Neutral Citation Number: [2007] EWHC 2996 (QB)

Case No: 4CF20091

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2007

Before :

MR. JUSTICE LLOYD JONES

- -

Between :

A	**Claimant**
(suing by her litigation friend Mrs. H)	
- and -	
Powys Local Health Board	**Defendant**

- -
- -

Simon Taylor QC and William Latimer-Sayer (instructed by **Messrs. Huttons**) for the **Claimant**
Adrian Whitfield QC and Ranald Davidson (instructed by **Welsh Health Legal Services**) for the **Defendant**

Hearing dates: 3rd, 4th, 5th, 8th, 9th, 10th, 15th and 16th October 2007

- -

Judgment Approved by the court for handing down (subject to editorial corrections)

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

MR. JUSTICE LLOYD JONES:

1. The Claimant A, who sues by her mother and litigation friend Mrs. H, was born at the University Hospital of Wales, Cardiff on 3rd July 1991. As a result of the treatment of her mother during A's birth, A has suffered severe injury. Liability in negligence has been admitted. Judgment has been entered for damages to be assessed and quantum remains the only issue in dispute between the parties.

GENERAL DAMAGES: PAIN, SUFFERING AND LOSS OF AMENITY.

2. As a result of the injuries suffered at birth A suffers from dyskinetic cerebral palsy which significantly compromises her physical movements. Her disability is due to damage to the thalami and basal ganglia. The cause of the damage was profound hypoxic ischemia. Her disabilities are permanent and her dyskinesia is severe. A is currently 16 years of age.

3. A suffers from severe involuntary movements which hamper her ability to carry out all activities of daily living. She is unable to walk unaided but is able to walk using a Kaye walker. She shows multiple dyskinetic movements during walking. She is very unsteady when standing without her Kaye walker. She is able to transfer herself from one seat to another. Her hand skills are significantly compromised due to severe dyskinesia in her upper limbs. She has poor voluntary placement of her hands. Her involuntary movements become more pronounced when she tries to execute fine motor skills. Her involuntary movements are unpredictable and can be forceful. Her muscle tone is very variable, often becoming markedly hypertonic, but relatively loose on other occasions.

4. A suffers from a severe level of dysarthia which significantly affects her ability to communicate effectively, particularly with people who do not know her. This will be permanent and the evidence of the jointly instructed speech therapist, Ms. Lesley Carroll-Few, is that there is no treatment which will help her. She is prone to dribbling. However, she is capable of holding a conversation. She gave evidence before me. Her speech is intelligible when

one becomes used to it but we were assisted in court by her mother who repeated A's answers.

5. A does not suffer any pain as a direct result of her condition. However, involuntary biting of her gum has given rise to severe problems with mouth ulcers which are extremely painful and for which the only effective pain killer is morphine.

6. A's intelligence and intellectual development have not been affected by her injuries. She is very intelligent and has shown a commendable determination in her studies. She has recently achieved very creditable grades in ten Junior Certificate Examinations in Ireland, where she lives with her parents and brother. (These are the equivalent of GCSE examinations in England and Wales.) Despite her disabilities she has learned to ride and is able to trot, canter and jump low jumps. She is due to be assessed shortly for the Irish Paralympic Team.

7. A requires a high level of support. It is common ground between the parties that she will be dependant on able-bodied carers for all activities of daily living for the rest of her life and will be unable to live independently without assistance. She currently requires and will always require 24-hour care. She is unlikely to be able to feed herself. From the age of 18 she will require care 24 hours a day on a permanent basis. There is an issue as to whether she will require two carers throughout the day.

8. On behalf of the Claimant Mr. Simon Taylor QC draws my attention to the JSB Guidelines (8th Edition) published in June 2006. These indicate that the highest level of award for quadriplegia in category 1(a) ranges between £188,250 and £235,000. (When updated by reference to RPI for August 2007 of 207.3 the range is £196,596 to £245,418.) The JSB Guidelines indicate in 2(A)(a) that the highest level of award for severe brain damage should be between £165,500 and £235,000. (When updated by reference to RPI for August 2007 of 207.3 this gives a range of £172,837 to £245,418). Mr. Taylor concedes that the Claimant is not at very top level because she does not have

the communication problems experienced by some suffering from cerebral palsy, nor does she currently suffer from incontinence. Nevertheless, he submits that her injuries place A towards the top of the relevant bracket and that an award of £220,000 to £230,000 is appropriate.

9. On behalf of the Defendant, Mr. Adrian Whitfield QC points to the fact that A is active physically and has maintained her intellectual ability. She is able to communicate by speech, albeit with difficulty, does not suffer from epilepsy, is currently continent and sleeps well. He also draws attention to the report of the Defendant's medical expert, Dr. M. F. Smith, who describes A's cerebral palsy as "mild to moderate". On this basis he submits that although her injuries are serious the award of general damages should not exceed £200,000.

10. On behalf of the Claimant Mr. Taylor has drawn my attention to a number of comparable awards. With one exception, these are all settlements which have been approved by the court as opposed to adjudications. As a result, they have to be treated with some caution. The closest comparables to which I have been referred are both settlements. In ***Burnham v Northamptonshire Health Authority*** (2004) the Claimant suffered from predominantly dyskinetic cerebral palsy and a major motor dysfunction. He had a significant range of physical disabilities which included being unable to walk or stand unaided. His upper limb function was significantly impaired. His expressive communication was severely limited and he found both feeding and eating difficult. He had been unable to obtain employment. The agreed settlement for pain, suffering and loss of amenity, adjusted to current values, was £226,433. In ***X v North Staffordshire Health Authority*** (2003) the Claimant suffered from severe physical disabilities which included spasticity of her limbs, although there was a relative preservation of her intelligence. She was wholly reliant on others for all aspects of her daily living and required 24-hour care. Her communication was severely impaired and she suffered from feeding and sleeping difficulties. The agreed settlement for pain, suffering and loss of amenity adjusted to current values was £218,539.

11. A's injuries are undoubtedly serious. They are of a degree of severity that will require a high level of support throughout her life. They are so serious as to deny her any prospect of remunerated activity. Nevertheless, I accept the submission of Mr. Whitfield that the injuries suffered by A, if considered in isolation, do not place her at the very top of the range indicated by the JSB Guidelines. However, I consider that it is necessary to give due weight to two further considerations. First, it is necessary to take account of the fact that A has a long life expectancy. She is expected to live to the age of about 70. This means she will experience a greater degree of suffering and loss of amenity than many others who suffer from cerebral palsy but who have shorter life expectancies.

12. Secondly, it is also relevant that A's retained intellect means that she has an insight into her condition. It was clear to me from her evidence and from that of her mother that A is acutely aware of how she is different from others. In recent weeks she has suffered distress at the realisation that her disabilities prevent her from taking part in the transitional year usually taken by pupils in Irish schools at this stage and has decided to proceed immediately to her fifth year studies. This has been a very distressing experience. She is very sensitive to her appearance and is particularly anxious not to be seen with equipment or anything that reveals her disability. I accept that she will experience difficulty in making relationships, particularly with the opposite sex. It is an unhappy fact that there is already evidence that she is vulnerable to bullying and social exclusion; the negative attitudes of some acquaintances have caused her acute unhappiness. It is likely that she will suffer from periods of depression as she attempts to come to terms with her condition. In recognition of this an award of £10,000 has been agreed for future counselling.

13. These further considerations serve, to my mind, to distinguish the awards in favour of Luke Warren and Robert Annable in ***Heil v Rankin*** [2000] 2 WLR 1173. In each case the award, adjusted to current values, was £215,425. Those claimants suffered from learning difficulties and therefore had less insight into their condition. They also had shorter life expectancies than does A.

14. Having regard to all these considerations I assess pain, suffering and loss of amenity in the sum of £225,000.

PAST LOSSES AND EXPENSES

15. All past losses and interest on these heads of claim, excluding costs of accommodation, have now been agreed between the parties as follows:

Past care	£165,000
Past treatment and therapies	£ 7,500
Past travel and transport	£ 32,000
Past aids and equipment	£ 11,190
Past miscellaneous expenses	£ 10,000
Total	£225,690
Interest at 40%	£ 90,276

Interest on past accommodation has been dealt with separately.

16. Having considered the matters set out in the confidential Advice prepared by counsel for the Claimant, I am satisfied that the proposed settlements under these heads in respect of past losses and expenses are a fair compromise and I am happy to approve them.

Future losses: Form of the award.

17. The effect of the amendments to section 2, Damages Act 1996 made by the Courts Act 2003 is that with effect from 21st April 2005 when a court is making an award of damages for future pecuniary loss in respect of personal injury it must consider whether the damages or part of them should be paid by way of periodical payments. Moreover, by virtue of the new section 2(9) the court may disapply or modify subsection (8) which requires the use of the RPI as the basis of indexation of periodical payments. The purpose of the new section 2(9) is the better to secure, so far as is possible, that periodical payments move in line with inflation so that the real value of annual payments is maintained over the entire period for which payments will be payable, while at the same time providing against unfairness to the defendant as a result of

over-compensation of the claimant. If payments are linked to an inappropriate index or measure, they will either result in over-compensation of a claimant or lead to the result that periodical payments will fail to keep pace with inflation. In the latter case, where the award is in respect of future costs of care the claimant will not be able to meet his or her needs. Either outcome would be incompatible with the 100% principle.

18. Before considering whether the damages or part of them should be paid by way of periodical payments, it is necessary to say something about A's family and her present life.

19. A's mother, Mrs. H, was brought up in Ballinasloe, County Galway, Ireland. It was there that she met her husband, Mr. H. He is of Irish descent but was born and brought up in Wales. He explained in his evidence that he considers himself to be Welsh. When Mrs. H had completed her training as a nurse she and her husband decided to move to Cardiff. Mr. H's father had a business there and she knew that she could get work as a nurse there. They bought their first house in Cardiff and established themselves there. They planned to stay in Wales. Mrs. H secured a nursing post at the University Hospital of Wales. In the months following A's birth it became apparent that A suffered from serious disabilities. Her parents decided to return to Ireland with A. In particular, Mrs. H was anxious to be near her parents and brothers and sisters who would be able to provide them with support through the difficulties they faced as a result of A's condition. As a result they returned to Ballinasloe in August 1992. They have established themselves there. Mr. H has established a building business there. Their second child Sean was born there in 1996. A and Sean are being educated in Ireland. The family have lived in a series of houses in or near Ballinasloe. It is clear that the family, despite its links with Wales, is established in Ireland and the very high probability is that A will spend her life in Ireland.

20. The Claimant's legal advisors instructed Dr. Victoria Wass of the Cardiff Business School to propose an appropriate data series for use in the indexation of salary-based costs of privately purchased future care in Ireland and to

measure the historical difference between prices growth and earnings growth for such an earnings series. Dr. Wass's conclusions are set out in her report. They have not been disputed on behalf of the Defendant.

21. Dr. Wass concluded that earnings growth is a feature of the Irish economy as it is in the United Kingdom. In both countries earnings growth has exceeded prices growth over the period of 1985 to 2005. However, there is no established data series which either measures or includes the earnings of carers in Ireland. In considering whether there is an appropriate data series for present purposes Dr. Wass has considered three series which measure earnings in Ireland.
    (1) The National Employment Survey (NES) provides earning levels for nine broadly defined occupational groups across the working population of Ireland. Carers are included in this survey. However it is a new survey and data are available only from 2003. The intention is that this survey should be an annual survey from 2006. The data from 2006 are not currently available.
    (2) Earnings Hours and Employment Costs Survey (EHECS) makes available statistics as broadly consistent historical series from 1985. A number of separate series of disaggregated earnings are published. However, none of the sectors covered relates to or includes the occupational group of carers.
    (3) The Index of Average Weekly Earnings (IAWE) is the most general aggregate series. It relates to the earnings of industrial workers in the manufacturing sector. In the public sector there is a set of series which measure average weekly earnings. However, the health sector is excluded from these series at both the aggregate and the disaggregate levels.

22. CPI, which is the Irish equivalent to the RPI, would be an inappropriate measure because it reflects the growth in prices rather than earnings. There is no Irish equivalent of ASHE 6115. The only series which includes carers is NES which is not yet established as an annual series. Those series which have a historical track record are based upon broad industrial rather than

occupational groupings and neither series relates to or includes carers. There is no equivalent of the AEI in Ireland.

23. In these circumstances, I accept Dr. Wass's conclusion that although, historically, earnings increase faster than prices in Ireland there is currently no earnings series which it would be appropriate to use as a means of indexing carers' earnings in Ireland. It would clearly be inappropriate to use an index which measures price inflation in the United Kingdom to upgrade future care costs which will be incurred in Ireland.

24. The Claimant's preference is for a lump sum which, it is said, will give her the opportunity to make up any shortfall with prudent investment. This position is supported by the unchallenged evidence of Mr. Cropper, a financial services expert. A further relevant consideration in this case is that there is little dispute between the experts in relation to the Claimant's life expectancy. As a result the risk to the Claimant of a lump sum award resulting in under-compensation is less than in certain other cases where life expectancy is disputed or there is a very short life expectancy which the claimant is at a significant risk of exceeding.

25. The Defendant has adopted a neutral position as to the form of award and has adduced no expert evidence on this issue.

26. In these circumstances I conclude that a conventional lump sum is the form of award in respect of the cost of future care which will best meet the Claimant's future needs.

Life expectancy.

27. The opinions of the medical experts as to A's life expectancy have not differed dramatically. Dr. Smith, the expert instructed by the Claimant, considered that the reduction of life expectancy was 12 to 13 years but later revised this to a reduction of 10 to 13 years. Dr. Charles Essex, the expert instructed on behalf of the Defendant, started with a 10 to 15 year reduction from a normal life expectancy of a further 69.5 years of life for a 15 year old girl to age 84.5 i.e. a

reduced life expectancy from 69.5 to 74.5 years of age. Subsequently, Dr. Essex suggested a life expectancy to around 68 to 69.

28. During the course of trial the parties were able to resolve the issue by agreeing a lifetime multiplier of 31. Although the life expectancy has not been agreed, this multiplier indicates a life expectancy for A to the age of approximately 70 years of age. This is in line with the opinions of the experts and I consider it an appropriate basis for the calculation of future losses.

29. On the basis of a lifetime multiplier of 31 and a discount rate of 2.5% the relevant multipliers for different time periods are as follows:

FIXED TERM MULTIPLIERS

A	Whole Life multiplier (Table 28)		31.00
	Losses from age 16 to 17 (Year 1)		
	Period to 17th birthday	1	
B	Multiplier to 17th birthday (Table 28)		0.99
	Losses from age 16 to 18		
	Period to 18th birthday	2	
C	Multiplier to 18th birthday (Table 28)		1.95
	Losses from age 16 to age 19		
	Period to 19th birthday	3	
D	Multiplier to 19th birthday (Table 28)		2.89
	Losses from age 16 to 21		
	Period to 21st birthday	6	
E	Multiplier to 21st birthday (Table 28)		5.58
	Losses from age 16 to 25		
	Period to 25th birthday	9	
F	Multiplier to 25th birthday (Table 28)		8.07
	Losses from age 16 to 40		
	Period to 40th birthday	24	
G	Multiplier to 40th birthday (Table 28)		18.11

	Losses from 16 to 70		
	Period to 70th birthday	54	
H	Multiplier to 70th birthday (Table 28)		29.82
	Losses from age 17 to 18 (Year 2)		
I	Appropriate multiplier for this period is C - B =		0.96
	Losses from age 18 for life		
J	Appropriate multiplier for this period is A - C =		29.05
	Losses from age 19 to 25		
K	Appropriate multiplier for this period is F - D =		5.18
	Losses from age 19 to 40		
L	Appropriate multiplier for this period is G - D =		15.22
	Losses from 19 for life		
M	Appropriate multiplier for this period is A - D =		28.11
	Losses from age 19 to 21		
N	Appropriate multiplier for this period is F - E =		2.69
	Losses from 21 for life		
O	Appropriate multiplier for this period is A - E =		25.42
	Losses from age 21 to 25		
P	Appropriate multiplier for this period is F - E =		2.49
	Losses from age 25 to 40		
Q	The appropriate multiplier is G - F =		10.04
	Losses from age 25 to 70		
R	The appropriate multiplier is H - F =		21.75
	Losses from age 25 for life		
S	The appropriate multiplier is A - F =		22.93
	Losses from age 40 for life		
T	Appropriate multiplier is A - G =		12.89

30. The parties have agreed the following periodic multipliers using a discount rate of 2.5%.

Replacement Interval	Appropriate Multiplier
Replacement every 2 years:	15.04
Replacement every 3 years:	9.82
Replacement every 4 years:	7.22
Replacement every 5 years:	5.65
Replacement every 6 years:	4.61
Replacement every 7 years:	3.97
Replacement every 8 years:	3.43
Replacement every 10 years:	2.53
Replacement every 12 years:	2.01
Replacement every 15 years:	1.50
Replacement every 20 years:	0.98

Where an immediate purchase of the item is required, one needs to be added to the appropriate periodic multiplier.

FUTURE LOSS OF EARNINGS.

Preliminary Issue.

31. Before considering the claim for loss of future earnings, it is necessary to consider in which country A would have spent her life had she not suffered her injuries. Both parties have proceeded on the basis that she would have lived and worked in the United Kingdom and have accordingly calculated her future loss of earnings in sterling. I consider that this approach is clearly correct. At the time of her birth, A's parents were firmly established in Wales. Mr. H's evidence was that he was happy at work, owned his own home and had

established his own business in Wales. As he put it, that is where he had his roots. Similarly Mrs. H's evidence was that at that time they were quite settled in Wales. I consider that but for the negligence it is highly likely that A's family would have stayed in Wales, that she would have gone to university in the United Kingdom and would have lived and worked in the United Kingdom. I consider therefore that the report of the jointly instructed expert Mr. Seamus Halliday on A's career prospects and earnings in the United Kingdom, had she not suffered the injury, is directly relevant.

Form of Award.

32. I have addressed earlier in this judgment the issue of the appropriate form of the award for the cost of future care and whether it should be a traditional lump sum or in the form of periodical payments. There was no dispute between the parties on this matter and the strong preference of the Claimant was to receive a lump sum. For the reasons set out above I have concluded that it is in the Claimant's best interests that that award should be in the form of a lump sum.

33. So far as the award in respect of loss of future earnings is concerned, the parties proceeded before me on the basis that the appropriate form of award is a lump sum and no submissions were made on this issue. It is clearly the preference of the Claimant that the award for loss of future earnings be in the form of a lump sum. In the light of my conclusion that the Claimant would probably have lived her life in the United Kingdom, had she not suffered the injury, it may have been possible to identify an appropriate index in relation to United Kingdom earnings for the purpose of an order for periodical payments in respect of loss of future earnings. However, there is no evidence before me in relation to the degree of accuracy with which various indices and measures might accurately reflect A's loss of future earnings. In view of the preference of both parties that the award should be in the form of a lump sum and the fact that the expert opinions on A's life expectancy are very close to each other, thereby reducing the risk that a lump sum award may result in under-compensation, I have come to the conclusion that an award of a lump sum would be fair to both parties and in A's best interests.

The Initial Period.

34. Both parties agreed that the issue of loss of earnings from part-time work while studying requires to be addressed separately from loss of earnings during a career. I accept that different considerations apply to this initial period and it is appropriate to consider it separately. The claim for loss of income from part-time work between the ages of 16 and 21 is supported by evidence from Margaret Connaughton, a family friend of the Claimant, who provides evidence as to the earnings of her children from part-time holiday work. During the trial the parties were able to agree this head of claim on the basis that A would have been paid around the minimum wage (i.e. £3.30 per hour under the age of 18, £4.45 per hour between the ages of 18 and 21) with supplements for working Sundays and bank holidays. On this basis the annual loss between the ages of 16 and 18 is agreed at £1,250 with a multiplier of 1.95 giving a subtotal of £2,437.50. The loss of earnings between ages 19 and 21 is agreed as an annual loss of £2,500 which with a multiplier of 2.69 gives a subtotal of £6,725. This head of claim is therefore agreed in the total sum of £9,162.50.

The Correct Approach.

35. Turning to the Claimant's loss of earnings during adult working life, the parties have adopted different approaches. On behalf of the Claimant Mr. Taylor invites me to make a single assessment based on average earnings across the whole of the Claimant's adult working life. On the other hand, Mr. Whitfield, on behalf of the Defendant, invites me to predict loss of earnings at different stages in A's life as opposed to applying an overall average. Accordingly Mr. Whitfield invites me to adopt the following periods: 22 to 29 years, 30 to 43 years (the years of child bearing and rearing) 44 to 60 years and 61 to 65 years (when he submits a woman would be more likely to work part time as opposed to full time). In his closing submissions Mr. Whitfield accepted that as a reduction is made for part time work in two of these periods, no further discount should be made for contingencies.
36. In deciding the preferable approach, I have in mind the modern trend in favour of seeking to secure greater accuracy in calculations of future loss

wherever this is possible. It may well be that Mr. Whitfield's approach would be appropriate in circumstances where the claimant has suffered injury during his or her career and where the likely progress of that career can be predicted with greater certainty. However, in the present case I am faced with assessing the prospects of a person who has never worked. This will inevitably be a more general exercise. I therefore accept the submission of the Claimant that I should make a single assessment based on average earnings across the entire working life of the Claimant and seek to take account of the opportunities, risks and discrepancies in earning levels at different stages in selecting an averaged multiplicand and in the approach taken to discounts for contingencies.

The Level of Multiplicand.

37. A comes from a professional family background. Her father has professional qualifications and has established himself as a successful and industrious builder. Her mother is a qualified nurse who has recently been able to return to work part time. A has recently distinguished herself in her Junior Certificate Examinations in which she obtained the following grades: Science (C), Mathematics (B), Business Studies (B), Irish (A), Geography (C), Religious Education (B), English (D), German (A), Civic Social Studies (B), Arts and Crafts (C). She came 17th out of a class of 85 students. She dictated her answers to an amanuensis and was allowed ten extra minutes per hour to complete her examinations. Given these conditions and given that A's ability to study is severely impeded by her injuries - she is, for example, unable to turn the pages of a book – this is a remarkable and highly creditable achievement. All the indications are that, had she not suffered the injury, she would have gone on to university and pursued a professional career or a career as a senior manager or official. She has expressed interest in business, accountancy and law.

38. In seeking to arrive at the appropriate level of multiplicand I have been assisted by the evidence of Mr. Halliday, the jointly instructed expert, who has proposed that the appropriate multiplicand can be arrived at on the basis of categories SOC 1 and SOC 2 of the ASHE Tables, which relate to managers,

senior officials and professionals. He takes the mid-point of median and mean figures of the earnings of females in these two categories. This figure, when adjusted to take account of inflation leads to an annual net income of £25,187. This figure is accepted by the Defendant as an appropriate multiplicand.

39. However, I am persuaded by the submission on behalf of the Claimant that there are present in this case a number of features which indicate that A, had she not suffered the injury, would have earned an income above the average in these categories and that Mr. Halliday's figure is an underestimate of her earning potential.
    (1) Her exceptional examination results reveal considerable ability and a real determination to succeed.
    (2) Her background is that of a hard working supportive family who have clearly instilled in her a work ethic.
    (3) It is likely that she would have pursued a career in business, accountancy or law where earnings can be substantial and significantly higher than the public sector.
    (4) The agreed evidence is that she would probably have earned more than her mother who, as a qualified neo-natal nurse, has an earnings potential of £33,000 gross per annum.
    (5) Mr. Halliday's figures are, quite correctly, based on the earnings of females. I consider that some allowance should be made for the likelihood that remuneration of females in these categories is likely to move closer to that of males.
    (6) Separate provision has been made for pensions so I exclude this consideration from account here. However, it is likely that in these categories of employment A would also have received employment benefits. Loss of these benefits would justify an upwards adjustment of the multiplicand.

40. In these circumstances, I accept the submission on behalf of the Claimant that the appropriate multiplicand would be £40,000 gross per annum which leads to a net figure in respect of annual earnings of £29,066.

Retirement Age.

41. The Claimant contends for a retirement age in the range of 68 to 70 years of age. The Defendant contends for a retirement age of 65. A number of considerations support the view that workers of A's generation are likely to work longer and retire later than earlier generations. First, life expectancy has increased very considerably. A's life expectancy, had she not suffered these injuries, would have been to the age of 89. Secondly, in its White Paper "Security in Retirement: Towards a New Pensions System", published in May 2006, the Government outlined its commitment to raising the State retirement age. For people of A's age eligibility to a State pension will arise at only the age of 68. Moreover, it is the Government's stated intention to bring the current State retirement age for women into line with that for men so that the retirement age for both sexes with eventually be raised to 68. Thirdly, it seems probable that people will need to work longer in order to ensure they have sufficient to keep them during their prolonged retirement. Fourthly, having regard to the type of employment in which the Claimant would have been engaged, there is no good reason why she should not continue in employment to a later age. Having regard to all these considerations I conclude that it is appropriate to adopt a retirement age of 68.

Discount for Contingencies other than Mortality.

42. In its Counter Schedule the Defendant maintained that the contingencies of injury, absence from work, career breaks, part time working and work related expenses, while necessarily involving a degree of speculation, should reasonably be reflected by a reduction of 50%. In his closing submissions Mr. Whitfield advocated alternative approaches: an adjustment of the multiplicand or the use of actuarial guidance. The first method involves a consideration of different phases in A's career and adjusting the multiplicand to take account of likely contingencies in certain phases. Thus, for example, in the band for ages 30 to 43 years a reduction is made to allow for part-time income throughout the period. Similarly, the phase from 61 to 65 years assumes a part-time income and adjusts the multiplicand accordingly. In each case the Defendant proposes a multiplicand of £13,169. I have explained above why I consider it more appropriate in the present case to adopt a single average multiplicand in

respect of A's entire working life and to make appropriate adjustments for contingencies. However, I am persuaded that there is a more fundamental objection to the first method proposed on behalf of the Defendant. It is necessary, wherever possible, to employ the available actuarial tools, as opposed to adopting an impressionistic approach. In ***Wells v Wells*** [1999] 1 A.C. 345 Lord Lloyd emphasised (at p. 379 F-G) that, while there may well be special factors in particular cases, the Tables should now be regarded as the starting point rather than a check. He considered that a judge should be slow to depart from the relevant actuarial multiplier on impressionistic grounds or by reference to a spread of multipliers in comparable cases. The Court of Appeal has adopted this approach to discount for contingencies other than mortality. In ***Herring v Ministry of Defence*** [2004] 1 All ER 44 it made clear that discount should be made upon the available statistical evidence. Potter L.J. observed (at para. 31):

> "… statistics, or at any rate guidance upon research, are now available in the notes to the Ogden Tables which demonstrate that so far as the level of any "arbitrary" or generally applied level of discount is concerned, a figure of 25% is a gross departure from that appropriate simply in respect of future illness and unemployment. In order to justify a substantially higher discount by reason of any additional future contingencies, there should in my view be tangible reasons relating to the personality or likely future circumstances of the claimant going beyond the purely speculative".

In that case the Court of Appeal endorsed an approach based on the fifth edition of the Ogden Tables. The sixth edition, which has recently been published, includes notes on discount for contingencies other than mortality which are substantially revised from the previous edition and which are based on extensive new research. In general, it appears that these new actuarial tools would lead to a higher level of discount than would those in the previous edition. I consider that it is necessary to apply the guidance in the Explanatory Notes to the Ogden Tables and that there are no features of the present case which would justify a departure from this actuarial guidance.

43. Adopting this approach, the appropriate table is that at Table C of the Explanatory Notes to the sixth edition of the Ogden Tables.

(1) I consider that the appropriate category of educational attainment in this case is Category D i.e. degree or equivalent or higher.

(2) At the stage of closing submissions there was a dispute between the parties as to whether the Claimant should be treated for this purpose as employed or not employed at the time of assessment. However, paragraph 41 of the Explanatory Notes makes clear that the relevant factor for age 16 is to be selected using the assessed employment status and educational status likely to be ultimately attained. Accordingly, she is to be treated as employed for this purpose.

(3) I note that Table C addresses the appropriate discount in the case of loss of earnings to a pension age of 60. However, paragraph 43 of the Explanatory Notes states that where the retirement age is different this should be ignored and the reduction factor and the adjustments thereto are to be taken from the table for the age of the claimant as at the date of trial with no adjustment. Different considerations may apply if the retirement age is close to the age at the date of trial but that is not the case here.

(4) I note that Table C, which applies to females, makes allowance for the interruption of employment for bringing up children and caring for other dependants. Accordingly, it is not appropriate to make a further discount in respect of time off work for bearing and rearing children or caring for other relatives.

(5) On this basis the appropriate discount factor for contingencies other than mortality is 0.87 i.e. a discount of 13%.

Residual Earning Capacity.

44. Having regard to the expert evidence, I conclude that it is not appropriate to make any discount for residual earning capacity in the present case.

Conclusion on Future Loss of Earnings.

45. For the reasons set out above I assess the award for loss of future earnings as follows.

(1) Loss of earnings from age 16 to 21 is assessed at £9,162.50.

(2) Loss of earnings from age 21 to 68.

The annual net earnings are assessed at £29,066.

The discount factor for contingencies other than mortality is 0.87.

The appropriate multiplier from age 21 to a retirement age of 68 is 27.366.

The award will also be discounted for accelerated receipt for 5 years to age 21 by a factor of 0.8839 (Table 27).

(3) The calculation for total loss of earnings is therefore £9,162.50 + (£29,066 x 0.87 x 27.366 x 0.8839) = £620,835.03.

FUTURE LOSS OF PENSION.

46. The claim for future loss of pension comprises two elements: the loss of employer's contributions during working years and the lost pension in the lost years claim. The parties have now compromised these heads of claim in the total sum of £50,000, a settlement which I approve.

FUTURE CARE AND CASE MANAGEMENT.

Rates of Pay per Hour.

47. The Claimant claims the following rates for carers: €18 per hour for week days, €24 per hour for Saturdays and €36 per hour for Sundays. These rates are proposed by Mrs. Sargent, the Claimant's care expert in her report. It is her evidence that she has arrived at these rates on the basis of rates paid to carers in Ireland and in particular the rates paid by Enable Ireland. Mrs. Sargent had discussed the rates with Ms. Roche, the Claimant's case manager who supports the rates proposed by Mrs. Sargent. To the extent that a second carer may be required the Claimant's original claim, on the basis of Mrs. Sargent's recommendation, was for the following rates: €13 per hour for week days, €19 per hour for Saturdays and €24 per hour for Sundays. However, during the hearing Ms. Roche gave evidence in relation to pay increases in Ireland. Accordingly the Claimant now seeks the following rates for the second carer: €14 per hour for weekdays, €20.50 per hour for Saturdays and €26 per hour for Sundays. These figures and the general approach are supported by Ms. Roche as representing normal rates payable in County Galway. So far as sleep-in night care is concerned, Mrs. Sargent has revised her recommendation in the light of the evidence of Mr. Conor Quigley QC on

the law of Ireland as to permitted working time. In its amended form, Mrs. Sargent's recommendation is that an 8 hour sleep-in night shift should be paid at the rate of €9 per hour on weekdays, €12 per hour on Saturdays and €18 per hour on Sundays.

48. Mrs. Lawrence, the Defendant's care expert, states in her report that she has been unable to determine what are the hourly rates paid to health care assistants/carers in Ireland. However, she does refer to rates payable to personal assistants provided by Enable Ireland (€17 per hour), advertisements for a senior family support worker (€14.44 – €21.09 per hour), an advertisement for a rehabilitation care worker (€12.82 - €17.95 per hour) and remuneration of staff nurses (€8.52 - €12.45 per hour). Mrs. Lawrence recommends that the hourly rate for carers of A be €15 in the day and €17 in the evenings and weekends. In his closing submissions Mr. Whitfield maintained that these rates are appropriate. However, in the alternative he submits that the evidence of comparables before the court suggests a basic rate of €16 per hour. In the light of Mrs. Lawrence's acceptance that she had been unable to determine the hourly rate paid to carers, I am unable to attach any weight to her recommendation that the hourly rate be €15 per hour in the day and €17 per hour in the evenings and at weekends.

49. I turn therefore to the comparables which were produced in evidence, including the comparables produced by Ms. Roche and Mrs. Lawrence during the course of their oral evidence.

    (1) The Defendant attaches considerable weight to the evidence of Mrs. H that she currently pays her sister, Severine, at a rate of €15 per hour. A's Aunt Severine currently spends between 15 and 18 hours per week caring for A. However, Mrs. H explained in her evidence that Severine has no experience of caring and this is her first job as a carer. Mrs. H is planning to review her rate of pay once she has settled down and has completed a probationary period. Mrs. H explains that the rate of €15 per hour is less than Aunt Severine might otherwise be paid if she had experience. In this regard she states that Elaine, the Enable Ireland carer, if she were to work for A would charge between €18 and €20 per hour and only work during

daytime and evenings up to 8pm. Mrs. H also gave evidence that she and her husband employed Sarah Tuohy from March 2007 for a few hours each week to do homework and occasionally to socialise with A. She has been paid at a rate of €15 per hour. The rates paid to Severine and Sarah would suggest that the first carer, who will need to be experienced and who will accept considerable responsibility, must be paid at a higher rate than €15 per hour. It is also relevant that while it was Mrs. H's evidence that Ms. Roche had advised her that €15 per hour is the standard rate for personal assistants, this seems to conflict with the evidence of Ms. Roche who contends for a higher rate.

(2) In the course of her oral evidence Mrs. Sargent produced a table of rates paid by Enable Ireland to child care assistants in Dublin and Kilkenny. There are 12 grades of remuneration. The annual remuneration at December 2006 was €30,755 at grade 6 (at Kilkenny rates, €15.77 per hour) and at grade 12 €34,533 (at Kilkenny rates €17.70 per hour). The evidence was that Kilkenny rates are broadly comparable with those in Galway. The rates would need to be increased by approximately 3% to indicate current rates of pay. On this basis Mrs. Sargent's basic rate of €18 per hour is close to the top of the scale. However, as Mrs. Sargent pointed out in her evidence, employees of Enable Ireland would receive the benefits of public employment including a pension and travel expenses. When these considerations are taken into account a basic rate of €18 per hour is still comparatively high in the scale but is easier to justify in the case of an experienced carer assuming the role of first carer.

(3) In the course of her evidence Mrs. Lawrence produced details of research carried out on the internet very shortly before she gave evidence. The most relevant of these was an advertisement for carers in Roscommon County. Some experience was required – a minimum of 1 year's experience. The minimum salary was €13 per hour and the maximum salary was €20 per hour. The Defendant relies on these figures as supporting its case on rates. However, it seems to me that these figures lend some support to Mrs. Sargent's case. The mid point is €16.50 per hour. The person performing the role of first carer might be expected to be paid at a rate above the mid point of the scale. On this basis, the

Roscommon rates are not significantly out of line with Mrs. Sargent's proposal.

(4) In the course of her evidence Ms. Roche produced a newspaper cutting which gave details of the remuneration of special needs assistants employed in primary and secondary schools throughout Ireland. They have a structured pay scale and also receive entitlements attached to the post. It appears that since January 2006 a 13 point salary scale has been implemented starting from €20,128 per annum reaching a maximum of €34,447 per annum (approximately €12.05 to €19.54 per hour). However, I consider that this comparable needs to be treated with some caution. A classroom assistant is supervised by a teacher. Moreover, a classroom assistant works 6 hours a day for 38 weeks a year and is paid for holidays. Furthermore, it was the evidence of Ms. Roche that schoolroom assistants are currently on strike because they consider their earnings too low.

(5) There was a dispute between Mrs. Lawrence and Ms. Roche as to the Irish Nurses Organisation current rates of pay for a staff nurse. Taking Ms. Roche's figures which were higher, (€30,339 to €44,294 inclusive of service increment) the lowest of these rates equates to €15.56 per hour. This is roughly equivalent to the mid-point of the rates for carers shown in the Enable Ireland document considered at (2) above.

(6) The Defendant also relied on a document disclosed by the Claimant relating to a National Lottery Respite Grant received by A in 2006. Under this grant Sarah Tuohy was to work as a personal assistant with A for 2 hours a week for 6 weeks commencing January 2007. She was to be paid at a basic rate of €14.14 with an additional payment of €14.14 for working on a Saturday. The document also reveals that on that scale the Sunday was €28.28 per hour, the unsocial rate was €16.50 per hour and the early morning rate was €17.68 per hour. I consider that this comparable needs to be treated with some caution. It reveals the rates applicable on a very limited respite grant funded by the National Lottery. I doubt that it is safe to draw any conclusions from this for the purposes of a private package of care.

(7) In his closing submissions, Mr. Whitfield very fairly acknowledged, without abandoning Mrs. Lawrence's evidence on care rates, that the

evidence on comparables was inconsistent with it. This is why he falls back on €16 per hour.

50. Having regard to the comparables set out above I have come to the conclusion that Mrs. Sargent's basic rate of €18 per hour is a fair and reasonable assessment of the rate that will have to be paid for the first carer, if A is to receive the quality of care which she needs. In coming to this conclusion I have also been influenced by the following considerations.
    (1) The first carer will bear considerable responsibility and will need to have substantial experience of care work. She will need to be above average to meet A's needs. Mr. Whitfield very fairly accepted that A needs as first carer someone of spirit and ability above what is to be expected of a care home assistant.
    (2) Because of A's communication problems the first carer will need to be fluent in English. Many immigrant care workers will not have the necessary fluency.
    (3) In recruiting carers A will be competing with institutions which are able to offer more attractive conditions of work and will be able to offer financial benefits which are not reflected in the scheme proposed by Mrs. Sargent.
    (4) While the scheme proposed by Mrs. Sargent includes higher rates for Saturdays and Sunday, there is no additional remuneration for working in the evenings or unsocial hours on weekdays.

51. In the course of cross examination Mrs. Lawrence accepted Ms. Roche's evidence that the practice in Ireland is to pay double for Sundays and an intermediate rate for Saturdays. On this basis, I accept Mrs. Sargent's proposed rate of remuneration for Saturdays and Sundays as fair and reasonable.

52. So far as a second carer is concerned, I agree with Mrs. Sargent that it will not be necessary for her to be as experienced as the first carer or to be remunerated at the same rates. In the light of Ms. Roche's unchallenged evidence as to the latest pay increases in Ireland I accept that the rate for the

second carer should be €14 per hour for weekdays, €20.50 per hour for Saturdays and €26 per hour for Sundays.

53. So far as sleep-in night carers are concerned I consider that Mrs. Sargent's proposal that the carer be paid at half rate (€9 per weekdays, €12 per hour Saturdays and €18 per hour on Sundays) is entirely fair and reasonable. It does not appear to be challenged by Mrs. Lawrence or on behalf of the Defendant.

Weeks per annum.

54. The parties have agreed that 59 weeks per year should be allowed in order to take account of contractual holidays, public holidays, sick pay and training. Making the appropriate allowance can be a difficult process, in particular because the extra cost of sick days and statutorily required training can only be estimated and it cannot be known whether sickness or contractual holidays will fall on weekdays, Saturdays or Sundays. A 59 week year has been agreed by the parties on the basis that this also makes allowance for the extra cost of alternative cover on public holidays, which was originally included as a separate head of claim but which is no longer pursued separately. In these circumstances, I am prepared to approve the agreement on a 59 week year subject to the following qualifications. First, it must be borne in mind that the figure has been arrived at on the basis of Irish conditions. Secondly, the calculation has been adopted for purposes of simplicity and is necessarily imprecise.

Pay Related Social Insurance (PSI).

55. A will have a liability for social insurance as a result of employing carers. It eventually emerged in the course of the evidence that the rate of pay-social insurance (PSI) is 8.5% up to €356 per week and 10.75% above that level. A precise calculation of the likely liability to PSI is impossible because it will depend on the number of hours which each carer works. It is likely that the carer team will comprise some full time and some part time employees. In these circumstances I propose to adopt a flat rate of 10%.

Expenses.

56. Mrs. Sargent and Mrs. Lawrence both gave evidence in relation to the expenses associated with engaging carers. By the stage of final submissions these had been agreed at the rates proposed by Mrs. Sargent. Accordingly I propose to allow expenses as follows:

Food	€2,600 per annum
Recruitment	€1,500 per annum
Insurance	€1,000 per annum
Training	€1,000 per annum
Payroll	€1,815 per annum
Total	€7,915 per annum

Family care.

57. In her scheme for the care of A Mrs. Lawrence allowed for continuing family care of 1 hour per day at weekends and during school holidays to age 19. She also allowed for some continuing family care during university years at night and in the holidays. To this she applied the English National Joint Council (ENJC) rate. There is no doubt that A is extremely fortunate in having very devoted parents. It is regrettable that Mrs. Lawrence had not discussed with Mr. and Mrs. H her proposal as to their participation in A's care regime and so had no idea whether they were agreeable to it. While I have no doubt that they will be willing to assist in meeting A's needs, as and when appropriate, it may well be that they will wish to return to the role of parents and to place disability-related care into the hands of professional carers. In these circumstances, I can see no justification for a reduction in the amount of professional care to be provided. (See ***Stephens v Doncaster Health Authority*** [1996] Med LR 357 per Buxton J. at p. 367.)

Assistance from Enable Ireland.

58. A has been in receipt of assistance from Enable Ireland at a rate of 7 hours per week. Mrs. Lawrence, in constructing her proposed care regime, assumed this assistance will continue even after A has received a substantial award of damages. However, in cross examination Mrs. Lawrence accepted that it was unclear what, if any, funding was to be provided by the State and that it was

therefore reasonable not to make a deduction in respect of such assistance. There is before me no evidence that Enable Ireland will continue to make any free care available to A following the award of damages in this case. Accordingly I make no deduction in respect of any such care.

Night Sleeper at Home.

59. A does on occasion need assistance at night. In her proposed scheme Mrs. Lawrence contends that A's parents should provide this assistance to age 18, when A is expected to go to university, and thereafter during university holidays. Mrs. Sargent accepts that it is reasonable for Mr. and Mrs. H to provide this assistance until A goes to university. However, she proposes that sleep-in care should now be provided two nights a week to enable A to have some evenings out without her parents having to wait up in order to put her to bed. In cross examination Mrs. Lawrence appeared to change her mind and accept that it was reasonable for A to have professional night care so that she could go out a couple of nights a week. I agree with that view and accordingly propose to allow for sleep-in care for one weekday and for one weekend day each week.

60. I consider that it would be unreasonable to depend on A's parents to provide night care during university holidays and therefore propose to allow for sleep-in night care every night during university vacations.

Care in University Years.

61. It is common ground between the parties that I should proceed on the basis that A will go to university in Galway, some 40 miles from her home in Ballinasloe and that she will live in student accommodation in Galway during term and live at home with her parents during vacations. It had originally been expected that A would go to university in three years time at the age of 19. However, Mrs. H explained in her evidence that A is finding it very difficult to participate in the optional transitional year which Irish pupils usually take following Junior Certificate and A has accordingly decided to miss this year and return immediately to her studies. This means that she is

likely to go to university in two years time at the age of 18. The model will therefore have to be adjusted to make allowance for this.

62. Mrs. Lawrence has maintained that A is likely to receive state funding for considerable amounts of help in her university years. She has suggested that this would be provided through an organisation known as Assist Ireland or through some disability service. As a result Mrs. Lawrence has made allowance for professional care to be funded from compensation only during the evenings and nights and for care during university holidays. However, Mrs. Lawrence has been unable to provide any information as to the basis of her understanding. There is no direct evidence before me to support the conclusion that A will, in fact, be eligible for any free care during her time at university. Moreover, it is the evidence of Ms. Roche and Mrs. Sargent, both of whom have experience of the provision of care in Ireland which Mrs. Lawrence does not possess, that in their experience care during university years has to be paid for. In these circumstances I conclude that compensation must make provision for full adult care from the age of 18.

Care Model in Adult Years.

63. At the start of this trial there were two substantial issues between the parties in relation to the care model in adult years: the Defendant's proposal for a resident, full time carer and the claimed need for a second carer in daytime. These will be considered in turn.

(1) A resident full time carer.

64. The scheme originally proposed by the Defendant allows for a resident carer living in and working full time for a period of a week or two at a time, relieved for some four hours each day by a second carer. On behalf of the Claimant it was submitted that the proposed model was unlawful and impracticable.

65. The Claimant adduced evidence as to the applicable Irish law in the form of a report by Conor Quigley QC. That evidence has not been challenged on behalf of the Defendant. Mr. Quigley's conclusions in relation to the

Organisation of Work Time Act 1997 which implements in Ireland Council Directive 93/104/EC may be summarised as follows:

(1) The legislation imposes restrictions on the length of periods for which a person may be engaged. A person may not be required to work more than 48 hours per week. A person must have a daily rest period of at least 11 consecutive hours and, in the case of night workers, must not be required to work for more than 8 hours per day.

(2) A residential carer for a significantly disabled person will be considered to be working at all times when at the disposal of the employer and performing her duties or activity. Being on call at the place of residence will be considered to be working. A residential carer would be regarded as working within the meaning of the Directive and the Act for a total of 20 hours each day under the defendant's proposed arrangement. This would be prohibited by the Act.

(3) Apart from the case of family members, there is no applicable derogation in Ireland from the 48 hour maximum working week or from the prohibition of night workers working more than 8 hours in a day.

(4) An Irish court would be bound to find that the Defendant's proposed scheme would not be lawful in that it would require, in particular, the carer to work for daily and weekly periods prohibited under the Act.

66. In the light of this evidence, the Defendant has abandoned the model which was originally proposed.

(2) Second Carer.

67. On behalf of the Claimant it is submitted that a second carer will be required from age 18, when A is expected to start university, and that the second carer will be required for most of the day. (The model proposed on behalf of the Claimant has a second carer on duty for 14 hours per day whereas a first carer will be on duty for 16 hours a day.) The claim is based on the Claimant's condition as assessed by Mrs. Sargent (supported by Mrs. Ho, the Claimant's expert Occupational Therapist) and on the assessment made by Ms. Roche and

Mrs. Sargent that the Claimant is rapidly approaching the point where two carers will be required for all transfers. Particular reliance is placed upon the risk assessment carried out by Ms. Roche. On behalf of the Defendant it is accepted that a second carer will be required in later life, but the Defendant maintains that a second carer will not be required from age 18. The Defendant has not specified any particular date from which it accepts that a second carer will be required.

68. The medical experts have deferred to the care experts on the issue whether and when two carers will be required. However, it will be necessary to refer below to certain aspects of the medical evidence.

69. In approaching this issue it is vital to bear in mind the date at which various examinations and assessments were carried out. It is clear that A has grown considerably over the last two years. Mrs. Ho examined A on a visit to Ballinasloe on 17th November 2005. At that date she was 4 foot 10 inches tall and weighed approximately 4 stone. A is now 5 foot 1½ inches tall and weighs 5½ stone. The medical evidence is that she is unlikely to grow much taller but she is likely to put on weight. How much weight she will put on and when this will occur will depend on how fit she keeps and how much exercise she gets. However the evidence is that when she does put on weight this will increase the difficulties of mobility and may have implications on her ability to assist in transfers. It is also likely to have a bearing on the forcefulness of involuntary movements.

70. A's ability to assist in transfers was considered by the physiotherapy experts. Susan Edwards, the physiotherapist instructed on behalf of the Claimant, examined A on a visit to Ballinasloe on 21st February 2006, some twenty months ago. She recorded in her report that A was fully independent with all changes of position and sequences of movement including getting down onto the floor and back up again. However some of these movements such as sitting up and lying and getting up from the floor were quite effortful. A told Ms. Edwards that she would normally accomplish a stand transfer with no difficulty but on this occasion she fell onto her knees.

71. Ms. Filson, the expert physiotherapist instructed by the Defendant, carried out an examination of A on a visit to Ballinasloe on 9th May 2006. She recorded in her report that A was able to move from sitting to standing independently. However, she referred repeatedly in her report to the difficulties caused by severe unwanted movements.

72. Mrs. H in cross examination accepted that if A gets no worse she can manage most of the day with one person there. However, she also gave evidence of increased difficulty in transferring A over the last year to 1½ years. This, she explained was due to an increase in the severity of involuntary movements and an increased tendency to overbalance. Mrs. H also gave evidence that Severine was not managing all transfers by herself. For showering, two carers were needed and even with two carers it was quite difficult.

73. It is a striking feature of Ms. Filson's report that she refers repeatedly to the difficulties suffered by A as a result of severe and unwanted movement. Thus, for example, she states that A is able to take a few steps unaided but has severe unwanted movements and has to hold her arms out into abduction, her knees in a flex position and uses a wide based gait to help maintain her balance. She refers to the fact that when sitting A tries hard to control her unwanted movements. She describes A crawling onto the bed on her hands and knees with her arms held rigid, wrists flexed and her fists clenched, but again being troubled by severe unwanted movements. When walking in high kneeling position she is troubled by severe unwanted movements. It is also significant that she describes A throwing and catching a pillow but overbalancing on the bed. Ms. Filson concludes that A's "constant unwanted movements" hamper all activities.

74. Dr. Essex gave evidence before me and he dealt with the nature of these involuntary movements. His evidence was based upon his examination which took place at A's home on 1st April 2006. He referred in his report to A's marked dyskinetic movements. In his oral evidence he explained that these are sudden and unpredictable and may be strong and forceful. They affect all

of the joints in the upper and lower limbs and affect the head and the trunk. They can be significantly more forceful than any voluntary movement which she may make. There is more involuntary movement when she is excited. He also referred to the fact that she has poor grasp and an inability to direct her grasp, a factor which increases her difficulties in this regard. He also considered that A has poor control of her movements even when involuntary movements do supervene. Dr. Essex considered that A's muscle tone is very variable. On examination he found that it often became markedly hypertonic, resulting in a stiff condition often described as spasticity. I consider that this has an important bearing on the likely effect of A's severe involuntary movements on carers.

75. Dr. Essex considered that A's balance is poor and made worse by "scissoring" of her legs which is caused by imbalance between the adductor and abductor muscles around the hip joints, a matter on which Ms. Roche also comments.

76. Mrs. H gave evidence that over the last year to year and a half A's condition had deteriorated. There is now a lot of involuntary movement in her arms which have grown longer. When she is unwell this is more pronounced. Her arms could be all over the place. Mrs. H has learned to compensate for these movements but it has become more difficult as A has grown older. She explained that A sits on her left arm in order to steady her position. Mrs. H said that A is unpredictable. Sometimes she can overbalance which causes difficulty. Mrs. H also gave evidence that A cannot fix her right hand onto her Kaye walker without assistance. Mrs. H considered that extra handrails would not assist because she could not be confident that A would be able to grasp them in order to prevent a fall.

77. Mrs. Ho also gave evidence of the deterioration in A's condition. She first examined A on 17th November 2005. However she carried out a further examination on Sunday 7th October 2007, immediately before she gave her evidence on the following day. She is, therefore, particularly well placed to form a view of the changes in A's condition over a period of time. She is the only expert who has carried out a recent assessment. Mrs. Ho's evidence was

that transfers are now much more difficult than they were in November 2005. She considers this is a matter of truncal balance. A is now far more unstable and wobbly. She described A attempting to transfer herself from her wheelchair to a bed. While she was doing this her father who was standing nearby inadvertently knocked the pillowcases and caused her to fall sideways. She described A transferring herself from the bed to the floor. A slithers to the floor with the assistance of gravity but she needs a carer on each side so as to prevent her from tumbling. I note that it was Mrs. Ho's evidence that A cannot get up from the floor without assistance. This is in marked contrast to the situation observed by Ms. Edwards in February 2006. Mrs. Ho's conclusion on the basis of her examination of A in October 2007 was that A's involuntary movements were unpredictable and they posed a danger to A and to her carers. She concluded that the need for two carers was swiftly approaching if it had not already arrived. She considered that A requires two carers for transfers such as toileting, showering and bathing. Mrs. Ho had not herself carried out a bath transfer with A because she considered it too dangerous.

78. The Claimant's care expert, Mrs. Sargent, first examined A at A's home on 29th March 2004. She carried out a further examination on 6th October 2006. Following her first examination of A, Mrs. Sargent considered that she was able to manage with one carer. However, following the second examination Mrs. Sargent observed that A's mobility had reduced and concluded that in future she would require two carers for transfers because she would become more unstable. Mrs. Sargent also suggested that there should be a risk assessment. Such an assessment was carried out by Ms. Roche. In the course of her oral evidence Mrs. Sargent attached great importance to this risk assessment. Mrs. Sargent considered that two carers would be needed for all transfers, including transfers for toileting which would need to take place at irregular intervals six or seven times a day.

79. Mrs. Lawrence, the Defendant's care expert, visited A at her home on 31st July 2006. In her report dated 9th September 2006 she recorded that A is able to walk using a Kaye walker but that, increasingly, she is using her powered

wheelchair. In her report Mrs. Lawrence accepts that A will always require the presence of someone to assist her with personal care, domestic tasks and meal preparation. Mrs. Lawrence expects that A will remain able to assist the transfers in and out of her wheelchair and able to wash herself with some assistance. Mrs. Lawrence also observes that should A lose her ability to assist with transfers in later life she would make an allowance of eight hours per day for additional assistance first thing in the morning and again preparing for bed and during the day. Mrs. Lawrence observed that it would be a matter for medical opinion as to when such assistance would be required.

80. In her oral evidence Mrs. Lawrence expressed the opinion that one carer would be sufficient at present. This was based on her observations on her visit and on reading the experts' reports. She concluded that "one carer can manage at the moment". However in cross examination she accepted that some activities would require two carers and that there would therefore be some periods of the day when two carers would be needed. She also expressed the opinion that A can at present reliably assist in her own transfers. She considered that when A knows her carers and what is expected and is not rushed she can be managed by one person. However, it became apparent during her cross examination that on her visit to A Mrs. Lawrence had not asked A to perform any manoeuvres or transfers for her because Mrs. Lawrence considered that this was too stressful for a child in A's situation. While respecting Mrs. Lawrence's desire not to distress A, I do consider that this is a very significant limitation on the reliability of Mrs. Lawrence's assessment. Moreover, Mr. Whitfield very fairly accepts that Mrs. Lawrence is subject to the disadvantage that she visited A once whereas Mrs. Sargent and Mrs. Ho have each examined her twice and Ms. Roche has visited her on a number of occasions and has carried out a risk assessment. In these circumstances I am unable to attach any great weight to Mrs. Lawrence's conclusions on this issue.

81. In his report dated 18th November 2006 Dr. Essex expressed the opinion that as A gets older she will become less ambulant over the next decade or two. He expressed the opinion that many people in A's situation stop using walking

aids and solely use their wheelchair in their late teens or twenties or thirties. He considered that if A remains fit and active she would probably remain ambulant longer – possible to her mid thirties. If she did not keep fit she was more likely to put on weight and more likely to become wheelchair dependant in her mid twenties. In his letter dated 3rd October 2007 Dr. Essex expressed the view that A would deteriorate in terms of physical strength and ability in her forties. He found it difficult to be precise about when exactly this would be. When this occurred she would need increasing help with self help skills which involve transfers. The deterioration would be gradual but ongoing.

82. In giving oral evidence Dr. Essex entered the important qualification that it would be difficult to be specific about A because he had not re-examined her. However he considered that, generally, uncontrollable movements do not improve. He considered that A's plateau of strength in her twenties would be lower than that of other people and that she would decline from that lower plateau. Her stability would deteriorate. She would be likely to put on weight and as a result she would need greater strength and her strength would be declining. There would be an increased risk of falls. She would be less able to help herself in transfers because she would be heavier and weaker. She would need increased assistance because she would find self-help tasks increasingly difficult. Dr. Essex expressed the view that when he had examined A in April 2006 she was "still at the cusp of the upward slope about to reach a plateau". However in cross examination he accepted that he did not know that that was the case and he was examining her as she was at that stage. He was unable to say whether deterioration had started but expressed the view that it would be very surprising if it had. He very fairly accepted that if she had already begun to decline at the date of his examination he would need to reconsider his conclusions. He added that he had not come across such a decline in children of this age with this type of cerebral palsy.

83. However, there is a considerable body of evidence in this case – from Mrs. H, Mrs. Ho and Mrs. Sargent – that A's condition has deteriorated over the last 18 months. These witnesses have been in a position to observe changes in A's condition over this period. In particular, they provided clear evidence of an

increase in involuntary movements and an increase in loss of stability. The evidence of Mrs. H, Mrs. Ho and Mrs. Sargent of what they have observed in this regard has not been challenged or contradicted on behalf of the Defendant. In the light of the evidence of Dr. Essex, I accept that it may be unusual for such a development to occur at such a relatively early age. However, as I have indicated above, Dr. Essex frankly accepted that he had not examined A's history in such a way as to assist him in establishing where she was on the curve of her functional mobility development at the date of his examination. I am entirely satisfied on the basis of the evidence of Mrs. H, Mrs, Ho and Mrs. Sargent that such a decline has occurred in A's case and I so find. It is a regrettable fact that A is already on a downward path in terms of functional mobility. This will be a gradual process. It is not suggested, for example, that there is any evidence that A would lose the ability to stand, at least for some time. Nevertheless I consider that the Defence case that A's decline in functional mobility will occur at some point in the future is not correct. It is already occurring. This conclusion has an important bearing on her care needs and in particular the issue as to when she will need two carers.

84. Ms. Roche was commissioned to prepare a risk assessment on A. She carried out that assessment following a visit on the 6th December 2006. The assessment included the following:

    (1) Moving A from her bed to the bathroom. The carer bears A's weight. There is a risk to A of slipping or tripping, although it is observed that this rarely happens. The manual handling risk is assessed as moderate to high while supporting A.

    (2) She is assisted onto the toilet by the carer. This is assessed as a medium risk to the carer.

    (3) Washing A's hair while she kneels over the shower tray. This is assessed as medium risk to the carer due to poor ergonomic design.

    (4) Transfer from wheelchair. Low to medium risk depending on spasticity.

    (5) Assisting A to a standing position and into a car. The risk is assessed as medium to high depending on the level of spasticity and body position.

(6) Undressing A and manually showering her while A kneels in the shower. The risk is assessed as medium to high.

85. Mrs. Lawrence was critical of the assessment which she described as "over generous" on the basis that too many manoeuvres were considered to give rise to high risk. In his submission Mr. Whitfield on behalf of the Defendant criticised the assessment on a number of grounds. First, he criticised Ms. Roche's references to spasticity. Strictly Mr. Whitfield is correct. However Ms. Roche was clearly referring to forceful involuntary movements which may be accompanied by hypertonic state. Indeed, Dr. Essex accepted that this is often referred to as spasticity. Secondly, Mr. Whitfield criticised the differing assessment of risks in respect of identical activities, namely the activities summarised at (2) and (6) in the summary set out above. However, I am satisfied that they are not identical activities. The showering will be carried out in circumstances where A will be wet and slippery. Thirdly, Mr. Whitfield criticises Ms. Roche for having failed to take account of the extent to which equipment would reduce risks. However I doubt that the use of equipment can significantly reduce the risk to handlers assessed by Ms. Roche. In particular, I accept the submission of the Claimant that the use of hoists is not a solution. If hoists are to be provided for A they will be used, for some years, only in emergencies. It is not suggested that routine use of hoists would be appropriate for many years to come. In any event, A's severe involuntary movements are going to create substantial difficulties when hoists are used.

86. I consider that Ms. Roche's risk assessment is a fair assessment of the risks to which a single carer is likely to be exposed in handling and transferring A. It is, of course, the case that there have been no accidental injuries to A's carers during the existing regime. However, this may simply be a matter of good fortune. Mrs. H has been handling A from birth and is used to handling her. Moreover it is likely that parents would be willing to take risks that professional carers would not be prepared to take. A and her carers, whether members of her family or professional carers, should not be exposed to the

risks identified in the risk assessment, nor should A be exposed in future to a risk of possible civil claims.

87. For these reasons I have come to the conclusion that the Claimant has established her case that two carers will reasonably be required throughout the day from the age of 18.

Child Care.

88. I propose to state my conclusions on this issue briefly.

89. So far as annual costs of child care are concerned, I consider Mrs. Sargent's rates to be reasonable. Ms. Roche, who lives and works in Ireland, confirmed that they were about right for a nanny in Ireland and that Mrs. Lawrence's rates were too low. I also accept that public holiday supplements will be payable and that the appropriate rate of PSI here is 10.75%. However, I consider that it is appropriate to make allowance for the child care which would have been likely to be provided by A's husband at weekends in any event. So from the figure of €52,827.75 per annum I deduct €5,000 per annum.

90. For how many years would such child care have to be provided? The Claimant's original position was that child care costs should be awarded for 18 years. However, it seems to me that this is far too long a period and the Claimant now accepts this. On the basis that a full time nanny is not needed while children are in full time education, I propose to allow for a full time nanny for 7 years and a part time nanny for a further 11 years. It is convenient for the purposes of calculation to allow for a nanny for 12 ½ years on a full time basis. The appropriate multiplier is arrived at by applying Ogden Table 28 and the award under this head is to be discounted under Ogden Table 27 on the basis that the period of child care would begin when A achieves the age of 25.

91. Having regard to all the circumstances I apply a discount for contingencies of one half.

Case Management.

92. In the course of her evidence Mrs. Lawrence accepted that she has no expertise on the rates paid to case managers in Ireland and that accordingly, it would be unreasonable for her to criticise the Claimant's claim for case management. I consider that the figures produced by Mrs. Sargent in respect of case management are entirely reasonable. I assess the annual cost of case management at €18,745.32 per annum to age 18 and €25,907.20 per annum from the age of 18.

AIDS AND EQUIPMENT.

93. The parties have approached the issue of damages in respect of aids and equipment on the basis that A is likely to go to university at the age of 18 for 3 years. Thereafter she is likely to live at home until the age of 25 when she will move to her own home. However, it is likely that her own home will be in close proximity to that of her parents and that she is likely to spend substantial periods of time visiting her parents.

94. The basis of assessment is the test of reasonableness as stated in ***Rialis v Mitchell***, (Court of Appeal, 6th July 1984) and ***Sowden v Lodge*** [2005] 1 WLR 2129. The claimant is entitled to damages to meet her reasonable requirements and reasonable needs arising from her injuries. In deciding what is reasonable it is necessary to consider first whether the provision chosen and claimed is reasonable and not whether, objectively, it is reasonable or whether other provision would be reasonable. Accordingly, if the treatment claimed by the claimant is reasonable it is no answer for the defendant to point to cheaper treatment which is also reasonable. ***Rialis*** and ***Sowden*** were concerned with the appropriate care regime. However, the principles stated in those cases apply equally to the assessment of damages in respect of aids and equipment. In determining what is required to meet the claimant's reasonable needs it is necessary to make findings as to the nature and extent of the claimant's needs and then to consider whether what is proposed by the claimant is reasonable having regard to those needs. (***Massey v Tameside and Glossop Acute***

Services NHS Trust [2007] EWHC 317 (QB), Teare J. at para. 59; ***Taylor v Chesworth and MIB*** [2007] EWHC 1001 (QB) Ramsay J. at para 84.)

Wheelchairs

95. Ms. Page suggested initially that A could expect to receive a wheelchair from the Irish State. However, this suggestion was not maintained and there was no evidence before me on which I could conclude that any such provision would be made.

96. At present A has a manual wheelchair. However she cannot propel herself. She uses it with an e-fix system which she operates with a joystick. She has become very accomplished at manoeuvring it. She has also recently acquired a lightweight manual wheelchair.

97. The Claimant's claim as originally formulated in the Schedule was for an electric wheelchair with standing facility and a manual wheelchair with e-fix. However, the Claimant now claims in addition the cost of replacement of the lightweight wheelchair. In its Counter Schedule the Defendant allowed for the cost of a manual wheelchair and an electric wheelchair. So far as the electric wheelchair is concerned it allowed £3,500 for the purchase of a Spectra Plus wheelchair. There has been a shift in the Defendant's position. In closing submissions the Defendant accepted that the Claimant should have a powered wheelchair and a manual wheelchair to which the e-fix system can be attached. However, the claim for a lightweight wheelchair is opposed. The Defendant says that this is an opportunistic afterthought.

98. There is substantial agreement between the expert witnesses that A now needs a powered standing wheelchair. Both physiotherapist experts recommended a powered standing wheelchair. They agreed the cost of equipment recommended by Ms. Edwards - a Permobil with stand up facility - at £9,000. However, it now appears that the cost of a Permobil standing wheelchair is likely to be between £11,000 and £15,000. Mrs. Ho, the occupational therapist instructed by the Claimant and Ms. Page, the occupational therapist instructed by the Defendant, agree that, in the light of the changes in the

Claimant's condition to which I have referred, a standing wheelchair is now required. Permobil has indicated that the appropriate chair for A is likely to cost in the region of £15,000. Ms. Page, on the other hand, recommends a Levo standing wheelchair. The Comfort II model costs £6,165; the more sophisticated Combi model costs £9,850. However, it is Ms. Page's view that the Combi model includes features which A does not need. In these circumstances the parties, at the stage of closing submissions, have agreed that the court should take a mid point and make an award of £10,000 for the capital cost of a standing wheelchair. On the basis of replacement every 4 years, which I find to be a reasonable and appropriate interval, the replacement cost will be £10,000 x 7.22 = £72,200. The total award for this item including the initial capital cost is therefore £82,200. I also make an award of £200 per annum in respect of replacement parts and batteries (total cost £6,200) and £49.50 per annum in respect of insurance (total cost £1,534.50). In addition there is an award for servicing and maintenance at £100 per annum giving a total cost of £3,100.

99. The Defendant now accepts that there should be an award in respect of a manual wheelchair with an e-fix system. I am satisfied that A needs such a system and that what is claimed is reasonable. The more robust wheelchair will be more likely to be used for longer journeys and used outdoors. A lives in a rural community. There are likely to be circumstances in which the wheelchair has been used outside and will be muddy and she would not wish to use it indoors. Furthermore, it will provide a reasonably necessary backup for the standing powered chair in the event of there being a technical fault. I consider that it is reasonable to replace the manual wheelchair with e-fix every 4 years. In addition I make an award of £49.50 per annum for insurance and £100 per annum for new tyres.

100. Mr. H has given evidence that the new lightweight wheelchair which A has acquired, folds into a compact square shape, the size of a seat cushion. I have seen a demonstration in court. Mr. H says that this has greatly increased A's independence in that it enables her to travel with her friends in their parents' cars as it can fold up so as to fit into the boot or the back of a car with

ease. It also has the advantage that it is less obvious than a standard manual chair and, as a result, when A is using it it is less obvious that she is disabled, a matter on which A is particularly sensitive. In these circumstances, I accept that A has a reasonable need for such a chair in addition to the other two wheelchairs. The mobile chair is likely to make a real difference to her life. Furthermore, there is no evidence that an e-fix system could be attached to this lightweight chair. There is no obvious place to put the battery pack and there are no arms for A to rest on when operating the joystick control. In any event, attaching an e-fix system to this wheelchair would defeat its purpose as it would become much more cumbersome. In these circumstances I propose to allow the claim for replacement of the lightweight manual wheelchair. I consider it reasonable that it be replaced every 5 years. The initial capital cost is €4,686. This gives a total under this head of €26,475.90.

101. Mrs. Ho considers that A requires a Jay back cushion for use in the manual wheelchair, to make her more comfortable and to provide her with support. Ms. Page when giving evidence accepted that there was such a need. I consider it reasonable to provide a Jay back cushion and to make provision for a replacement every 3 years. The capital cost is £1,000. With replacement every 3 years this gives a total cost of £10,820. There will be no need to use a Jay back or cushion with the standing wheelchair because this is fully padded. I have made an award in respect of the cost of two manual wheelchairs. However, I am unable to accept Mrs. Ho's suggestion that there is a reasonable need for two sets of Jay back cushions. One set can easily be transferred from one chair to the other.

102. Waterproof capes have been agreed at a total cost of £2,097.84. Portable ramps have been agreed at a cost of £230.85, with replacement at 10 year intervals which leads to a total cost for this item of £814.90.

Portable Hoist.

103. Ms. Page had originally taken the view that A would not need a hoist before the age of 50. However, it was the strongly held view of Mrs. Ho and of the care experts that there is an immediate need for a portable hoist. It is

not suggested that A is yet at a stage where she requires to be moved by the use of a hoist. However, they maintain there is an immediate need for such a hoist which can be used if A has a fall. In her oral evidence Ms. Page accepted this. I consider that A has a clear need for a mobile hoist.

104. Mrs. Ho recommends the Arjo Trixie hoist. Ms. Page recommends an Oxford hoist. To my mind there are several advantages in the Arjo Trixie hoist over the Oxford hoist. It folds down to a much smaller shape and is easier to transport and stow away. Unlike the Oxford hoist, it could be stowed in the boot of a car. This will be a real advantage to A when she is at university and needs to transport the hoist between home and university and when she goes on holiday. In addition, I accept the evidence of Mrs. Ho that the Arjo Trixie hoist has a smoother operation and is more comfortable for the person being transported. Contrary to the view of Ms. Page, I do not consider that the wishbone structure of the Arjo Trixie hoist poses any threat to A by reason of her involuntary movements. I also note that the Claimant intends to install an Arjo Head Track hoist. Accordingly, if the Arjo Trixie hoist were purchased slings would be transferable between the portable and permanent hoists. The capital cost of the Arjo Trixie is £2,360. I consider it reasonable to replace the portable hoist every 10 years. The total award under this head of claim is £8,330.80. I also allow £100 per annum for servicing (total cost £3,100) and £336 for slings, replaceable every 5 years (total £1,898.40.)

Shower Chair.

105. This has now been agreed. An initial capital cost of £600 and a replacement every 7.5 years giving a total of £3,174.

Washing Machine / Tumble Dryer.

106. Because A is prone to dribbling, her clothes need washing more frequently. Both Mrs. Ho and Ms. Page accepted that it was appropriate to make allowance for this. I propose to make an allowance of 10% per annum in respect of the capital cost of a washing machine and tumble dryer. I allow £55 per annum giving a total under this head of claim £1,705.

Activity Chair.

107. An activity chair has been agreed between the experts at an initial capital cost of £950 and with replacement at 5 year intervals. This gives a total figure for this item £6,317.50.

Adjustable Chair.

108. The Claimant has included a claim for a Tiltrite, multi-adjustable chair which provides postural support. There was a disagreement between the occupational therapist experts as to whether this was really required. Mrs. Ho considers that A needs postural support when sitting in an easy chair. Ms. Page considered that she did not. However, both experts considered that she needs additional postural support when sitting in wheelchairs and at a desk. I consider that, in the same way, there is a need for postural support when sitting in a relaxing chair. Accordingly, I propose to allow this item on the basis of an initial capital cost of £1,300 and replacement every 8 years which leads to a total sum of £5,759. I consider that this adjustable chair would be in addition to normal furnishings and therefore it is not appropriate to make a reduction in respect of the furniture which might have been bought had A not suffered her injury.

Beds.

109. Mrs. Ho considers that A needs a high / low adjustable bed. Ms. Page originally considered that such a bed would be required only from age 40. However, during the course of her oral evidence she accepted that such a bed is now required because A's condition has deteriorated. Ms. Page's acceptance of this need seems to be founded on the fact that A was previously able to transfer herself to and from her bed but is no longer able to do so. The care experts also agree that such a bed is required.

110. Mrs. Ho considers that A should have a three quarter size or double bed because of her involuntary movements. This is now agreed by Ms. Page. Mrs. Ho recommends a Theraposture bed at a cost of £3,500. Ms. Page, on the other hand recommends a Bakare bed at a cost of £1,945. I am satisfied that the Theraposture bed recommended by Mrs. Ho possesses all of the

features which A requires and does not possesses any features which exceed her needs. Furthermore, I accept Mrs. Ho's evidence that the Theraposture bed has better mechanics and as a result has smoother movement and makes less noise. Accordingly, I consider that the Theraposture bed reasonably meets A's needs. Following the approach to the issue of reasonableness which I have outlined above, I consider that, in the light of this conclusion, the fact that A's needs may be satisfied by a cheaper bed is irrelevant.

111. It was hotly contested by the parties as to whether the Theraposture bed or the Bakare bed was more hospital-like and therefore less attractive to A. It seems to me that there is little to choose between the two on this ground and accordingly I attach no weight to this consideration. Furthermore, contrary to the submission on behalf of the Defendant, I am satisfied that there is no difficulty in placing the legs of the mobile hoist underneath the Theraposture bed.

112. I accordingly allow for a Theraposture bed at an initial capital cost of £3,500. Replacement at 10 year intervals is reasonable. This leads to a total for this head of claim of £12,355.

113. It is now common ground between the parties that A's condition requires a pressure relieving mattress. I allow £1,000 for the initial capital cost. Replacement at 5 year intervals is reasonable. This leads to a total award for this item of £6,650.

114. I allow £50 per annum for mattress protectors (total £1,550). I also allow £33 per annum for an electric blanket (total £1,023) on the basis that this would not be required but for A's injury.

Kitchen / Home.

115. The total sum of £12,912.75 has been agreed in relation to these items.

Leisure.

116. The cost of a special riding saddle, a travel commode and a riding hoist has been agreed in the total sum of £5,000.

Parents' Accommodation.

Bath.

117. The parties agree that a special bath is required in A's parents' home. Mrs. Ho recommends an Aquanova bath. When using such a bath the disabled person is placed on a plinth in the same manner as a bed transfer. The sides of the bath then rise to raise the bath full of water around the disabled person to the desired depth. At the end of bathing the bath lowers to its original position. The disabled person can then be dried on the plinth before being transferred. The cost of the Aquanova bath is £7,344. Ms. Page recommends a Chiltern Concept bath. Here the disabled person is placed on a seat alongside the bath which is then swivelled over the bath. This operation involves lifting the disabled person's legs as the chair is swivelled into position over the bath. Ms. Page considers that there is not much difficulty in transferring a disabled person into the Chiltern Concept bath and points out that with the Aquanova the patient has to be placed on the plinth in any event. She also makes the point that A's long sitting is not very good and on this basis she considers that the chair of the Chiltern Concept is preferable because it can be lowered into the bath in such a way that the seat can be positioned slightly higher than the bottom of the bath so that A's legs would not be straight. I attach little weight to the Claimant's submissions that the Aquanova looks and operates as if it were a normal bath while the Chiltern Concept, when the seat is present, obviously looks like a disabled bath. It seems to me that it is obvious in either case that the bath is designed for a disabled person. I also attach little weight to the need to store a bulky chair somewhere near the Chiltern Concept bath. However, I do accept that there is a real advantage in the Aquanova bath which is that it is easier for carers to use, both in terms of transferring the disabled person into it and then in washing her since the bath is raised up and is at a level which does not require the carers to bend. Furthermore, the whole process of drying is facilitated by the positioning of the disabled person on the plinth. In all the circumstances I

have come to the conclusion that the Aquanova reasonably meets the needs of A and that it is appropriate to award the cost of the Aquanova bath.

118. There is a dispute between the parties as to whether the Aquanova bath requires replacement every 10 years or every 20 years. I consider that replacement every 15 years is reasonable.

119. Maintenance has been agreed at £231 per annum giving a total figure of £5,775.

Toilet.

120. A cost of a Clos-O-Mat toilet has been agreed at £2,651 with replacement every 10 years. This gives a total figure of £4,957.37. Maintenance has been agreed at £125 per annum giving a total figure of £3,125.

Shower.

121. This item has been agreed at £1,557 with replacement every 10 years giving a total figure of this head of claim at £2,911.59.

Body Drier.

122. The body drier has been agreed at the initial capital cost of £734 with a replacement at 10 year intervals. This gives a total amount for this item of £1,372.58.

Air Conditioning.

123. The claim for air conditioning, including maintenance, has now been agreed on the basis there will be three air conditioning units at her parents' home. This gives a total amount for this item of £23,638.32.

Hoist.

124. The parties have agreed the cost of an Arjo Bravo Hoist at £7,331.63 with replacement at 10 year intervals. This gives a total amount of £7,185. It is also agreed that slings are to be replaced annually at a cost of £336 per annum

giving a total of £8,400. In addition, maintenance is agreed at £295 per annum giving a total of £7,375.

Maintenance for Specified Items.

125. Maintenance for garage door control system, fire extinguishers, door opener intercom and associated maintenance has been agreed at the total sum of £3,737.24.

Claimant's Accommodation from age 25.

Bath

126. For the reasons set out above I consider that the provision of an Aquanova bath is reasonable provision to meet the Claimant's needs. The capital cost is £7,344. I consider that a replacement should be at 15 year intervals. Maintenance is agreed at £231 per annum giving a total of £5,313.

Toilet.

127. The Clos-O-Mat toilet is agreed at a capital cost of £2,651 with replacement every 10 years giving a total of £4,745.29. Maintenance is agreed at £125 per annum giving a total of £2,875.

Shower.

128. The provision of a shower is agreed at £1,557 with replacement at 10 year intervals giving a total of £2,787.03.

Body Drier.

129. The provision of a body drier is agreed at £734 with replacement every 10 years giving a total of £1,313.86.

Air Conditioning.

130. The claim for air conditioning, including maintenance, has now been agreed on the basis there will be two air conditioning units at her own home. This gives a total amount for this item of £14,518.32.

Hoist.

131. An Arjo Bravo Hoist is agreed at a cost of £7,331.63 with replacement every 10 years giving a total of £7,185. Because I have awarded the cost of an Arjo Trixie mobile hoist, the slings from the mobile hoist can be used with the permanent hoist and accordingly I make no additional award in respect of slings for use with the permanent hoist. Maintenance is agreed at £295 per annum giving a total of £6,785.

Maintenance.

132. Maintenance for specified items is agreed at £3,496.97.

Physiotherapy Costs.

133. Physiotherapy costs have been agreed as follows:

(1) Kaye Walker and class 1 replacement	£ 819.66
(2) Neurology treatment plinth	£ 860.00
(3) Maintenance of plinth at £50 per annum	£ 1,550.00
(4) Insoles at £50 per annum	£ 1,550.00
(5) Lycra vests at £400 per annum	£12,400.00

Shipping.

134. There seems to be considerable uncertainty as to which items can be purchased in Ireland and which will have to be purchased in the United Kingdom and shipped to Ireland. In the circumstances, the parties have agreed the figure of £4,000 in respect of shipping costs.

FUTURE EDUCATION.

135. This head of claim is in respect of counselling and obtaining specialist advice on further education opportunities for A. I approve the settlement of this head of claim at the figure of £25,000.

FUTURE MEDICAL TREATMENT.

136. This head of claim is in respect of annual medical reviews and an MRI scan that may be required. I approve the settlement of this head of claim at the figure of £5,805.

FUTURE THERAPIES.

137. This claim is in respect of physiotherapy, speech and language therapy, occupational therapy, counselling, chiropody and orthotics. I approve the settlement of this head of claim at the figure of £130,000.

FUTURE TRAVEL AND TRANSPORT.

138. Ms. Page, the Defendant's occupational therapy expert originally suggested that a specially adapted vehicle would not be required for A before she reached the age of 45. However, she adopted a very different position in her oral evidence. Mr. and Mrs. H have recently purchased a Chrysler Voyager with Entervan conversion. This enables A to enter the vehicle from a side door which operates automatically. From her point of view, this vehicle has the great advantage that she sits alongside other members of her family and it does not draw attention to her disabilities. It also meets all her needs in relation to luggage space and accessibility. It is considered by A and her parents to be a great success. I accept that it has had a greatly beneficial effect on A's quality of life. In the light of this evidence Ms. Page in her oral evidence accepted that it was reasonable for A's family to purchase the Chrysler Voyager with Entervan conversion and to replace it up to the age of 25, although there remains an issue as to the replacement period. I consider that A clearly has a need now for a specially adapted vehicle and that this will continue for the rest of her life. I agree with the experts that provision of a Chrysler Voyager with Entervan conversion is an entirely reasonable means of meeting these needs up to the age of 25. The cost of the adapted Chrysler Voyager is £49,340 (base cost £24,631). It will be particularly useful when A goes to university.

139. In considering the appropriate replacement period I accept that it is very important for A to have a reliable vehicle. The appropriate replacement period would depend to an extent on the likely mileage. There was no evidence

before me of the current annual mileage of Mr. and Mrs. H in respect of A. There was no suggestion that this is unusually high. I accept that when A goes to university she will be travelling frequently between home and university and that this will significantly increase the annual mileage. The likelihood is that A will go to university at Galway some 50 miles away from her home at Ballinasloe. Elsewhere in the claim the Claimant has estimated a future annual mileage of 15,000 miles per annum. Having regard to all these considerations I consider that replacement every 5 years is reasonable.

140. There was a dispute between Mrs. Ho and Ms. Page as to the appropriate vehicle for A from the age of 25. It is common ground that from that age A will be living in her own home and this is likely to be in close proximity to her parents' home in Ballinasloe. The Claimant submits that the appropriate vehicle will continue to be a Chrysler Voyager with Entervan conversion. The Claimant maintains that this has a number of advantages: in particular, it has remote control side access loading, it gives a choice of different seating positions so that A is not compelled to sit alone in the rear of the vehicle, the vehicle does not look like a disabled person's vehicle from the outside and there is adequate space for A to carry all her aids and equipment as well as to take luggage. The Defendant maintains that it would be unreasonable to provide A with a large family sized vehicle of this sort after the age of 25. By the stage of her oral evidence Ms. Page maintained that the appropriate vehicle for A at that stage would be a Fiat Multipla costing £26,382 after conversion (base cost £14,208).

141. There is a degree of unreality attached to debating the appropriate provision of vehicles some ten years hence by reference to current models, which are unlikely to be available at that date, but I accept that the competing submissions of the Claimant and Defendant in relation to current models are of assistance in that they relate to the features reasonably required and their cost. I have come to the clear view that the Fiat Multipla would not be a suitable vehicle for A from the age of 25. The Fiat Multipla would accommodate A and two carers plus a certain amount of equipment. The Fiat Multipla suffers from a number of disadvantages so far as A is concerned. Rear loading makes

it awkward to park. There is insufficient luggage space for all the equipment which A would need to carry. The configuration of the seats would mean that it would be necessary to install A before the luggage and to remove the luggage every time A wished to get out of the vehicle. Moreover, it became clear during her evidence that Ms. Page was, in this context at least, applying a test of what was essential as opposed to a test of what is reasonable.

142. I have come to the conclusion that it is reasonable for A to be provided, from the age of 25, with a vehicle which will comfortably accommodate her and her two carers and all necessary portable equipment, but which will also enable her to travel with one or two friends or members of her family. In normal circumstances a 25 year old would enjoy the opportunity to travel with friends or family in this way. This reasonably requires a bigger car than would normally be needed for such a purpose because of the need to take carers and equipment. I also consider that it is reasonable for the vehicle to have a side loading facility. It has already been demonstrated that the Chrysler Voyager meets such a need. I do not consider that the Chrysler Voyager is unnecessarily large for this purpose or that it has any features not reasonably required by A so as to make the award unreasonable. Accordingly, I propose to allow for the capital cost of the Chrysler Voyager Entervan conversion at 5 year intervals for the whole of A's life.

143. The Claimant will be required to give credit for the resale value of each vehicle after 5 years. This will be calculated by reference to the base price only (i.e. excluding the cost of conversion) because there is unlikely to be a market in the sale of used vehicles to disabled persons and the vehicle may therefore be more difficult to sell. The appropriate allowance is 33% of the base cost after 5 years.

144. In addition the Claimant will be required to give credit for the vehicles she would have driven in any event. I accept as reasonable the Claimant's prediction that A would have purchased her first vehicle at age 21, costing £10,000. Thereafter from age 25 to 40 she would have owned a vehicle costing £10,000 to £13,000 and from age 40 she would have owned a car

worth £13,000 to £20,000. In calculating the credit 50% of the resale value of the vehicle should be allowed.

145. A will incur increased running costs for two reasons. First, the vehicle will be larger and more expensive to run than would otherwise have been the case. Secondly, she is likely to have a greater annual mileage than would otherwise be the case as a result of her disability. I accept as reasonable the Claimant's suggestion that the calculation should be performed on the basis that she will run up an annual mileage of 15,000 whereas it would have otherwise been 10,000 per annum. On this basis a calculation in accordance with the figures at p. 265 of Facts and Figures 2007 leads to total additional running costs of £49,342.29.

146. It is reasonable to allow for membership of a motoring organisation which can provide roadside assistance from an earlier date than would otherwise be the case. Accordingly, I award the cost of membership for five years from the age of 18 at a rate of £95 per annum. Service call is agreed at £9.50 with renewal every 3 years (multiplier of 9.82) giving a total of £102.79.

147. A will incur additional costs of insurance because she will have a larger, more expensive car than otherwise would be the case and because she will have to insure her carers to drive. The carers are likely to be under the age of 25, at least in the early years, and their working pattern will require that several of them are insured to drive A. This will inevitably have a severe impact on the insurance premium. I am told that brokers and insurers in Ireland were not prepared to provide quotes without having the details of the drivers. Accordingly, the claim for £1,000 per annum under this head is an estimate. While this is likely to be an overestimate in the early stages, it is likely to be an underestimate once A starts living independently. (I am reminded that the award for additional costs of insurance I made in ***Sarwar v. Ali*** [2007] EWHC 1255 in respect of the same adapted vehicle was considerably higher than the sum claimed here.) I consider an allowance of £1,000 per annum for additional insurance costs to be reasonable.

Holidays.

148. By the closing submissions there was not a great deal of ground between the parties on the additional costs of holidays. Mrs. Ho suggested that the increased cost of holidays would be about £5,000 per annum. Ms. Page accepted that this was in the right area on the assumption that the Claimant would have to take three carers with her. In his closing submissions Mr. Whitfield suggested an approach which took as a starting point £1,500 per annum for each carer in any year in which there is to be a foreign holiday other than one at her grandparents' house in France.

149. I consider that had she not suffered the injury A would have taken at least one two week holiday and three weekends each year and that she will still take these holidays. Given the conclusion that A needs two carers in daytime, the effect of the Organisation of Working Time Act 1997 is that A will have to take three carers with her. I consider that £1,500 per annum for the travel, accommodation costs, costs of meals and incidental expenses of each carer is an entirely reasonable and appropriate allowance. In addition, A will incur further costs in respect of herself. She will not be able to take advantage of low-cost airlines or last minute offers. It is likely that all flights will have to be in business class. She will need to book accommodation appropriate to her needs. She will incur excess baggage charges. When it is necessary to hire a car this will have to be a specially adapted vehicle. Furthermore, there will be additional insurance costs. Even when one makes allowance for the possibility that some of the holidays will be at her grandparent's house in France, I consider that £5,000 per annum is a reasonable and appropriate award in respect of the additional cost of holidays.

150. On behalf of the Defendant it was submitted that the award for additional cost of holidays should be made on the basis of two thirds of the full life multiplier. However, I consider that the whole life multiplier should be applied. As long as A takes holidays with her parents, there is no reason why they should be required to act as her carers during the holiday. Moreover, I do not accept that people stop taking holidays later in life, although the character

of the holidays may change. A will have a reasonable need for holidays for the rest of her life.

Cost of Livery.

151. A is an accomplished rider. This activity affords her great pleasure and is excellent exercise. She is shortly to have a trial for the Irish Paralympic Team. Mrs. Sargent has now found A a suitable pony of her own.

152. The only claim under this head is for the cost of livery which will be incurred because A is unable to look after her pony herself. The Claimant claims livery fees of €120 per week to age 40. On this basis the total claim, calculated in sterling, is in the region of £75,000. On behalf of the Defendant it is said that a multiplier / multiplicand approach is artificial because of the uncertainty. Accordingly it is submitted that a nominal sum should be allowed, not in excess of €10,000 which would be the rough equivalent of extra livery costs for six months in each of three years.

153. I consider that a multiplier/multiplicand is appropriate here. I consider that A should be compensated for the cost of livery which would not otherwise have been incurred because she would have looked after the pony herself. The claimed rate of €120 per week is supported by evidence and is reasonable. The pony needs to be kept for 12 months of the year even if it can graze for part of the year. I allow for livery for the full year until A goes to university. However, I consider that the pony would have been in livery in any event for half the year while A is in university and accordingly allow for livery for half the year during those 3 years. Thereafter she would have looked after the pony herself notwithstanding her work commitments and should therefore be awarded the cost of livery for the full year. Having regard to all the circumstances of the case, it seems unlikely that A will continue to ride beyond the age of 30, so I make the award to the age of 30, to include half the year only for the 3 years during which she will be at university.

FUTURE INFORMATION TECHNOLOGY.

154. This head of claim includes the cost of computer systems to enable the Claimant to control various aspect of her life including environmental controls and equipment relating to mobility. I approve the settlement of this head of claim at a figure of £180,000.

FUTURE MANAGEMENT OF THE AWARD.

155. The Claimant submits that by reason of her disability she will need the assistance of someone to carry out administrative tasks and to act for the protection of A's interests. It is proposed that these needs could be met by the appointment of a professional trustee whose duties would be very similar to those of a professional receiver or a court appointed deputy under the Mental Capacity Act 2005. On behalf of the Claimant it is said that she will need the help of someone who is able to understand what she is saying to carry out administrative tasks such as paying carers, the preparation of annual accounts and tax returns. It is submitted that the trustee would be responsible for checking and managing the Claimant's accounts, for assisting with employment disputes, for negotiating contracts on behalf of the Claimant and for protecting her against unscrupulous individuals.

156. On behalf of the Claimant it is accepted that there is no previously reported case in which a court has been asked to rule on whether such expenses are recoverable. That in itself, of course, is not an objection if the claim is in accordance with legal principle and other authorities. Reference is made to ***Rialis v Mitchell,*** (Court of Appeal 6th July 1984), where the Court of Appeal considered that the costs associated with the management of the Claimant's award were a loss directly flowing from the injury and were therefore recoverable. However, that was a case concerned with a patient and the fees of the Court of Protection for managing the fund created by the award of damages. I have also been referred to three recent cases in which the parties agreed that the award should include a sum in respect of the future management of the award. In at least one of those cases, ***Sarwar v. Ali*** [2007] EWHC 1255, the court was not concerned with a patient. On behalf of the Claimant it is submitted that the legal test for recovery under this head should not be whether someone is a patient and therefore assumed not to be able to

manage her affairs, but whether or not it is reasonable for the Claimant to have some assistance. This seems to me to be too wide a test. At the very least, it would be necessary for any such claim to meet the requirements of causation and remoteness. I consider it necessary to examine in turn the different elements of this head of claim.

157. It is clear, and Mr. Taylor accepts, that there can be no claim in respect of investment advice or for the costs of managing investments. This is so whether or not the claimant is a patient. (***Page v Plymouth Hospitals NHS Trust*** [2004] 3 All ER 367; ***Eagle v Chambers (No. 2)*** [2004] 1 WLR 3081.) A defendant is required to pay damages assessed on the basis that the return on the money would be by way of investment gilts. The claimant is entitled to use his money as he chooses but if he chooses to invest more broadly the costs relating to that broader investment flow from the decision as to how to invest and not from the accident. (See ***Eagle v Chambers*** per Waller L.J. at paras. 95-96.) I consider that accountancy costs fall into the same category because these will arise from the choice to make investments other than in gilts.

158. Mr. Taylor submits that the Claimant is in a very vulnerable position. She is not able to open a purse or to use a debit card with a PIN number. As a result she would have no knowledge of whether a carer had taken any money from her without authority. On a larger scale, he suggests that A may be vulnerable to undue influence on the part of those on whom she depends. It is therefore submitted that A reasonably needs a trustee to protect her. I am unable to accept this submission. A is of full mental capacity. There is no evidence to suggest that this will not remain the case for the rest of her life, nor has this even been suggested. Until she reaches the age of majority directions for the administration of the award will be by the Cardiff District Registry. It has not been suggested that this is in any way inadequate or inappropriate. The Claimant has not been a patient under the Mental Health Act 1983 and will not be a person who lacks capacity under the Mental Capacity Act 2005. Accordingly, the Court of Protection will not be involved in her case. I have heard competing submissions as to whether it would ever be appropriate to make an award in the case of someone who is not and will

not be a patient for the cost of a trustee performing a protective role similar to that of a court appointed deputy in the case of a patient. However I do not have to decide that question because it is clear to me that such an award would not be reasonable in the particular circumstances of this case. A suffers from severe physical disabilities but I do not consider her to be any more vulnerable than any other severely physically disabled claimant. On the contrary, she has the great good fortune to have a devoted and protective family. Accordingly, it seems to me that the cost of providing for a professional person to perform such a role cannot be justified.

159. Furthermore, many of the matters which, it has been suggested, should be the responsibility of such a professional trustee seem to be matters which could be the responsibility of the case manager, for whom provision has been made elsewhere in the award. Here, I have in mind in particular the recruiting of carers, the negotiation of terms, the handling of any employment disputes and the making of payroll returns. Similarly, I would expect a case manager to advise on the organisation of carers. Provision has been made elsewhere in the award for future advice by occupational therapists in relation to equipment.

160. I have given careful consideration to the question whether A has a need for a personal assistant to help her in communicating her wishes and instructions to others. I have heard A give evidence. Her speech is difficult to understand at first but it is evident that those familiar with her speech are able readily to understand her. She is also able to produce written messages on a computer, although I accept that this is a laborious process. In these circumstances I am satisfied that it would not be reasonable to provide for a personal assistant.

161. However, there is one area where I consider Mr. Taylor's submissions do have some force. As a result of her injury, A is unable to handle cash, use bank cards or write cheques. No doubt it will be possible to set in place arrangements whereby carers have access on A's behalf to limited amounts of cash for everyday transactions. A special account could be set up for this purpose with a relatively small credit balance. However, it does seem to me

that A will reasonably need a banking service superior to that which is normally provided to customers. Accordingly, I propose to allow for the annual cost of a premier banking service from the date of her majority. There is no evidence before me as to the likely cost of such a service. However, it seems to me that an annual sum of €500 would be reasonable.

FUTURE MISCELLANEOUS COSTS.

162. This head of claim comprises increased telephone costs, heating costs, costs of clothing, costs of sundry items, gardening, DIY and decoration and straws. I approve the settlement of this head of claim at the figure of £51,466.

PAST AND FUTURE COSTS OF ACCOMMODATION.

163. The heads of claim comprising the past and future costs of accommodation gave rise to a number of complex issues. However, during the hearing these heads were compromised in a global figure of €1,250,000. I am happy to give my approval to this settlement.

CONCLUSION.

164. The award may be summarised as follows:

Heads of Loss Assessed in Sterling			**(£)**	**(£)**	**(£)**
1.	General Damages for PSLA				225,000
2.	Interest on PSLA @ 6.73%				15,142.50
3.	Past Expenses and Losses				
	3.1 Care	(agreed)		165,000	
	3.2 Treatment & Therapies	(agreed)		7,500	
	3.3 Travel and Transport	(agreed)		32,000	
	3.4 Aids & Equipment	(agreed)		11,190	
	3.6 Miscellaneous Expenses	(agreed)		10,000	
	Subtotal:				225,690
4.	Interest on Past Losses	(agreed)			90,276
5.	Future Expenses and Losses				
	5.1 Loss of Earnings				

	(i) Loss of earnings to age 21		9,162.50		
	(ii) Loss of earnings from age 21 to 68				
	Multiplicand	£29,066			
	Multiplier	27.366			
	Discount for contingencies	0.87			
	Discount for early receipt	0.8839			
	Subtotal for period:		611,672.53		
	Total loss of future earnings:			620,835.03	
5.2	Loss of Pension	(agreed)		50,000	
5.4	Aids & Equipment (See further **Appendix 1**)			377,239.20	
5.6	Education	(agreed)		25,000	
5.8	Therapies	(agreed)		130,000	
5.9	Travel & Transport (See further **Appendix 2**)			287,114.14	
5.10	Information Technology	(agreed)		180,000	
5.11	Holidays & Leisure		**(£)**	**(£)**	**(£)**
	<u>Holidays</u>				
	Multiplicand	£5,000			
	Multiplier	31			
	Subtotal			155,000	
5.13	Miscellaneous	(agreed)		51,466	
Subtotal future losses:					1,876,654.37
TOTAL Sterling:					**£2,432,762.87**

<u>Heads of Loss Assessed in Euros</u>

5.3	Future Care & Case Management		**(€)**	**(€)**	**(€)**
	<u>Future care</u> (see **Appendix 3**)				

(i) From age 16 to 18

Multiplicand	€ 99,536.20	
Multiplier	1.95	
Subtotal		194,095.59

(ii) From age 18 for life

Multiplicand	€ 311,751.90	
Multiplier	29.05	
Subtotal:		9,056,392.70

(iii) Additional childcare

Multiplicand	€ 47,827.75	
Multiplier 12.5 years	10.755	
Discount for early receipt	0.8007	
Discount for contingencies	0.5	
Subtotal		205,935.02

Case management

(i) From age 16 to 18

Multiplicand	€ 18,745.32	
Multiplier	1.95	
Subtotal		36,553.37

(ii) From age 18 for life

Multiplicand	€ 25,907.20	
Multiplier	29.05	
Subtotal:		752,604.16

	Total future care and case management:			10,245,580.84
		(€)	**(€)**	**(€)**
5.4	Future Aids & Equipment (See **Appendix 1**)			26,475.90
5.5	Past and Future Accommodation	(agreed)		1,250,000
5.7	Future Medical Treatment	(agreed)		8,525
5.11	Future Holidays and Leisure			

Livery

(i) Livery from 16 to 18

Multiplicand	€6,240	
Multiplier	1.95	
Subtotal:		12,168

(ii) Livery from 18 to 21

Multiplicand	€3,120	

	Multiplier	3.63			
	Subtotal:		11,325.60		
	(iii) Livery from age 21 to 30				
	Multiplicand	€6,240			
	Multiplier	6.26			
	Subtotal:		39,062.40		
	Total livery:			62,556	
5.12	Banking Services				
	Annual cost:		€ 500.00		
	Multiplier:		31		
	Total Banking Services:			15,500	
TOTAL Euros:					**€11,608,637.74**

165. The calculations in relation to Future Aids and Equipment, Future Travel and Transport and Future Care and Case Management are set out in Appendices 1-3, respectively.

166. I propose to hear further submissions in relation to the terms of the final order, after the parties have had the opportunity to take further financial advice.