

Neutral Citation Number: [2011] EWHC 2066 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5/8/2011

Before :

THE HONOURABLE MRS JUSTICE SWIFT DBE

Between :

	LEO WHITEN (A protected party suing by his mother and Litigation Friend, Samantha Nowell)	<u>Claimant</u>
	- and -	
	ST GEORGE'S HEALTHCARE NHS TRUST	<u>Defendant</u>

Mr David Melville QC, Mr Rohan Pershad QC & Mr Robert Marven (instructed by **Kester Cunningham John**) for the **Claimant**
Miss Philippa Whipple QC & Ms Maria Roche (instructed by **Bevan Brittan LLP**) for the **Defendant**

Hearing dates: 30 November – 3 December 2010 & 12, 17, 18 & 23 May 2011 & 28 July 2011

Judgment **The Hon. Mrs Justice Swift DBE** :

THE CLAIM

Introduction

1. The claimant, Leo Whiten, claims damages for personal injury and financial losses sustained as a result of the defendant's negligent management of his mother's labour and his birth. In September 2005, breach of duty was admitted by the defendant and, in March 2006, the defendant further admitted that its breach of duty had caused the claimant's injury. Proceedings were commenced on 8 August 2006 and, on 30 August 2006, judgment was entered for the claimant. Between 30 November and 3 December 2010 and

on 12, 17, 18 and 23 May 2011, I heard evidence and submissions in relation to the issue of quantum of damages. I have since received further written submissions from counsel, who were Mr David Melville QC and Mr Rohan Pershad QC for the claimant and Miss Philippa Whipple QC for the defendant. There was a further hearing today (28 July 2011) at which I dealt with a number of outstanding matters. At today's hearing, Mr Robert Marven appeared with Mr Melville for the claimant and Miss Maria Roche appeared with Miss Whipple for the defendant.

2. The claimant's claims under the various heads of damages are set out in the Final Updated Schedule of Loss (the Schedule of Loss) and the Supplementary Schedule of Loss filed on his behalf. The defendant's response to those claims is contained in its Amended Counter Schedule (the Counter Schedule) and Supplementary Schedule of Loss. In addition, the parties have prepared a Scott Schedule, setting out areas of agreement and disagreement between them. I shall refer to those documents when dealing with the individual heads of damage. I have calculated all past losses to the claimant's seventh birthday on 24 June 2011. Future losses are deemed to start from 25 June 2011. My awards under the various heads of damage are set out in the Appendices to this judgment.
3. Many of the heads of damage are in issue and have required detailed consideration in this judgment, hence its length. Whilst some of the disputed matters involve questions of principle and/or large amounts of money, many of them are relatively minor. I cannot help feeling that, had the parties exercised a greater degree of co-operation and good sense, the number of issues to be determined could have been considerably reduced and the amount of time spent on the case in and out of court could have been shortened significantly.

The principles to be applied

4. In assessing damages in this case, I have had in mind the principles set out by Lord Woolf M.R. giving the judgment of the Court of Appeal in *Heil v Rankin et al.* [2001] 2 QB 272 at paragraphs 22, 23 and 27:

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

5. The claimant is entitled to damages to meet his reasonable needs arising from his injuries. In considering what is “reasonable”, I have had regard to all the relevant circumstances, including the requirement for proportionality as between the cost to the defendant of any

individual item and the extent of the benefit which would be derived by the claimant from that item.

The form of award sought

6. It is agreed between the parties that damages for care and case management should be paid by way of periodical payments. Clearly, this arrangement is in the claimant's best interests. It is now agreed that the 90th centile of the Average Earnings Index (ASHE) 6115 should be used for the annual up-rating of the periodical payments. There was a dispute as to whether the award for loss of earnings should be paid by way of lump sum or periodical payments. I decided today that it was in the claimant's best interests for a periodical payments order to be made. It is agreed that the award should be uprated annually by reference to the ASHE earnings data for the gross annual pay for all male full-time employees in the United Kingdom (currently Table 1.7a).

THE CLAIMANT

7. The claimant was born on 24 June 2004. He is now seven years old. He is the first child of Simon Whiten (now aged 42 years) and Samantha Nowell (now 33 years old). At the time of his birth, they were living together in London, where they had both had well paid employment. Since the claimant's birth, they have had two other children: Dexter, who was born on 18 October 2007, and Victor, who was born on 11 March 2011.

The claimant's disabilities and prognosis

8. The evidence relating to the claimant's current condition and the prognosis for the future came from a number of experts, all of whom had examined the claimant and provided Reports and other written material. Dr Richard Miles, consultant paediatrician, and Mr Anthony Baldwin, chartered educational and paediatric psychologist, gave oral evidence on behalf of the claimant. The Report of Mr Mark Paterson, consultant orthopaedic surgeon instructed by the claimant, was not in dispute. Dr Neil Thomas, consultant paediatric neurologist, and Dr Jane Hood, consultant paediatric neuropsychologist and registered educational psychologist, gave oral evidence for the defendant. The two pairs of experts (Dr Miles and Dr Thomas; Mr Baldwin and Dr Hood) provided agreed notes of telephone discussions which had taken place between them prior to the trial.

The claimant's physical disabilities

9. The experts were agreed about most aspects of the claimant's current condition and prognosis. By reason of the defendant's negligence, he suffered profound hypoxic ischaemic damage and developed a mixed spastic-dystonic severe quadriplegic cerebral

palsy. He has hypertonia (stiffness) in all 4 limbs and hypotonia (floppiness) in his trunk. He has limited mobility, the precise extent of which I shall discuss later in this judgment. He cannot stand or walk unaided. His hand function is also very limited and his hands tend to be fisted with his elbows bent. He can open his fingers at times but a change of position, excitement or discomfort can cause his hands to fist again, making any further voluntary movement impossible. He suffers from mild epilepsy which is controlled by medication. However, he experiences frequent involuntary dystonic spasms and is prone to strong extensor spasms, particularly when startled. He has poor head control with a strong asymmetric tonic neck reflex to the right which causes him to look to the right and makes it difficult for him to bring his head into the mid-line. His eyes deviate to the right and he has reduced vision in his left eye and an intermittent convergent squint. He can vocalise but has no functional speech. He is doubly incontinent. His general health is good although he has suffered a number of chest infections in the past. Despite his profound disabilities, it is clear that he is a very engaging and generally happy child who is socially aware and thoroughly enjoys the company and attention of adults and other children.

The claimant's orthopaedic problems

10. The claimant has various orthopaedic problems which were described by Mr Paterson. He reported that progressive subluxation of the claimant's right hip had occurred during 2008. The claimant had received botulinum toxin injections (Botox) and a course of intensive physiotherapy which had produced some improvement in the position of the hip. Nevertheless, Mr Paterson described the hip as "precarious". He suggested that, on a balance of probabilities, it would require surgical stabilisation at some stage. The aim should be to delay the need for surgery for as long as possible by means of Botox injections, continued intensive therapy and attention to the claimant's posture and positioning. Mr Paterson considered that soft tissue surgery was likely to be necessary within 2-3 years and that there was a 30% chance that bone surgery would be required at the age of 10-12 years.
11. Mr Paterson also noted some increased spasticity of the claimant's arms. In order to combat this, he recommended daily ranging and stretching of the arms, together with the use of elbow and wrist splints and regular Botox injections. He suggested that surgery might be necessary in the future in order to correct contractures of the arms. Surgical intervention might also be required if a fixed scoliosis of the spine developed, or to lengthen his Achilles tendon so as to preserve his ability to stand with assistance.

The claimant's cognitive disabilities

12. The experts agree that the claimant has significantly impaired cognitive function resulting in a severe degree of learning disability. Both Mr Baldwin and Dr Hood assessed the claimant at his school, Linden Lodge, in the presence of one or both of his parents and

spoke to members of the school staff. Their assessments took place within a fortnight of each other in late 2009, when the claimant was 5½ years old. They noted that the claimant has a constellation of problems: significant physical disabilities, impaired vision and lack of expressive communication skills, in addition to his cognitive deficits. Because of those problems, they were unable to undertake a formal psychometric assessment. In particular, they had difficulty in assessing his precise level of understanding of language. It was clear that he understands certain key words although his reactions to the words were slow, suggesting a delay in information processing and speed of response.

13. Overall, the educational psychologists agreed that, even taking into account the claimant's physical and visual impairments, he was functioning only at a cognitive level equivalent to a normal child in the first two years of life. Their view was that, if the claimant continues to make progress – in particular with his communication skills – he can be expected, when he reaches adulthood, to have attained a level of cognitive functioning equivalent to a child of 4-5 years. They agree that he will be capable of using communication aids and IT equipment appropriate for that level of cognitive functioning.
14. It is clear from the evidence of the educational psychologists that the use of age level equivalents relating to uninjured children can be misleading when assessing a child with complex disabilities. In reality, even if the claimant attains the abilities of a 4-5 year old in some areas, he will not be functioning at the same age equivalent level in all skills. His motor and daily living skills, for example, will always remain below the level of a 2 year old. Dr Hood's evidence, which I accept, was that the claimant's reasoning and functioning level is likely to remain well below the level of a 4-5 year old, so that, while he may apparently be able to perform a task at that age level, he will not have the underlying skills of reasoning and understanding possessed by an undamaged child functioning at that age level. This evidence has important implications for some elements of the claim.
15. The educational psychologists agree that the claimant's placement at Linden Lodge is appropriate. They were asked whether he was likely to benefit from college after he leaves school. Their response was that a residential college is unlikely to be the best option for the claimant. A preferable arrangement, they say, would be to arrange a programme of activities based on his care arrangements at home. The claim has been presented on the basis that their view is correct and that the claimant will cease full-time education when he attains the age of 19 years.

The effect of the claimant's disabilities

16. The experts agree that, as a result of his disabilities, the claimant will always be totally dependent on the care of others for all daily activities. He will never be able to live independently, will not be capable of any form of employment and will never have the necessary mental capacity to be able to manage his own affairs.

17. For reasons that I shall explain later in this judgment, the intention is that the claimant will continue to live with his parents for the rest of his life and that, when he is aged 11½ years, the family will move to accommodation outside London.

LIFE EXPECTANCY

18. Dr Miles and Dr Thomas differed in their assessments of the claimant's likely life expectancy. This issue is of considerable importance because of the effect that it has on the appropriate multipliers to be applied when calculating the amount to be awarded by way of lump sum damages. Dr Miles takes the view that the claimant will probably live to the age of 44 years, whilst Dr Thomas predicts a life expectancy to the age of 35 years.

The Strauss data

19. The life expectancy of an individual is assessed by reference to the average survival time of a large group of individuals with similar characteristics. That average survival time does not reflect the actual time for which a given individual will live. The survival time of that individual could be much longer or shorter than the average life expectancy of the group to which he/she belongs. This is particularly so in the case of people with disabilities, for whom the variations in life expectancy are far greater than amongst the general population.
20. In making their assessments of the claimant's life expectancy, Dr Miles and Dr Thomas referred to data relating to adults and children with cerebral palsy which has been collected and published in the USA by Professor David Strauss and various colleagues. The quality of the Strauss data has been challenged by some experts. Nevertheless, it has for some time provided the starting point for assessing the life expectancy of persons with cerebral palsy.
21. In their evidence, Dr Miles and Dr Thomas relied in particular on the following papers: Strauss DJ, Shavelle RM, Anderson TW. *Life expectancy of children with cerebral palsy*. *Pediatric Neurology* 1998;18:143-149 (the 1998 Strauss paediatric paper); Strauss DJ, Shavelle RM. *Life expectancy of adults with cerebral palsy*. *Developmental Medicine and Child Neurology* 1998;40:369-375 (the 1998 Strauss adult paper); Strauss DJ, Shavelle RM, Reynolds R, Rosenbloom L, Day S. *Survival in cerebral palsy in the last 20 years: signs of improvement?* *Developmental Medicine and Child Neurology* 2007;49:86-92 (the 2007 Strauss paper); and Strauss DJ, Brooks J, Rosenbloom L, Shavelle RM. *Life expectancy in cerebral palsy: an update*. *Developmental Medicine and Child Neurology* 2008; 50: 487-493 (the 2008 Strauss paper).
22. It should be noted that the life expectancy figures quoted in the Strauss papers are for US actual life expectancy rates, rather than for UK projected life expectancy rates. They require adjustment for use in the UK. It is agreed that the adjustment should be performed

by using the methodology developed by Professor Strauss for that purpose and explained at page 491 of the 2008 Strauss paper.

The 1998 Strauss paediatric paper

23. The 1998 Strauss paediatric paper contains data from the study of over 12,000 children with cerebral palsy. The children were aged between 6 months and 3½ years at the time of entry into the study. The paper demonstrated that the most powerful prognostic factors for survival of such children were their mobility and feeding skills. The children were divided into categories according to their levels of skill in these areas. Mobility skills were classified on a graduated scale. Children who could not lift their heads when lying on their stomachs were at the lowest end of the scale. The next most able group consisted of those who could lift their heads, but not their chests, when lying on their stomachs. Those with greater mobility skills were classified as “lifts head and chest, partial rolling” and “full rolling, does not walk unaided”. Highest on the scale of mobility skills were those who could walk 10 feet unaided. There were three classifications of feeding skills: “tube fed”, “fed by others” and “some self-feeding”.
24. The graph at Figure 1 of the 1998 Strauss paediatric paper shows the expected additional survival period, based on the findings of the study, of children unable to lift their heads when lying on their stomachs who had each of the three levels of feeding skills. The graph shows that, for children with very limited mobility skills who were tube fed, the mean additional survival time was about 7 years whereas, for children with the same mobility skills who were not tube fed but had to be fed wholly by others, the mean additional survival time was about 14 years.
25. The graph at Figure 2 of the 1998 Strauss paediatric paper performs a similar exercise, this time for children with a slightly higher level of mobility skills, i.e. able to lift their heads, but not their chests, when lying on their stomachs. Once again, the children were sub-divided according to feeding skills. The graph shows that the mean additional survival time for children at this level of mobility skills who had to be tube fed was about 13 years. Although the graph only shows additional survival times up to 14 years, Dr Miles and Dr Thomas agreed that, if the line in Figure 2 which plotted the additional survival time for children who had to be fed by others was continued beyond 14 years, it would show that just over 50% of such children survived for an additional 20 years.
26. Table 3 of the 1998 Strauss paediatric paper relates to children in the three groups with the highest mobility skills. As before, each category was sub-divided according to differing levels of feeding skills. It is important to note that the information provided by Table 3 is of a different nature to that shown in Figures 1 and 2. Table 3 shows, not the expected additional survival time, but instead the statistical probability of survival for an additional 5, 10 and 15 years. Table 3 suggests that a child who can lift his/her head and chest, has partial rolling and is fed by others, has an 87% chance of surviving for a further 10 years

and a 79% chance of surviving for a further 15 years.

The 1998 Strauss adult paper

27. The 1998 Strauss adult paper contains the results of an analysis of data relating to over 24,000 adults with cerebral palsy, “adult” being defined as a person aged 15 and above. Once again, mobility and feeding skills were observed to be the key predictors of mortality. Table III of the paper shows life expectancies for males and females aged 15, 30 and 45 years within three classifications of mobility skills: “cannot lift head”, “lifts head” and “rolls/sits”. The subjects are further divided between the same three levels of feeding skills as in the 1998 Strauss paediatric paper. It is to be noted that Table I of the 1998 Strauss adult paper shows that the mobility skills of the subjects of the study had been categorised more narrowly for some purposes. It seems that the classification “rolls/sits” in Table III must have included those who had “at least partial rolling”. This is confirmed by a passage in the text of the paper at page 372.

The 2007 Strauss paper

28. The 2007 Strauss paper reported an appreciable improvement, over a period of 20 years, in the mortality rates for children under the age of 15 years with severe disabilities resulting from cerebral palsy and also for adults who required tube feeding. There had been a 50% reduction in mortality rates over that period. The authors advised that the life expectancies reported in earlier studies (including the 1998 Strauss paediatric paper) should be increased by approximately 5 years.

The 2008 Strauss paper

29. The 2008 Strauss paper revised and updated the data in the 1998 Strauss adult paper. Table I reproduces the categories of disability which had appeared at Table III of the 1998 Strauss adult paper, the only difference being that the “rolls/sits” classification has been sub-divided into two further categories: “rolls/sits, cannot walk” and “walks unaided”. Table I shows that, for a 15 year old male who can lift his head or chest and has to be fed by others, the average life expectancy is an additional 20 years (i.e. to the age of 35 years). A male of the same age, who rolls and/or sits, but cannot walk, and has to be fed by others, has an average life expectancy of a further 32 years (i.e. to the age of 47 years). The authors of the paper note that the categories in Table I are “rather broad”. They emphasise that the figures for life expectancy given for each category are averages and that, within each category, life expectancies can vary considerably according to the precise level of disability of the individual concerned.

The Strauss Patient Evaluation Questionnaire

30. As I have indicated, the classifications of mobility skills in the various Strauss papers encompass a wide variety of abilities. The data held by Professor Strauss and his team contains much more detailed information about the life expectancy of individuals with different levels of ability within the broad classifications. On request, Professor Strauss and his team will provide a personal assessment of life expectancy based on the particular circumstances of the individual concerned, including the extent of his/her mobility and feeding skills. In order to obtain such a personal assessment, a doctor must complete a "Patient Evaluation Questionnaire" (PEQ). So as to ensure that the assessment of life expectancy is based on the correct data, and because the contents of PEQs are used in the research undertaken by Professor Strauss and his team, doctors are given guidance as to the circumstances in which an individual should be credited with a specific skill.

31. The guidelines in the PEQ state:

"For each item, indicate the *highest level of skill that consistently applies* (e.g. daily or on request). Most often the person will be able to perform the lower levels of the item if they can perform a higher one. If this is not the case, please indicate. The skill may be demonstrated in an unusual manner, but must be purposeful and performed on a consistent, typical basis."

32. The "Rolling and Sitting" section of the PEQ has the following options for the doctor to tick:

- ♣ Does not lift head when lying on stomach

- ♣ Lifts head when lying on stomach

- ♣ Lifts head and chest using arm support when lying on stomach

- ♣ Rolls from side to side [must be 180 degrees, or fully to each side]

- ♣ Rolls from front to back only

- ♣ Rolls from front to back and back to front

- ♣ Sits without support for at least 5 minutes

- ♣ Assumes and maintains sitting position independently.

The claimant's mobility and feeding skills

33. Because of the important effect of mobility skills on life expectancy, the evidence about the extent of the claimant's mobility skills (and their classification for the purposes of the Strauss papers) assumed considerable significance in the case. There was no dispute about the current classification of his feeding skills for the purposes of the Strauss papers. He is not tube fed and has to be fed by others. However, it is necessary to consider whether that classification might change in the future and/or whether he has feeding problems which might adversely affect his life expectancy.

The evidence about the claimant's mobility skills

34. In their Reports, both Dr Miles and Dr Thomas commented on the claimant's mobility skills as observed by and reported to them at the time of their respective examinations of the claimant. At his first examination, in May 2007, Dr Miles noted that, when the claimant was lying prone (i.e. on his stomach), with his arms placed in position in front of him, he was able to lift his head and chest and hold himself in that position. In May 2009, Dr Miles noted that he could push his head up when in a prone position and hold it up, especially when he was positioned over a wedge. He made no mention on that occasion of the claimant being able to lift his chest. He observed that the claimant could not sit without support.
35. At the time of his first examination of the claimant, Dr Miles also described how he had observed the claimant rolling from his side onto his back, but not rolling fully over from his back onto his stomach, or from his stomach onto his back. He had seen a report from the physiotherapist who was treating the claimant which indicated that, on occasion, the claimant would roll from his stomach onto his back, usually to the left. However, he could not roll from his back onto his stomach. Dr Miles concluded that the claimant had partial – but not full – rolling abilities. When he re-examined the claimant in May 2009, he noted that he could still roll only partially and with difficulty. In oral evidence, he said that the claimant did not have consistent rolling.
36. Dr Thomas first examined the claimant in October 2005. He noted that the claimant was unable to push up on his arms when lying prone. The claimant's parents told him that the claimant could on occasion roll from his back onto his left side. Dr Thomas said that it was not clear whether or not the movement was voluntary. He noted that the claimant was unable to roll from front to back.
37. When Dr Thomas re-examined the claimant in November 2009, he noted that the claimant was able to lift his head when lying prone and could push up on his arms, but only if they were placed in the correct position by others. He was able to sit on the sofa with support to his back but tended to fall over if he turned his head. Dr Thomas reported that the

claimant could roll from his back to his left side (i.e. through 90 degrees) but was unable to roll over onto his front (i.e. through 180 degrees).

38. Dr Miles and Dr Thomas agreed that there was unlikely to be any significant development of the claimant's functional abilities in the future, since the peak of physical performance for those (like the claimant) with severe cerebral palsy occurs at the age of 5-6 years. They explained that, after that time, spasticity and contractures tend to develop, with consequent reduction of physical skills.
39. The claimant's parents clearly became aware that the extent of his rolling abilities was of importance to the issue of life expectancy. In August 2010, Ms Nowell made a witness statement in which she commented in some detail on the claimant's mobility skills. In it, she said that the claimant was able to roll from his back onto his stomach over the left side and would do this at will when playing on his own or with members of his family. In oral evidence, she said that the claimant can roll over both to his left and his right although, because of the problems with his right hip, he finds it much more difficult to roll over his right side. (At times, she appeared to be saying that it was more difficult for him to roll to the left but I think this was a mistake.) She described how, when he rolls, his arm becomes stuck underneath him and he requires help to free it. Ms Nowell told me that the claimant understands the request to roll over but will not always comply. Mr Whiten's evidence was that the claimant can roll over from back to front whenever he wishes to do so but will not "do tricks" on request. He said that he had tried to capture the claimant's rolling on video but had been unable to do so.
40. I also heard oral evidence from one of the claimant's carers, Ludmila Mlcakova (Lida). In her witness statement, Lida described how the claimant could roll onto his stomach "right and left side". In oral evidence, she said that, for the first two and a half years of her employment as the claimant's carer, she did not see him roll through 180 degrees, although his parents had told her that he was able to do so. She described how she had first seen him do so on 28 October 2010 and had recorded it in her work diary. In the diary, she described how the claimant "had rolled from right side onto his stomach". In oral evidence, she said that, by that, she had meant that he had rolled through 180 degrees from his back onto his stomach. She said that she had then placed the claimant on his side and left him to get a camera. When she returned to the room, he was on his stomach. She tried to get him to repeat the movement so that she could photograph him but he just laughed at her. She interpreted his behaviour as showing pleasure at being in control of events. Lida's evidence was that she had seen the claimant rolling on other occasions since October 2010. She said that, when the claimant rolls to the left, his right arm becomes trapped underneath him. She said that he is sometimes able to free the arm without physical assistance if he is given verbal encouragement and shown where his arm is. Otherwise, she will assist by physically releasing it.
41. I also heard evidence from Alice Robinson, a state registered physiotherapist who has been providing therapy for the claimant fortnightly (more frequently after he has had a

Botox injection) on a private basis since February 2008. As part of her regular regime of treatment, Miss Robinson writes periodic reports on the claimant's mobility skills as she observes them to be. In reports written in 2008 and 2009, she noted that he was able to lift his head against gravity when prone over a cushion. When placed lying on his side, he was able to maintain that position for only a short time, after which he would push into extension (by arching his back) in order to move out of it. He could roll from his back onto his right side (through 90 degrees) independently. In March 2009, she recorded that he was still unable to roll from his back onto his left side or from his back to his front independently.

42. In a report written in July 2010, Miss Robinson again described the claimant's mobility skills. She observed once again that he was able to lift his head against gravity when prone over a cushion and required high trunk support to sit upright. On that occasion, she saw the claimant roll from his back to his left side independently. Lida had reported to her that he could also roll to his right. She noted that "as he gets older and bigger, it is also more difficult for him to roll as he is heavier and his limbs are longer".
43. Miss Robinson was asked to carry out a formal assessment of the claimant for the purposes of this litigation in November 2010. She recorded that the claimant's head control had improved in that he was now able to hold his head in the midline for at least 5 minutes when lying prone over a cushion. When placed lying on his side, he could maintain the position independently for about a minute then, in order to get out of it, either pushed into extension or rolled onto his front in an uncontrolled manner. She observed the claimant rolling from his back onto his left side (i.e. through 90 degrees); she described the movement as "intentional and controlled". She also saw him roll from his right side onto his front intentionally and independently, but in an "uncontrolled" manner. His right arm tended to get stuck underneath his body when he rolled to the right.
44. In oral evidence, Miss Robinson said that, during therapy sessions, she did not work with the claimant on rolling since the movement had no therapeutic value. However, she had observed him rolling through 90 degrees in each direction. She had never seen him roll through 180 degrees. i.e. from his back to his front or *vice versa* or from side to side. She said that the claimant had difficulty in getting his hips into the correct position to roll and rolling caused him pain in the right hip. She explained that, when the claimant was lying on his front, she would position a cushion under his upper chest and then put his arms in position. He would then weight bear through his arms whilst lifting his head. She gave no indication that the claimant was able independently to lift his head and chest whilst lying on his stomach.

The evidence about the claimant's feeding skills

45. The claimant was initially fed by tube but soon progressed to oral feeds. At first, he had difficulty chewing and swallowing but this improved with time and he now has a

reasonable ability to chew and can manage food that is chopped up or puréed. He enjoys his food, although feeding him can be a very slow process.

46. In November 2007, shortly after the claimant started school, the speech and language therapist employed there became concerned that the claimant was coughing and choking when given food and drinks. She requested a video fluoroscopy swallow assessment at St George's Hospital to determine whether there was any risk of aspiration (food or fluids entering the trachea). If materials are aspirated, they can give rise to respiratory infection. The assessment, when carried out, revealed severe aspiration with thin liquids and with syrup and custard consistency fluids. All the aspiration was "silent" (i.e. it was not accompanied by any protective cough response), indicating reduced sensation in the larynx and pharynx. Following the assessment, staff at the claimant's school fed him only liquids that had been thickened.
47. The claimant's parents were unhappy at the way in which the assessment had been carried out. In particular, they considered that the claimant should have been assessed whilst in his special seating system. They insisted that a further assessment should be carried out, this time at Great Ormond Street Hospital. Meanwhile, they continued to feed the claimant thin liquids at home.
48. The further assessment was conducted in March 2009 with the claimant positioned in his special seating system. It confirmed that he has a delayed swallow trigger for liquids, making it difficult for him to clear them, so that they pool in his throat and place him at risk of aspiration. When the claimant was given a thin fluid (a Fortini drink) during the assessment, silent aspiration was observed. However, on this occasion, no aspiration was observed when he was fed with syrup consistency fluids. As a result of the assessment, the claimant's parents were told that he was at high risk of aspiration on thin fluids. They were advised that he should be offered syrup-thickened fluids from an open cup to minimise the risk. However, they did not consider that the assessment at Great Ormond Street Hospital had properly replicated the claimant's usual feeding conditions and declined to take the advice.
49. At home, the claimant's parents and carers continue to give him unthickened liquids. When Dr Thomas examined the claimant at home in November 2009, he observed that, although Mr Whiten had told him that the claimant could cope with drinking liquids, he coughed frequently while taking thin liquid from a cup. Dr Thomas knew nothing about the previous video fluoroscopy assessments but was concerned about the risk of aspiration and consequent infection. He considered that it was very likely that the claimant would become dependent on tube feeding later in life.
50. An assessment carried out at the Bobath Centre (a specialised facility for children with cerebral palsy) in February 2010 confirmed the advice given by Great Ormond Street Hospital to the effect that liquids should be thickened to a syrup consistency before being

fed to the claimant in order to reduce the risk of aspiration.

51. In a witness statement made in August 2010, Mr Whiten said that there was no evidence that the claimant had ever aspirated. He said that there was no evidence to suggest that the claimant would ever have to be tube fed. When asked about the claimant's feeding in his oral evidence, Mr Whiten became very aggressive. He insisted that the claimant had never aspirated. He said that he had researched the matter and there was no clinical evidence linking aspiration to respiratory infection. He said that the claimant could drink thin fluids "fine" at home and did not need thickened fluids. He claimed that, "as his father", he knew that the claimant had no problems with drinking. He suggested that, in making their recommendations, the staff at Great Ormond Street Hospital were merely "covering their backs". He was adamant that the claimant had never had a chest infection as a result of aspiration "and never will have".

52. Dr Miles and Dr Thomas agreed that some children with the same level of feeding difficulties as the claimant would be tube fed, if only to supplement oral feeding. However, they considered that, provided the claimant is fed with thickened liquids and more dense substances, oral feeding is reasonably safe. They were clear that, if he is given thin liquids, he will be at risk of aspiration which could in turn lead to infection. Dr Thomas was particularly concerned that he might suffer from low level aspiration which, whilst not immediately apparent, might over time result in the development of chronic lung disease. He was concerned about the claimant's parents' refusal to take the advice they had been given. Dr Miles considered that, provided that those responsible for the claimant's feeding take proper care, it was not likely that he would require tube feeding in the future. Dr Thomas was less optimistic. He considers it very likely that the claimant will become dependent on tube-feeding at some time in his life.

The medical evidence on life expectancy

Dr Miles' approach

53. Dr Miles considered that the claimant has partial (although not full) rolling skills. He pointed out that the PEQ contains a number of sub-categories within the "rolls/sits, cannot walk" category. He suggested that the request for this detailed level of information demonstrated that Professor Strauss and his team distinguished between the various gradations of rolling skills and gave credit for them in their individual projections of life expectancy. He considered that the claimant should be given "credit" in the assessment of his life expectancy for the fact that he has some – albeit limited – rolling skills. He said that, if he were completing a PEQ for the claimant, he would select the category, "rolls from side to side" but would add a comment such as, "only just and really sometimes he needs a bit of support even for lifting his head and chest". He said that the claimant "was far from being a consistent roller ... he really struggled to roll".

54. Dr Miles used as his starting point the data from the 2008 Strauss paper for a 15 year old male with cerebral palsy. As I have indicated, the categories of mobility skills contained in Table I of that paper include “lifts head or chest” and “rolls/sits, cannot walk”. In the assessment of life expectancy contained in his Report dated June 2009, Dr Miles placed the claimant in the latter category. However, he later modified that view and acknowledged that, given that he considered that the claimant has only limited rolling skills, it would be over-generous to place him squarely in the “rolls/sits” category. Nevertheless he argued that to place him in the “lifts head or chest” category would fail to recognise the rolling skills he has. He therefore considered that the claimant should be regarded as falling half way between the categories “lifts head or chest” and “rolls/sits, cannot walk” in Table I.
55. According to Table I of the 2008 Strauss paper, a 15 year old male who is fed by others and falls into the “lifts head or chest” category can be expected to live an additional 20 years (i.e. to the age of 35 years), whereas a 15 year male who is fed by others and “rolls/sits, cannot walk” can be expected to live another 32 years (i.e. to the age of 47 years). Dr Miles suggested that, if the claimant were aged 15, it would be reasonable to expect him to survive for a further period halfway between 20 and 32 years, i.e. a further 26 years, to the age of 41 years.
56. Dr Miles said that it was then necessary to make an adjustment to reflect the risk that the claimant might not survive until the age of 15 years. He estimated that risk at 6%. He reached that figure by reference to Table 3 of the 1998 Strauss paediatric paper. Table 3 suggests that a child aged 6 months to 3½ years who falls within the category “lifts head and chest/partial rolling” and has to be fed by others has an 87% chance of surviving (and therefore a 13% risk of not surviving) for a further 10 years. Since the claimant is older than 3½ years, Dr Miles suggested that it would be reasonable to assume that the risk of him not surviving to the age of 15 would have been approximately 12% in 1998. Given the 50% reduction in the mortality rate reported in the 2007 Strauss paper, the risk had now reduced to about 6%. He observed that such a percentage would accord with his experience of mortality within his own patient group. He therefore considered that a reduction of 2 years from the life expectancy of 41 years taken from Table I of the 2008 Strauss paper was appropriate. That reduced the life expectancy figure to 39 years.
57. A further adjustment was necessary to reflect the fact that the life expectancy figures quoted in the Strauss papers are for US actual life expectancy, rather than for UK projected life expectancy. To take account of that fact, Dr Miles performed a calculation in accordance with Professor Strauss’s methodology, which resulted in an increase of 4.8 years (which he rounded up to 5 years). That produced a predicted life expectancy for the claimant of 44 years.

Dr Thomas’s approach

58. Dr Thomas's evidence was that, if he were completing the PEQ in respect of the claimant, he would place him in the second lowest category of mobility skills, i.e. "lifts head when lying on stomach". He did not consider that the claimant was able to lift both his head and chest using arm support when on his stomach without assistance. Moreover, if it were accepted that his rolling skills were limited to those described by Miss Robinson, it could not be said that he came within the category "rolls from side to side".
59. Dr Thomas used as his starting point for the assessment of the claimant's life expectancy the data contained in Figure 2 of the 1998 Strauss paediatric paper which, as I have said, suggested that just over 50% of children who were able to lift their heads, but not their chests, when lying on their stomachs and who had to be fed by others, survived for an additional 20 years.
60. Up to the time when he gave oral evidence, Dr Thomas had used the 1998 data without updating it in accordance with the data contained in the 2007 Strauss paper. In oral evidence, he acknowledged that this had been an error. He said that he had previously misunderstood the 2007 Strauss paper. He accepted that the life expectancy derived from the data contained in Figure 2 in the 1998 Strauss paediatric paper should now be 25 years.
61. Dr Thomas recognised that the 1998 Strauss paediatric paper contained data relating only to very young children (from 6 months to 3½ years). He said that it would not be appropriate to assess the claimant's life expectancy by reference to the data contained in that paper without making some adjustment for the fact that the claimant was older than the cohort of children who were the subject of the paper. He said that there was no comparable data relating to the average life expectancy of children of the claimant's age. He therefore referred to the data contained in Table I of the 2008 Strauss paper. For the purpose of Table I, Dr Thomas placed the claimant in the category "lifts head or chest /fed by others". As I have already indicated, Table I shows that a 15 year old male with those levels of mobility and feeding skills can be expected to live a further 20 years.
62. Dr Thomas said that it would be reasonable to assume that a child of 6½ years (as the claimant was when he gave his evidence) would have a life expectancy of somewhere between 20 additional years (that of a 15 year old male according to the 2008 Strauss paper) and 25 additional years (that of a child up to 3½ years according to the 1998 Strauss paediatric paper). He suggested that it would be reasonable to adopt a figure of 24 additional years in the claimant's case. He then made an adjustment of 4½ years, to reflect the difference between US actual life expectancy rates and UK projected life expectancy rates. That produced an additional survival time of 28½ years. When added to the claimant's age in December 2010, that gave a predicted life expectancy to the age of 35 years.

The opposing views

63. Dr Thomas criticised Dr Miles' approach in three main respects. First, as I have explained, he did not agree that the claimant could be classified as having partial rolling skills.
64. Dr Thomas's second criticism of Dr Miles' approach related to Dr Miles' use of Table I of the 2008 Strauss paper as his starting point for the assessment of the claimant's life expectancy. Dr Thomas's evidence in December 2010 was that it was wrong in principle to impute to the claimant, at the age of 6½ years, a life expectancy based on the assumption that he was aged 15 years. He said that he could not see any logical reason why the data relating to the life expectancy of a 15 year old (any more than data for the life expectancy of, say, a 30 year old) should be used as the starting point for an assessment of the claimant's life expectancy.
65. At the resumed hearing in May 2011, I gave leave for Dr Thomas to be recalled for further cross-examination on this issue. In March 2011, the claimant's solicitors became aware of a report written by Dr Thomas in November 2010 on behalf of the defendant in a clinical negligence claim brought by a child, *JR*, against a different hospital trust. The *JR* case involved a child who was just over 4 years old when Dr Thomas's report was written. *JR* had cerebral palsy and other disabilities. His mobility skills are significantly greater than those of this claimant. He sits, rolls, crawls and bunny hops although he is unable to stand or walk unaided. He is able to finger feed but is predominately fed by others. In his report on *JR*, Dr Thomas took as his starting point Table I of the 2008 Strauss paper. He noted that a male aged 15 years with *JR*'s mobility and feeding skills would have a life expectancy of 32 years. He then referred to Table 3 of the 1998 Strauss paediatric paper and the fact that it shows that a child up to 3½ years with the same mobility and feeding skills has a 90% probability of living a further 15 years. Dr Thomas calculated the life expectancy of an individual who was one of the 90% who would live to 15 years. He then attempted to take account mathematically of the 10% of individuals who would not survive to the age of 15 years. That calculation produced an estimated life expectancy for *JR* of 40 years. Dr Thomas then increased the 40 years to 48 years to take account of the difference between US actual life expectancy rates and UK projected life expectancy rates and made a reduction to reflect the particular circumstances of *JR*'s case. His eventual figure was an additional 46 years' life expectancy, to the age of 50 years.
66. Having considered Dr Thomas's report in *JR*, I concluded that there was no evidence of inconsistency in the methodology used by him in the two cases. As he explained, the 1998 Strauss paediatric paper does not contain life expectancy rates for children with the higher level of mobility skills possessed by *JR*. The only data available for an individual with that level of mobility skills is that for a 15 year old in the 2008 Strauss paper. I was concerned, however, at the apparent inconsistency between Dr Thomas's second criticism of Dr Miles' approach (see paragraph 64 above) and his own use of Table I of the 2008

Strauss paper in the *JR* case.

67. When he gave evidence for the second time, Dr Thomas acknowledged that his criticism of Dr Miles for using data in the 2008 Strauss paper had been misplaced. Dr Miles had taken the view that the claimant had partial rolling skills. No data about the life expectancy of a child with those skills appeared in the 1998 Strauss paediatric paper. Therefore, Dr Miles had had no option but to use the available data in Table I of the 2008 Strauss paper as a starting point, just as Dr Thomas had done in *JR*. Dr Thomas said that, having re-read the transcript of his evidence, he regretted having made that particular criticism of Dr Miles.
68. Dr Thomas's third criticism of Dr Miles' approach related to his method of taking account of the risk that the claimant might not survive to the age of 15 years. Dr Thomas did not accept that it was appropriate to use the figure of 12% derived from Table 3 of the 1998 Strauss paediatric paper. That figure represented the probability of a child aged up to 3½ years surviving a further 10 years. It did not represent the probability of a child of that age surviving to the age of 15 years. Moreover, Dr Miles' figures took no account of the life expectancy of those individuals who would not survive to 15 years. Nor, according to Dr Thomas, was the application of the 50% reduction in mortality rate (revealed by the 2007 Strauss paper) to the 12% risk derived from Table 3 statistically sound. Overall, he did not consider that the reduction of 6% applied by Dr Miles properly reflected the risk that the claimant would not survive to the age of 15 years. He estimated that risk at about 20%.
69. Dr Miles said that Dr Thomas's methodology suggested that there was little difference between the life expectancy of a 6 month old child with cerebral palsy and a 15 year old child with the same condition. He said that could not be right. It was, he said, appropriate to give the claimant a life expectancy longer than 25 years because he had survived beyond the age group covered by the 1998 Strauss paediatric paper. Dr Miles also said that it was not appropriate to make extrapolations from the graph at Figure 2 of the 1998 Strauss paediatric paper when assessing the life expectancy of a child outside the age group covered by that paper. He drew attention to a passage at page 148 of the paper, in which the authors warned against using the analysis in Figure 2 in order to obtain a prognosis for an older child.

Discussion on life expectancy

The evidence of the claimant's parents

70. The claimant's parents are an intelligent couple who are both devoted to the claimant. They have had to endure the enormous stress of caring for a severely damaged child and of trying to secure for him the medical, therapeutic and other help he needs in order to be able to maximise his potential. That has not been easy. Their evidence, together with that

of friends and relatives, describes in moving terms the profound impact which the claimant's disabilities have had on his parents' lives and the limitations which have been placed on their careers, their relationships, and their social and leisure activities. They are to be admired for the dedication, tenacity and initiative they have shown in striving to achieve the very best for the claimant over the past seven years.

71. As the claimant's parents, Mr Whiten and Ms Nowell have a knowledge of his character and abilities which is unrivalled by anyone - apart, perhaps, from his regular carers. That knowledge enables them to recognise and interpret aspects of the claimant's behaviour – such as responses to certain words or situations – which would not necessarily be evident to others. However, their position as the claimant's parents also makes them vulnerable to a degree of over-interpretation of his actions and reactions. Moreover, their natural and overwhelming desire to see the claimant progress and develop as far as possible is liable to give rise to excessive and unrealistic expectations. I detected at times in their evidence an optimism about the claimant's abilities, understanding and likely future development which appeared to me unrealistic and which was at variance with the clear views of the experienced professionals who had observed and assessed him. One striking example was Mr Whiten's assertion, made to Dr Hood in November 2009, that he had not ruled out the possibility of the claimant being able to manage his own affairs and to help run the family business (presumably Ms Nowell's parents' property letting business) in the future. Mr Whiten's vehement denial that the claimant has any feeding problems - in the face of overwhelming evidence to the contrary - provides another illustration. Ms Nowell too was adamant that, in respect of feeding and other matters, she and Mr Whiten were right and the professionals were wrong.

The expert witnesses

72. I found the evidence of both Dr Miles and Dr Thomas unsatisfactory in some respects. In November 2009, Dr Miles expressed the view that the claimant had a life expectancy to 52 years. In the notes of the experts' discussions in August 2010, he reduced that estimate very substantially to 44 years. The reduction resulted from a change of mind as to the way the claimant's mobility skills should be classified for the purposes of Table I of the 2008 Strauss paper. In his Reports, Dr Miles gave no explanation for his decision to reduce the figure for life expectancy by 2 years to reflect the risk that the claimant might not survive to the age of 15 years. When he gave his explanation in oral evidence, by reference to Table 3 of the 1998 Strauss paediatric paper, it was not clear to me that he had properly appreciated that the 87% probability of survival to which he referred was in fact the probability of a child aged no more than 3½ years surviving a further 10 years (i.e. not to the age of 15 years). I found his proposition that it was appropriate to reduce the percentage risk of an individual not surviving to 15 years by 50% in order to reflect the contents of the 2007 Strauss paper unconvincing. Dr Lewis Rosenbloom, a highly respected consultant paediatric neurologist and co-author of the 2007 and 2008 Strauss papers, had conducted a peer review of an article which Dr Miles had written for publication, setting out the methodology he used in this case. In oral evidence, Dr Miles

asserted that Dr Rosenbloom had accepted that his methodology was reasonable and had been “impressed” by it. Subsequently, the defendant produced an email from Dr Rosenbloom. In it, he said that, as a reviewer, he had been asked (as is usual with peer review) to advise whether the article was suitable for publication and to suggest any changes that might be required. He had not been asked to endorse the contents of the article and had not done so. He went on to say that he regarded the methodology as:

“personal practice rather than a seminal or trend-setting review. I never quote it myself”.

I am concerned that Dr Miles should have sought to claim that Dr Rosenbloom had approved his methodology when this was not the case.

73. As for Dr Thomas’s evidence, I found it extremely surprising that an expert in this specialist field regularly providing medico-legal reports on life expectancy should not have fully understood the implications of the 2007 Strauss paper well before the end of 2010. Also, Dr Thomas did not appear (until the time he was cross-examined, when he accepted the fact) to have appreciated that the category “rolls/sits” in Table I of the 2008 Strauss paper includes individuals with “at least partial rolling”. Moreover, I was concerned about the criticism that he made in December 2010 about Dr Miles’ use of the 2008 Strauss paper. I had clearly understood that Dr Thomas was saying that it was wrong in principle to use that paper other than (as he had done) to show the top end of the range of life expectancies of individuals aged between 3½ and 15 years. As he himself acknowledged in May 2011, that particular criticism was unjustified and was inconsistent with his own methodology in the case of *JR*.
74. These features have made it difficult for me to repose a great deal of confidence in the evidence of either of the experts. In other circumstances, that might have caused me real problems. As it is, it has not had a significant impact on my assessment which is based primarily on my findings of fact.

Mobility skills

75. For the reasons I have already given, I have reservations about the reliability of the evidence given by the claimant’s parents concerning the claimant’s skills and abilities in circumstances where that evidence is not supported by the observations of the professionals who have had dealings with him over the years. I am not prepared to accept without some independent confirmation their assertion that the claimant can roll through 180 degrees at will. In any event, I found Ms Nowell’s evidence on the point somewhat confusing and am not certain that what she was describing was independent rolling since she said that the claimant’s arm becomes stuck under his body when he rolls and he needs help to free it. It may be that, on a few occasions in recent months, he has rolled through 90 degrees from his back onto his side and then, being unable to maintain that position

more than momentarily, has gone into extension and rolled onto his stomach in an uncontrolled manner, as observed by Miss Robinson (apparently for the first time) in November 2010.

76. Lida is a pleasant, caring individual and is plainly very fond of the claimant. She knows him well and places her own interpretations on his behaviour. However, some of her claims about his abilities (e.g. that he was able to give her a “high five” and that he “understands everything”) were unrealistically optimistic and were at variance with the expert evidence. I was not convinced by Lida’s insistence that, in her witness statement and/or diary, she had been describing how the claimant was able to roll through 180 – as opposed to 90 – degrees. Nor was I persuaded that she had seen the claimant roll – in a purposeful and controlled manner – through 180 degrees. It may be that she has seen him perform the two-stage process referred to in the previous paragraph. If so, I am satisfied that this has happened on only infrequent occasions. If it was a regular occurrence, it would have been possible to film the movement.
77. Far more reliable in my view is the evidence of Miss Robinson who has had regular contact with the claimant over a long period of time and was able to give an objective professional account of his mobility skills. Her observations of the claimant’s rolling abilities were broadly similar to those of both Dr Miles and Dr Thomas.
78. I find that the claimant is able to roll through 90 degrees in each direction, although he does not do so consistently, as defined by the PEQ. His rolling to the right is uncontrolled and his right arm tends to become trapped and has to be freed. It was not suggested in evidence that he is able to roll from his left side to his right side (or *vice versa*) or from his stomach onto his back. I consider it probable that, on the odd occasion, he has rolled through 90 degrees from his back onto his side and that, after remaining in that position for a short time, he has then got out of it by going into extension and rolling onto his front in an uncontrolled movement. I do not however accept that he rolls through 180 degrees consistently, deliberately or in one controlled movement.
79. I do not therefore consider that the claimant meets the requirements for “rolls from side to side”, as defined in the PEQ. Thus, I do not consider that, for the purposes of any of the Strauss papers, it would be correct to classify him as having “partial rolling”. There is no classification in the PEQ for an individual who can roll to a lesser extent than “from side to side”. That implies to me that such very limited rolling skills are not considered of any significance in predicting life expectancy. I find that the claimant has experienced increasing difficulty in rolling as he has got bigger and heavier and has experienced pain in his right hip. I accept the experts’ evidence that he is likely to lose the ability to roll at all in the next few years, certainly before he reaches the age of 15 years.
80. I accept that the claimant can lift his head when lying on his stomach, whether or not he is supported by a cushion under his upper chest. However, I do not consider that there is

convincing evidence that he can lift both his head and his chest independently when lying on his stomach. In order to push himself up to any significant extent, he requires assistance in placing his arms in the correct position. He cannot perform the movement unaided. Thus, I accept Dr Thomas's view that, for the purpose of the PEQ, it would be correct to classify him as "lifts head when lying on stomach".

Feeding skills

81. As to the claimant's feeding skills, I find that, notwithstanding the refusal by the claimant's parents to accept the fact, he is at risk of aspirating thin liquids and of contracting infections as a result. I do not consider that the risk of serious infection such as to affect his life expectancy is great, but I accept that it exists. I also find that there is a small risk that, at some time in the future, it may be necessary for the claimant to be tube fed, at least in part. I have taken those risks into account when reaching my conclusions on life expectancy. I have also taken into account the claimant's orthopaedic problems and his good general health.

Conclusions about life expectancy

82. The problem which both experts have faced in this case is that the Strauss papers do not contain data relating to individuals (such as the claimant) aged between 3½ and 15 years. Given my factual findings as to the claimant's mobility skills, the available data in his case consists of (i) Figure 2 of the 1998 Strauss paediatric paper (updated in accordance with the 2007 Strauss paper), which gives a child aged no more than 3½ years who is able to lift his/her head, but not his/her chest, when lying on his/her stomach a life expectancy of a further 25 years; and (2) Table I of the 2008 Strauss paper, which gives a 15 year old male who can lift his head or chest, but not roll or sit, a life expectancy of an additional 20 years.
83. Dr Thomas's evidence was that survival times for children with cerebral palsy reduce with age in a straight line. Thus, he said that it was appropriate to treat the periods of 20 years and 25 years as the two ends of the bracket of life expectancies for children aged between 3½ and 15 years with the relevant mobility and feeding skills. Dr Miles said that the probable survival time for the claimant must be more than an additional 25 years because he has already survived for at least 3 further years beyond the age of 3½ years. He provided no convincing statistical or other support for that argument. I accept Dr Thomas's evidence on this point. It cannot in my view be logical to find that a 7 year old child with the relevant mobility and feeding skills has a life expectancy outside the 20-25 year bracket. I accept also that it is fair and reasonable to give the claimant a life expectancy towards the top of the bracket, i.e. of an additional 24 years, to the age of 31 years.
84. The estimate of 24 years is based on US current mortality rates. I have used the

methodology set out at page 491 of the 2008 Strauss paper in order to convert that estimate to accord with UK projected mortality rates. The current life expectancy for a 7 year old based on US current mortality rates is 69.5 years. The claimant's life expectancy of 24 years represents (to round figures) 34.5% of 69.5 years. The current life expectancy for a 7 year old based on UK projected mortality rates is 81.5 years. 34.5% per cent of 81.5 years is (to round figures) 28 years. When added to the claimant's current age of 7 years, that gives him a life expectancy to age of 35 years.

85. I have considered whether I should make any adjustment to that figure to reflect individual features in the claimant's case. On the positive side, the claimant's mobility skills probably lie at the top end of the categories to which I have found that he belongs for the purposes of the Strauss papers. He appears to enjoy generally good health at present. Those factors militate in favour of a slightly increased life expectancy. However, the risk of aspiration (increased as it is by his current feeding regime) is a negative factor, as is the risk that he might have to be tube fed in the future. I consider that, on balance, the various factors cancel each other out. It was no doubt for that reason that, once the paediatric neurologists had reached their conclusions based on the statistical data, neither of them considered it appropriate to make any further adjustment. In the circumstances, it does not seem to me that any adjustment is appropriate.

MULTIPLIERS

The discount rate

86. In June 2001, pursuant to section 1 of the Damages Act 1996, the then Lord Chancellor set the discount rate at 2.5%. The current Lord Chancellor recently announced his intention to review the discount rate. In his Opening Statement, Mr Melville invited me to calculate all capitalised future losses by reference to multipliers based on the current discount rate of 2.5% and to grant the claimant permission to restore the assessment of damages in the event of a change in the discount rate. I have not yet heard submissions from the defendant in relation to this matter. For the present, however, capitalised future losses will be calculated by reference to multipliers based on the current discount rate.

The whole life multiplier

87. In the Schedule of Loss, it was contended that the whole life multiplier should be calculated by reference to Table 28 of the Ogden Tables, i.e. the Table giving "Multipliers for pecuniary loss for term certain". By contrast, the defendant's Counter Schedule argued that Ogden Table 1 should be used. Table 1 gives "Multipliers for pecuniary loss for life (males)".

Background

88. The Ogden Tables are prepared by the Government Actuary's Department with input from an inter-professional Working Party of actuaries, lawyers, accountants and other interested parties. As well as containing actuarial Tables, the publication contains Explanatory Notes for their use in personal injury and fatal accident cases. Paragraph 20 of the Explanatory Notes to the sixth edition of the Ogden Tables, published in March 2007, provides, *inter alia*:

“... the medical evidence may state that the claimant is likely to live for a stated number of years. This is often then treated as requiring payment to be made for a fixed period equal to the stated life expectancy and using Table 28 to ascertain the value of the multiplier. In general, this is likely to give a multiplier which is too high since this approach does not allow for the distribution of deaths around the expected length of life. For a group of similarly impaired lives of the same age, some will die before the average life expectancy and some after; allowing for this spread of deaths results in a lower multiplier than assuming payment for a term certain equal to the life expectancy. In such cases, it is preferable to look up the age in the 0 per cent column in Table 1 [for males] or 2 [for females] for which the value of the multiplier at 0 per cent is equal to the stated life expectancy. The relevant multipliers are then obtained from the relevant Tables using this age.”

Miss Whipple relies on the contents of Paragraph 20 in support of the contention made by the defendant.

The claimant's submissions

89. Mr Melville contends that it is clear that the whole life multiplier should be calculated by reference to Ogden Table 28. He relies on the decision of the Court of Appeal in *Royal Victoria Infirmary & Associated Hospitals NHS Trusts v B (a child)* [2002] Lloyd's Rep. (Med.) 282. In that case, the claimant contended that Ogden Table 38 (the equivalent of the current Table 28) should be used to calculate the whole life multiplier. The defendant submitted that, having applied Table 38, there should be an additional deduction for mortality risks in order to reflect the fact that *B* would not live exactly to her predicted life expectancy. The court rejected the defendant's submissions. At paragraph 24, Tuckey LJ said:

“...it seems to me that the Judge's approach followed that of the House of Lords of Lords in *Wells v Wells* and the other cases decided with it. Thus, in *Thomas v Brighton HA* the agreed medical evidence was that the claimant had a life expectancy to age

sixty. Both the trial judge and the Court of Appeal had taken the Table 38 multiplier but reduced it to discount for further contingencies. The House restored the full Table 38 multiplier. Lord Lloyd said at 378D to E:

“There is no room for any discount in the case of a whole life multiplier with an agreed expectation of life. In the case of life expectancy the contingency can work in either direction. The plaintiff may exceed his normal expectation of life or he may fall short of it.

There is no purpose in the courts making as accurate a prediction as they can of the plaintiff’s future needs if the resulting sum is arbitrarily reduced for no better reason than that the prediction might be wrong. A prediction remains a prediction.”

There is no difference in principle between an agreed expectation of life and one determined by the judge.”

90. Sir Anthony Evans agreed, observing at paragraph 40:

“ ... a multiplier which produced a lesser figure than is necessary to provide for the injured person until he or she reaches the average age cannot, in my judgment, be consistent with the underlying principle as it is applied by the courts”.

91. Mr Melville referred to other cases where a similar dispute has arisen. In *Waseem Sarwar v Kamran Ali and Motor Insurers’ Bureau* [2007] EWHC 274(QB), the defendant contended that, in assessing the claimant’s life expectancy, the medical experts had not taken into account the mortality risks facing the general population, as opposed to the risks associated with the claimant’s spinal injury. The claimant in that case was 23 years old and the judge, Lloyd-Jones J, had found that he had a life expectancy of a further 49 years, to the age of 72 years. Lloyd-Jones J accepted the claimant’s contention that Table 28 should be used. At paragraph 30 of his judgment he said:

“I consider that in the present case the experts, in assessing the life expectancy of the Claimant, have taken account not only of the consequences of his spinal injury but have also factored into their assessment a wide range of other individual factors particular to the claimant not arising from his spinal injury. These include his general medical history and that of his family, his weight, the fact that he does not smoke or drink, the extent of his susceptibility to heart disease or diabetes and his attitude to exercise. In these circumstances, if Table 1 were used it would lead to double counting in respect of the negative factors and would lead to under-recognition of the effect of the positive factors. [Counsel for the

second defendant] is correct in submitting that the assessment of life expectancy did not take account of the risks of accidental death or certain other diseases. In the light of that fact I have given careful consideration to the question whether I should arrive at the appropriate multiplier by employing a combination of Table 28 and Table 1. However, in view of the fact that by far the greater proportion of risks to this Claimant's life have already been taken into account by the experts in their assessment of life expectancy, and in the absence of any evidence as to what apportionment between Tables would be appropriate, I conclude that the appropriate multiplier should be calculated by reference to Table 28."

92. Lloyd-Jones J distinguished the decision of Leveson J (as he then was) in *Tinsley v Sarkar* [2006] PIQR Q1. In that case, the claimant, who had suffered a brain injury in a road traffic accident when aged 28 years, was a heavy smoker and was addicted to alcohol and drugs. He had behavioural problems. Many, if not all, the claimant's difficulties had pre-dated the accident but they had been exacerbated thereby. The medical experts gave evidence about the extent to which the claimant's life expectancy had been reduced by these factors and by the claimant's epilepsy which had been caused by the accident. The judge found that the claimant's life expectancy had been reduced by 12 years. Neither the evidence of the medical experts nor the judge's finding had taken account of the general mortality risks to which the claimant was subject. In those circumstances (and despite the fact that he accepted that there would be a degree of double discounting since Table 1 would include those at risk from the effects of smoking), the judge considered that it was appropriate to apply Ogden Table 1, rather than Table 28.
93. In March 2007, the sixth edition of the Ogden Tables was published and the advice contained in Paragraph 20 appeared for the first time. In *Anthony Burton v Guy Francis Kingsbury* [2007] EWHC 2091 (QB), Flaux J considered the appropriate whole life multiplier for an 18 year old paraplegic whom he had found had a total life expectancy to the age of 66 years. The defendant relied on Paragraph 20 in support of his contention that Ogden Table 1 should be used to calculate the multiplier. The claimant contended that Table 28 should be used. At paragraph 47 of his judgment, Flaux J observed:

"I consider that the present case and the approach of the medical experts is akin to that in *Sarwar v Ali* rather than *Tinsley v Sarkar*. The assessment of the reduction in life expectancy of the Claimant by Mr Gardner and Mr Tromans has involved a clinical judgment as to the positive and negative factors applicable to this Claimant, in order to assess the reduction in life expectancy compared with the average for a man of his age as set out in Table 1. Mortality having already been taken into account in that exercise, to use Table 1 again to establish the discount for damages for future cost of care and other future losses would involve a double discount,

for precisely the reason given by Tuckey LJ. This is a point which does not seem to be recognised by Mr Daykin, the Government Actuary, author of the Explanatory Notes to the Ogden Tables specifically in paragraph 20 on which Mr Faulks relies.”

Flaux J calculated the whole life multiplier by reference to Table 28.

94. In the cases of *Anthony Peter Crofts v Alan Murton* [2009] EWHC 353 (QB) and *Smith v LC Window Fashions Ltd* [2009] EWHC 1532 (QB), the medical experts had not given evidence about the claimant’s overall expectation of life. Instead, they had given their opinions as to by how long his pre-morbid statistical life expectancy had been shortened as a result of his injury. In those circumstances, the use of Ogden Table 1 (which takes into account mortality risks) did not involve any element of double discounting and the multiplier was calculated by reference to Table 1, rather than Table 28.
95. Mr Melville submits that in the present case, the medical experts gave evidence of the claimant’s life expectancy, based on all future risks. On the basis of that evidence, I made a determination as to his probable life expectancy. In those circumstances, if Table 1 were to be used and further allowance were to be made for mortality risks, this would amount to double discounting and would offend the principle enunciated in *Wells v Wells* and *B*.

The defendant’s submissions

96. Miss Whipple points out that both *B* and *Sarwar v Ali* were decided before the publication of the sixth edition of the Ogden Tables and the advice contained in Paragraph 20 of the Explanatory Notes. She argues that *B* is not authority for the proposition that the methodology explained in Paragraph 20 (“the Paragraph 20 methodology”) should be rejected and that Ogden Table 28 should be used in preference in every case where the predicted life expectancy has been determined or agreed after taking into account all risks of mortality. She points out that, in *B*, the defendant sought to argue that there was a greater chance that *B* would die earlier than her predicted life span than that she would live longer than predicted. It was for that reason that the defendant had contended that there should be a further deduction in the multiplier. The defendant’s approach was rejected by the court.
97. Miss Whipple relies on the advice and methodology contained in Paragraph 20. Paragraph 20 states that the application of Table 28 to a predicted life expectancy is likely to result in too high a multiplier. It points out that, within a group of individuals of the same age with similarly impaired life expectancies, some members of the group will die before reaching their predicted life expectancy and other members will die after reaching it. This spread of deaths around the predicted life expectancy can be catered for by using Ogden Table 1 or 2 in accordance with the methodology set out in Paragraph 20 in order to calculate the

appropriate multiplier.

98. Miss Whipple contends that the Paragraph 20 methodology produces a more accurate multiplier than one based on a term certain equal to the predicted life expectancy, as would be derived from Ogden Table 28. For an individual like the claimant, with a predicted life expectancy of 28 more years, it is, she suggests, reasonable to assess actual life expectancy as being at some point between 27 and 29 further years. The Paragraph 20 methodology permits the calculation of a multiplier that is based on a spread of two years (i.e. from 27 to 29 years). That multiplier will be more accurate than the Ogden Table 28 multiplier, which would be calculated by reference to a date which is exactly 28 years in the future.
99. Miss Whipple argues that the significance and effect of the Paragraph 20 methodology was not properly understood by the court in *Burton*. She submits that, in that case, the court appears to have approached the issue as one of determining whether (a) there has been an assessment of the reduction in the claimant's life expectancy (as in *Tinsley*, *Crofts* and *Smith*), in which case Ogden Table 1 or 2 should be used or (b) there has been a determination of the claimant's predicted life expectancy (as in *Sarwar*), in which case Table 28 was appropriate. She emphasises that the advice in Paragraph 20 is clearly applicable to cases where there has been a determination of the claimant's predicted life expectancy. She submits that, in such a case, the methodology advocated in Paragraph 20 does not involve any "double discounting" for mortality risks and thus is not inconsistent with the principles enunciated in *Wells v Wells* or *B*.

Discussion and conclusions on the whole life multiplier

100. The paediatric neurologists in this case have assessed the claimant's life expectancy by reference to his mortality risks as a whole, not just those risks associated with his cerebral palsy. This is not one of those cases (such as *Tinsley*, *Crofts* or *Smith*) where the medical evidence relates only to the reduction in life expectancy caused by a number of identified factors specifically relating to the claimant and the injury which is the subject of the claim. The predicted life expectancy which I have determined is a specific finding relating to the individual life expectancy of this claimant.
101. I accept that the decision in *B* did not involve an acceptance of Ogden Table 28 (or its forerunner, Table 38), in preference to the application of the Paragraph 20 methodology and the use of Ogden Table 1 or 2. Paragraph 20 had not been published at the time that *B* was decided and the defendant in *B* was not advocating the use of a different actuarial Table as a basis for calculating the appropriate multiplier. Instead, the defendant proposed a further deduction from the multiplier calculated by reference to Table 38 on the basis of medical statistical evidence to the effect that there was a greater chance that *B* would die earlier than her predicted life span than of her living longer than predicted. The Court of Appeal rejected that proposal.

102. The decision in *B* was based on the principle (clearly set out in *Wells v Wells*) that, where a claimant's life expectancy has been predicted (having been agreed between the parties or determined by the court), there is no room for any discount on the ground that the prediction might be wrong.
103. I have heard no statistical evidence explaining the Paragraph 20 methodology. Consequently, I do not understand the logic of assuming a spread of two years around the predicted life expectancy of 28 years, in preference to a spread of – say – four, six or eight years. But, whatever the logic may be, it is clear that the Paragraph 20 methodology is intended to make allowance for the fact that the predicted life expectancy of 28 years might be wrong. Moreover, it seems to me that underlying the methodology must be the assumption that the claimant has a greater chance of dying before the expiration of his predicted 28 years than of surviving for longer than 28 years. If that were not the case, the multiplier produced by using Table 1 would be greater than that derived from the application of Table 28. If I am right about that, the argument being mounted by the defendant in this case is, in reality, the same as that advanced unsuccessfully in *B*.
104. In any event, there can be no doubt that the effect of using Table 1 in the manner suggested by Paragraph 20 is to produce a discount (albeit a relatively modest discount) from the multiplier based on the full life expectancy as predicted. That being so, the application of Table 1 in accordance with the Paragraph 20 methodology in a case such as this would offend against the principle that there should be no discount from the multiplier calculated by reference to a claimant's predicted life expectancy.
105. In those circumstances I shall calculate the relevant multipliers in accordance with Ogden Table 28. I calculate the whole life multiplier at 20.21. I have set out the multipliers for other relevant periods in Appendix A to this judgment.

Recurring losses

106. I accept the defendant's submission that recurring losses should be calculated by reference to the appropriate Table at A5 of the Ogden Tables.

PAIN, SUFFERING AND LOSS OF AMENITY

107. The Judicial Studies Board (now Judicial College) Guidelines for the Assessment of General Damages in Personal Injury Cases (10th edition) (the JSB Guidelines) identify the bracket of damages for very severe brain damage cases as £185,000-£265,000. The Guidelines indicate that the level of award within the bracket will be affected by the degree of insight which the claimant has, by his/her life expectancy and by the extent of his/her physical limitations. The top of the bracket is intended to apply only where there is

“significant effect on the senses and severe physical limitation” and where the claimant has “a degree of insight”.

108. Mr Melville said that the claimant has a relatively long life expectancy, coupled with significant disability, lack of independence and a need for 24 hour care. In his written submissions, he argued that the claimant has a degree of insight into his condition. In this regard, he relied on the evidence of the claimant’s carer, Lida, who described in her witness statement how the claimant’s face “saddens” whenever people comment that his younger brother is more advanced than he is. In the light of this evidence of insight, Mr Melville contended for an award of £250,000.
109. Miss Whipple did not accept that the claimant has insight into his condition. She argued that his insight is restricted by his severe cognitive and learning disabilities. She suggested that he has a relatively limited life expectancy. She submitted that the claimant’s injuries fall into the middle of the bracket, with an appropriate award being one of £220,000.
110. The claimant has suffered very severe brain damage, resulting in catastrophic injuries which have a profound effect upon every aspect of his daily life. He will always be dependent on others for his needs. He will have very limited mobility and a severe cognitive deficit. He experiences some pain in his hip and may well require some operative interventions in the future. All these features justify a substantial award of damages.
111. I do not, however, consider that the claimant’s injuries are such as to fall at the very highest end of the bracket identified in the JSB Guidelines. I do not accept that he has any significant degree of insight into his condition. Lida’s evidence that he recognised the disparity between himself and Dexter was, I find, an example of her over-interpretation of the claimant’s reactions. None of the professionals who have examined the claimant – in particular, the psychologists – has suggested that he shows any recognition of his predicament. Even his parents have not sought to suggest that. The fact that he may on occasion demonstrate an unwillingness to do what he is asked or show signs of frustration or a sense of fun does not mean that he has an appreciation of what he has lost as a result of the defendant’s negligence. It is that type of appreciation that gives rise to an award of damages at the highest end of the scale. I must take into account also the fact that the claimant does not have the near normal life expectancy that is present in some cases of very severe brain damage.
112. I consider that in all the circumstances, the appropriate award for pain, suffering and loss of amenity is **£235,000**. That sum will carry interest which the parties have agreed at **£11,925**.

LOSS OF EARNINGS

113. The Schedule of Loss included a claim for the claimant's loss of earnings from the age of 21 years for life, at an average annual rate of £75,000 gross or £50,561 net. (The gross figure in the Schedule was in fact £50,000 but this appears to have been an error.) In its Counter Schedule, the defendant contended for a rate of £35,000 gross (£26,074 net), starting at the age of 22½ years. Given the claimant's age and disabilities, it is not possible to form any view of his employment prospects save by reference to the educational and employment attainments of his parents and other members of his family.

The claimants' parents and brother

114. Mr Whiten holds a second class Honours degree in Archaeology from University College, London. At the time of the claimant's birth, he was the group commercial manager for the trade newspaper, "The Publican" and was based in Central London. Mr Whiten's evidence was that he was earning about £50,000 per annum, together with bonuses totalling about £10,000. He said that his earnings had been at approximately the same level since about 2001 when he would have been aged 32 years. In July 2005, Mr Whiten terminated his employment and, shortly afterwards, he started work for a digital publishing company called Magicalia Limited, which publishes cycling magazines and manages websites for a number of cycle retailers. His salary at Magicalia was £45,000 per annum with a bonus of £10,000. When he made his witness statement in July 2006, he was expecting his salary to increase significantly, I assume to a level similar to his previous employment. Since March 2007, when he left Magicalia, Mr Whiten's career has taken a number of turns. He is now running a recently formed "dotcom" business from home. Mr Whiten's evidence was that his career and earnings have been adversely affected by the pressures consequent upon the claimant's disabilities.
115. Ms Nowell has an Honours degree in Information and Communications from Manchester University and a Master of Science degree in Information from Sunderland University. Before the claimant's birth, she was working as a data analyst for an insurance company, Mitsui Sumitono Insurance, earning £37,500 per annum, together (usually) with the same amount by way of bonus. She took maternity leave in May 2004 and returned to work part time in November 2005. In January 2007, she ceased work altogether for a time. In October 2008, she returned to full-time work for a company named Montpelier Reinsurance. I have no details of her earnings there. By November 2010, she was working three days a week on a short term contract for Lloyds of London at a rate of £470 per day, and two days a week for another company, Rooms Solutions. Assuming that her rate of pay with Room Solutions was similar to that at Lloyds, her earnings were the equivalent of about £122,000 per annum.
116. By all accounts, Dexter is a bright child who is making excellent progress at nursery.

The wider family

117. The evidence was that Mr Whiten's father works as a civil engineer and is currently earning about £85,000 per annum. His mother is a retired dental nurse. His 39 year old brother has recently been appointed a consultant anaesthetist in the NHS, earning approximately £77,450 (£53,000 net). Ms Nowell's parents are now retired. They own and manage four properties in the UK and two in Barbados. Her father was a psychiatric nurse, whilst her mother, a teacher, was the head of a primary school until 1989 when she retired through ill health. Ms Nowell's 30 year old brother was formerly a tooling engineer and, having been made redundant from that employment, now works offshore as a contract engineer. Her younger sister, who is in her mid-twenties, is currently a student having had employment "on and off" in the past.

The parties' cases

118. The claimant's case is that his parents and other members of the family are high achievers. Both his parents had good earnings before his birth and, whilst his father's career has been disrupted by the claimant's disabilities, Ms Nowell was commanding high earnings until she ceased work before Victor's birth. It is contended that the claimant would in all probability have graduated from University at the age of 21 with a good degree (i.e. not less than a 2:1) and, between the ages of 21 and his anticipated date of death, would have had average annual earnings of £75,000 gross or £50,561 net.
119. The defendant submits that it is impossible to predict what the claimant's earnings would have been. Although his mother has recently been earning large sums, she has not always earned at the same high level and, being self-employed, currently has no earnings at all. The turnover from Mr Whiten's new business is modest at present. Other members of the claimant's family present a mixed picture. Some are/were not in particularly remunerative employment whilst others are or have been in well paid jobs. The defendant argues that, in those circumstances, the appropriate course is to adopt as the multiplicand for loss of earnings the figure for average male earnings across all occupations, which is currently £35,000 gross or £26,074 net.

Discussion and conclusions on loss of earnings

120. There are always difficulties in predicting the likely career path of a child as young as the claimant. A good starting point is to look at the employment history of his parents and other close relatives. Mr Whiten and Ms Nowell are an intelligent couple who have benefited from a University education and have held remunerative jobs. They would have been anxious for their children to perform well at school and to go on to tertiary education. They would have given the claimant every support and encouragement to maximise his educational potential. Other close family members hold (or have held) secure and reasonably well paid (though not necessarily highly paid) employment. The exception is the claimant's aunt, although she is still young and may well settle down to regular employment in the future. These factors suggest that the claimant would probably have

been motivated to seek and obtain employment and would have had the abilities and qualifications to find and retain a good job in the public or private sector. I consider that it is probable that, at the peak of his career, he would have earned significantly more than the average earnings for all types of employment.

121. I regard it as unlikely that the claimant would have obtained employment as early as at the age of 21 years. He may well have undergone some form of postgraduate training and/or, like his aunt, have taken some time to decide what he wanted to do. I regard the defendant's assumption that he would have started paid employment at the age of 22½ as entirely reasonable.
122. It is contended on behalf of the claimant that, from the time he started employment until the end of his predicted life expectancy (35 years, as I have found it to be), he would have earned an average of £75,000 gross per annum. This is said to be commensurate with his parents' earnings although, in fact, it is significantly more than the earnings of his father, who is said to have been earning about £60,000 per annum at the age of 34. Whilst it is possible that, by the end of the period of loss, the claimant might have been earning that amount, it is probable that, in the early years of his employment, his annual earnings would have been significantly less. It follows that I consider the average annual figure advanced by the claimant to be excessive.
123. On the other hand, the claimant's family history suggests that his average annual earnings during the relevant period – even taking into account the probable lower than average remuneration during the early years – is likely to have exceeded current average male earnings. I consider that it is probable that he would have earned an average figure of £45,000 per annum gross, or £32,861 per annum net, from the age of 22½ years to 35 years.
124. After hearing argument today, I accepted the defendant's submission that there should be a discount from the annual figure for loss of earnings to reflect contingencies other than mortality, in particular the risk (which was not taken into account in calculating that annual figure) that he might have had a period or periods when he was not in work. The current financial climate demonstrates that this is a real risk, even for the young and well-qualified. Given the short period of the claimant's notional working life and the other circumstances of the case, I consider that the discount should be modest, namely 5% of the annual figure. This produces an annual loss of £31,218 which I have discounted further to **£31,000** to reflect what I consider to be the probability that the claimant would have incurred at least some expenses (in addition to those for his car, which have been taken into account when calculating the award for future transport costs) in connection with his employment.

THE CLAIM FOR CARE

The experts

125. Mrs Maggie Sargent gave evidence about the claimant's care needs on behalf of the claimant. The defendant's care expert was Ms Joanna Douglas. Both the experts are registered nurses with a background of hospital nursing.
126. Mrs Sargent has very considerable experience in assessing the care needs of persons with severe disabilities living in the community and of setting up and supervising appropriate care packages for such persons. She is currently a director of a national care consultancy, Community Care Management Services Limited (CCMSL) which, *inter alia*, provides case management services for clients with profound disability. Her wide and varied practical experience enables her to speak with considerable authority on the merits and demerits of different types of care regime.
127. Ms Douglas has worked for the last 19 years as consultant/adviser to care providers from the statutory, private and voluntary sectors. That work has involved maintaining close links with care and case managers who co-ordinate domiciliary care regimes on an individual and group basis. Ms Douglas does not undertake case management herself, nor does she have experience of managing and supervising personally care regimes for individuals with complex disabilities in a domestic setting. Those features make her less able than Mrs Sargent to speak with authority on some aspects of the care claim. Nevertheless, her evidence was careful and considered and I found it helpful in a number of respects.

Past care

128. It is clear from the evidence that, as a result of his disabilities, the claimant has required – and continues to require – a significantly greater amount of care than an uninjured child. The care required for an able child tends to diminish as he/she becomes older. However, in the claimant's case, this has not happened. His limited mobility and his total dependence on others for all his needs have meant that his requirement for care has increased – rather than reduced – over time. He has to be carried or transported everywhere, fed, washed, dressed and changed. His feeding alone takes a significant amount of time. During his waking hours, he has to be continually occupied and entertained. Whilst awake, he requires the undivided attention of at least one adult at all times. His sleep is frequently disturbed and he often needs attention during the night.
129. At the beginning of the claimant's life, his parents bore the entire burden of his care. Initially, Mr Whiten was working full-time in a demanding job, whilst Ms Nowell was at home. It is clear from their description of this period, and from the evidence of friends and family members, that it was an exceedingly stressful and exhausting time for them both. In August 2005, Mr Whiten changed to a less pressurised job. From that time, he was

able to assist with the claimant's care to a greater extent than previously.

130. From September 2005, the claimant's parents employed a carer, Jana, for 10 hours a day from Monday to Friday. Jana had trained as a physiotherapist in Slovakia and provided the claimant with regular sessions of a therapy known as "vojta". The introduction of a paid carer enabled Ms Nowell to return to her former employment on a part-time basis in November 2005. In September 2006, the claimant's parents terminated Jana's employment because of a disagreement. At that time, Ms Nowell decided to stop working and care for the claimant herself. She ceased working outside the home in December 2006 and, after spending a couple of months working from home, stopped work altogether in February 2007. Shortly afterwards, she discovered that she was pregnant with her second child. In March 2007, Mr Whiten left his job and worked freelance from home for a period whilst seeking alternative employment.
131. From June 2007, another carer, Aga, was employed. She was qualified as a physiotherapist in her own country but is not registered to practise in the UK. I have no information about the precise number of hours she worked initially, but assume that it was at least 30 hours per week. In July 2007, Mr Whiten returned to full-time employment. In September 2007, the claimant started to attend Linden Lodge, a special school for children with complex learning disabilities, including visual difficulties, which is situated only a short distance from 192 Crowborough Road. Aga continued to provide care during the school term for a total of about 32½ hours per week (2 hours each weekday morning and 4½ hours each weekday afternoon/evening), with an additional 2 hours at weekends when required. I have not been told how much care she gave during school holidays but assume that it was rather more than during term time. The couple's second child, Dexter, was born in October 2007.
132. From April 2008, a second carer, Lida, was employed. She became the lead carer whilst Aga, who had embarked upon a college course with a view to studying osteopathy, reduced her hours. In October 2008, Ms Nowell returned to work full-time. In 2009, some overnight care was introduced. Between them, the two carers also began to provide 8 hours' care at weekends. Ms Nowell's evidence is that, by late 2009, the carers were working for a total of 47 hours plus 3 nights per week during the school term and 65 hours plus 1 night per week during the school holidays. In May 2009, Mr Whiten's employment was terminated and he had a period of 6 months' "gardening leave" at home. By that time, Dexter was attending nursery 2 mornings a week. Mr Whiten cared for Dexter during the periods when he was not at nursery and also assisted in co-ordinating the claimant's therapy and other needs. In December 2009, Mr Whiten started up a new "dotcom" consultancy business. Since then, he has been working from home and has been able to continue in his co-ordinating role and also to care for Dexter when required.
133. The claimant's parents found that employing only two carers (one with full-time educational commitments) gave them insufficient flexibility, particularly during the school holidays. Therefore, as from February 2010, a third carer was employed. Initially, this

was Elena, but she proved unsatisfactory and her employment was terminated in April 2010. Her replacement, Hanna, started work at the beginning of September 2010. By that time, Ms Nowell was pregnant with the couple's third child. She ceased work in December 2010 and Victor was born in March 2011.

134. The current position is that Aga, Lida and Hanna continue to be employed as carers. Lida and Hanna share the claimant's care during the week, providing cover from the early morning until his bedtime. Between them, they provide night care 4 nights a week, together with 8 hours' care at the weekend. Aga comes in on Wednesday evenings and on one day at the weekend to assist with the claimant's care and do some physiotherapy exercises with him. Mr Whiten continues to run his business from home. Ms Nowell intends to return to work at some point, possibly at the beginning of 2012. She may seek part-time employment outside the house or work wholly or partly from home. Dexter is due to start school some time after his fourth birthday in October 2011.

Past gratuitous care

135. The care experts have estimated the amount and value of the additional care which the claimant's parents have been required to give him by reason of his disability. The claim under this head to the end of June 2011 is for £108,400, less nursery fees of £10,080 which it is conceded would have been incurred for the claimant in any event. The net claim is therefore £98,320. The defendant's figure (to December 2010 and after correction of a mathematical error in the Counter Schedule) is £36,577. This figure does not take account of any childcare costs that would have been incurred even had the claimant been uninjured.
136. The difference in the parties' valuations of this claim is accounted for by three factors. First, the experts' assessments of the number of hours of additional care required and given gratuitously by the claimant's parents differ. Second, the experts do not agree about the rates of pay which should be used to value the parents' care. Third, there is a dispute between the parties as to whether the commercial rates of pay (whichever rates are adopted) used to calculate the value of the parental care should be discounted in order to reflect the fact that the care was given gratuitously. I shall deal with those disputes separately.

The number of hours of gratuitous care required

137. When considering the number of hours of additional care contended for by each expert and my conclusions thereon, it is convenient to consider separately each period for which gratuitous care is claimed.

a) *10 July 2004 – 30 September 2004*

During this period, the claimant was unsettled and irritable and cried for long periods during the day and at night. However, because of the amount of care that any young baby under three months would need, Mrs Sargent does not consider that any additional care would have been necessary during this period. Consequently, no claim is advanced by the claimant for this period.

b) *1 October 2004 – 31 December 2004*

The claimant suffered from frequent seizures during this period. His distress and irritability reduced somewhat but he still had a very disturbed sleep pattern. Mrs Sargent considers that he required an additional 6 hours' care a day (42 hours per week) over and above the care that would have been required for a normal baby. Ms Douglas allows for 28 hours' additional care per week during this period.

The claimant required a considerable amount of additional care during this period, particularly at night. He frequently woke during the night and required attention before he would settle again. In addition, his parents (in particular Ms Nowell) spent a great deal of time attending medical appointments with the claimant and in seeking additional help (e.g. craniopathy) for him. I am satisfied that Mrs Sargent's estimate of 42 hours per week properly reflects the additional time spent by his parents in caring for him.

c) *1 January 2005 – 24 June 2005*

Mrs Sargent estimates that, from the age of six months, the claimant's additional care needs increased to 8 hours a day (56 hours per week). By contrast, Ms Douglas continues to allow for 28 hours' additional care as before.

By the time he was six months old, the claimant could have been expected to have established a proper sleep pattern. However, because of his disabilities, he had not done this and, as a result, he continued to require constant attention at night. In addition, his parents spent a great deal of time taking the claimant to medical and other appointments and attempting to obtain appropriate therapy and equipment for his needs. I consider it appropriate to allow for an additional 7 hours per week of additional care during this period, i.e. a total of 49 hours per week.

d) *25 June 2005 – 24 June 2007*

Ms Douglas considers that, between the ages of one and three years, the claimant's

additional care needs increased to 5 hours per day or 35 hours per week. Mrs Sargent's estimate for that period remains the same, at 56 hours per week.

I accept that, from the age of one year, the claimant's needs increased, particularly when compared with the needs of an able child. I consider that, during the periods when they had no help, the claimant's parents were providing an additional 56 hours per week of additional care during this period.

In reaching their estimates, neither of the experts took any account of the paid care provided by Jana for a year from September 2005 until September 2006. Jana assumed responsibility for taking the claimant to most of his medical appointments and for his care during the working day and early evening. His parents retained responsibility for his care in the evenings, overnight, in the early mornings and at weekends.

I bear in mind that, had he been uninjured, the claimant would have been at nursery on weekdays so that, for much of the time that Jana was caring for him, his parents would not have been required to care for him in any event. Nevertheless, I consider that some modest reduction is appropriate to reflect the assistance given by Jana. For the year when Jana was employed, I have reduced the allowance for additional gratuitous care by 5 hours per week to 51 hours per week.

e) 25 June 2007 – 31 August 2007

From the time when the claimant was three years old, Ms Douglas increases her estimate of the amount of additional care required to 6 hours per day or 42 hours per week. Mrs Sargent's estimate remains at 56 hours per week.

I accept Mrs Sargent's estimate that 56 hours of additional care per week were required during this period. It was at the beginning of this period, in June 2007, that Aga's employment began. The parties agree that 10 hours per week should be deducted to reflect the care given by her. Thus, I allow 46 hours per week of additional care during this period.

f) 1 September 2007 – 31 March 2008

The claimant started full-time school in September 2007. The experts agree that, from that time, his need for additional gratuitous care reduced to 26 hours per week during the school term. Mrs Sargent estimates that he required an additional 46 hours per week during the school holidays, whilst Ms Douglas's estimate is 42 hours per week.

In the light of the assistance available from Aga during the school holidays, I consider that Ms Douglas's estimate of 42 hours' additional care per week is fair and reasonable.

g) 1 April 2008 – 31 January 2010

From April 2008, a second carer, Lida, was employed. In order to reflect the care provided by Lida, Mrs Sargent reduced her estimates of additional care to 16 hours per week during the school term and 36 hours per week during school holidays. It appears from her Report that she assumed that night care had been available for 3 nights a week throughout this period. That was not in fact the case. Although I have not been told precisely when the new regime of night care came into effect, it is clear from Ms Nowell's witness statement of January 2010 that it was some time in 2009. I have assumed that it was introduced in about April 2009.

Ms Douglas's estimate of the additional amount of care required during this period (making no deduction for the paid care actually received) was 32 hours per week during the school term and 42 hours per week in school holidays. Because of the widening gap between the amount of care which the claimant would have required had he been uninjured and the amount of care which he actually required in his injured state, Ms Douglas increased her estimate of additional care from 24 June 2009, the claimant's fifth birthday. From that period she estimates that the claimant required (before any allowance for paid care actually received) 34 hours per week additional care during term time and 49 hours per week additional care in the school holidays.

After making what the defendant contends is the appropriate deduction for paid care, the Counter Schedule allows for 12 hours' additional care during term time and 22 hours' additional care during school holidays throughout the period from 1 April 2008 to 31 January 2010. The Counter Schedule makes no reference to the increase in hours allowed for by Ms Douglas once the claimant attained the age of five years.

For a year from April 2008, the employment of two carers enabled more assistance to be available to the claimant's parents at weekends and on weekdays during both school terms and holidays. Nevertheless, the claimant's parents had to cover the nights and much of the weekend. I consider that, during this period, it is appropriate to allow 26 hours' additional care per week during school terms and holidays.

As from April 2009, the claimant's parents had the benefit of a carer staying overnight for several nights a week. From April 2009 to January 2010, I have adopted Ms Douglas's estimates of additional hours spent (with a deduction of 20 hours per week to reflect the paid care received). Thus I have allowed 14 hours of additional care in

term time and 29 hours during the school holidays.

h) 1 February 2010 – 30 June 2011

As from February 2010, a third carer was employed. I was told that, although the addition of an extra employee has given greater flexibility to the care regime, it has not added significantly to the amount of paid care being provided. I have therefore maintained the same number of hours, i.e. 14 hours of additional care in term time and 29 hours during the school holidays, for the whole of this period.

The appropriate rates of pay

138. As to which rates of pay provide an appropriate valuation of the parental care, both experts have used rates from the National Joint Council for Local Authorities Services (NJC) pay scales, which are applicable to unskilled home helps/home carers. The difference between the experts lies in their choice of whether to use the basic, non-enhanced NJC rate (i.e. the Monday-Friday daytime rate) or the aggregate NJC rate, which is a weighted average rate calculated by reference to rates paid over the whole week, including evenings and weekends when enhanced rates would usually be payable for “unsocial” hours.
139. Mrs Sargent favours the aggregate NJC rates (i.e. £7.94 per hour for 2004/5, updated annually thereafter), on the ground that the higher rates take account of the “on-call” nature of the care given by the claimant’s parents, together with the fact that much of the care will have been given at night and weekends, during “unsocial” hours.
140. Ms Douglas considers that the basic NJC rates (£6.06 per hour for 2004/5, updated annually thereafter) are more appropriate. She points out that aggregate rates are often paid for evening and weekend work in recognition of the fact that the carer has to work outside his/her home. This would not have been the case with the claimant’s parents who would, she says, have been able to combine their caring duties with their ordinary activities.
141. From the beginning, the claimant has required a very high level of care by comparison with an uninjured child. That care has been required at all hours of the day and night. The levels of stress and exhaustion experienced by the claimant’s parents as a result of the demands placed upon them are well documented in the evidence. When paid care was first introduced, it was available only on weekdays. It was not until April 2009 that the claimant’s parents obtained some assistance with overnight and weekend care. Up to that time, they had been solely responsible for his care at those periods. Moreover, the claimant has always required one to one care. His needs are such that it is not possible to care for him whilst at the same time carrying out any other activity. I am quite satisfied therefore that, in the circumstances of this case, it is appropriate to value the gratuitous care given by the claimant’s parents throughout the relevant period at the aggregate NJC rates

used by Mrs Sargent.

Should the award for gratuitous care be discounted?

142. Miss Whipple submits that the award for gratuitous care should be discounted to reflect the fact that no income tax or national insurance contributions are payable on the award and the claimant's parents have incurred no travelling or other expenses of employment. She contends for a discount of 30%.
143. Mr Melville relies on the extent of the care provided by the claimant's parents and the fact that, at times, both of them have been unable to work (or unable to work to their full capacity) by reason of the demands placed upon them by the claimant. He points out also out that the NJC aggregate rates are significantly lower than the rates paid to the carers who have been employed to assist with the claimant. He submits that, for these reasons, no deduction should be made from the award for gratuitous care. He argues further that, if a deduction is to be made, it should be significantly less than 30%.
144. I am satisfied that fairness requires that some deduction from the award for gratuitous care should be made. That award is based on commercial rates of pay, albeit not as high as those paid to the claimant's professional carers. In deciding to award the aggregate NJC rates, I have already taken into account the extent of the care given to the claimant by his parents. Moreover, although it is true that his parents have had periods when they have not worked – or have worked less than full-time – because of the claimant's needs, this has not been the case throughout the relevant period. Some of their periods of absence from work have been for other reasons, e.g. Ms Nowell's two periods of maternity leave. In all the circumstances, I do not consider that this is one of those unusual cases where no deduction is appropriate. Weighing up all the relevant factors, I take the view that a discount of 25% would be fair and reasonable.

Conclusion on the award for past gratuitous care

145. On that basis, my award for past gratuitous care, without any deduction for the costs of care that would have been required in any event (which I shall take into account when assessing the costs of paid care), is **£77,631**. Details of the relevant calculations are contained in Appendix C to this judgment.

Past paid care

146. The Supplementary Schedule of Loss claims the costs of paid care and associated expenses to the end of June 2011 in the sum of £189,893, which is an agreed figure. However, there is a dispute between the parties as to the amount that should be offset for

the costs of childcare which would have been incurred even had the claimant been born without disabilities.

Offset for care costs that would have been incurred in any event

147. Mr Melville conceded that some childcare costs would have been incurred, since it was the intention of both the claimant's parents to continue working full-time after his birth. Their evidence was that, before he was born, they had paid a deposit of £200 in order to secure a place for him at a private nursery. Their plan was for him to attend there full-time until he started school, which, in normal circumstances, would have been in September 2008. The nursery is open all year round (apart from Christmas week) and it was envisaged that he would attend there whenever his parents were working.
148. The claim for past care in the Schedule of Loss includes an offset for the weekly cost of nursery attendance at £240 for about 47 weeks a year (to take account of holidays) throughout the period from October 2004 until 1st September 2006. No further allowance is made for any childcare costs that would have been incurred in respect of the claimant had he not been injured.
149. The defendant argues that, in reality, the claimant would not have attended nursery full-time throughout the period until he went to school. Its primary case is that the claimant's parents would have employed a full-time non-resident nanny at an annual cost of £25,559. This would, it is suggested, have been the cheaper and more convenient option, certainly after Dexter's birth in October 2007.
150. If the claimant had remained at nursery full-time throughout this period, the annual cost (based on the fees currently being paid for Dexter's attendance 3 days a week at a local nursery) would, the defendant suggests, have been about £15,000. That cost would have been incurred until the claimant went to school in September 2008.
151. Thereafter, the defendant argues that there would inevitably have been some costs incurred for the claimant's care after school and in the school holidays. It is suggested that, for school terms, an offset should be made of 3 hours' care per day on weekdays at £10 per hour, i.e. (based on 43 weeks of school terms) an annual sum of £6,450. Taking into account the cost of care during the school holidays, it is suggested that an annual offset of £10,000 would be appropriate.
152. In oral evidence, Ms Nowell said that, before the claimant's birth, it had not been her intention to employ a nanny. She was asked how she and Mr Whiten would have coped with problems such as a child's absence from nursery through illness. It was suggested that the only way of avoiding such problems would have been to employ a nanny. Ms

Nowell said that both her work and that of Mr Whiten afforded them some flexibility so that they were able to work at home on occasion. She said that, after Dexter's birth, she would probably have spent a period at home looking after him, whilst the claimant would have remained at nursery. When she returned to work, Dexter too would have started nursery. Dexter is currently attending nursery three days a week. Mr Whiten or Ms Nowell (who is currently at home, following Victor's birth) cares for him on the other two days.

153. I accept that it would probably have been the claimant's parents' preference, even after Dexter's birth, to send the boys to a nursery, rather than to employ someone to care for them at home. They had paid a deposit before the claimant's birth to secure a place for him at nursery. Subsequently, they have placed Dexter in a nursery. There can be no doubt, having regard to the events that have occurred since the claimant's birth, that Ms Nowell was correct in her belief that she and Mr Whiten would be able to "juggle" their work so as to cater for the occasional childcare emergency. I therefore find that the claimant would have remained at nursery from October 2004 until he started school in September 2008. Over that period, I have assumed that the nursery fees payable for the claimant would have been an average of £11,500 per annum. This figure is based on the figure which was payable in 2004; I consider that the 2010 figures for Dexter are too high to reflect the average cost for the relevant period.
154. I accept the defendant's contention that an offset must also be made for the childcare costs which would inevitably have been incurred after the claimant went to school. The end of the school day would have been significantly earlier than the latest time for collection from a nursery as a result of which some form of after-school care would have been required for the claimant on at least some weekdays. By this time, Dexter would have been at nursery so would not have required care after school. As for the school holidays, I consider it probable that the claimant's parents would have organised matters so that at least one of them was available for a significant proportion of the time. The claimant's grandparents may also have assisted. But, inevitably, there would have been some periods when paid childcare was required for the claimant. I am satisfied that it would be fair and reasonable to assume that the claimant's parents would have incurred average annual childcare costs for the claimant of about £7,500 from September 2008 to date.

Conclusions on the award for past paid care

155. I calculate the total amount to be offset in the sum of £66,292, giving a net award for past paid care of **£123,601**. Details of my calculations are set out in Appendix D to this judgment.

Future care

156. The parties agree that the claim for future care should be split into three periods (the “care periods”), i.e. from now until the claimant’s 11th birthday, from 11 to 19 years and from the age of 19 years (when it is assumed that the claimant will have ceased full-time education) for life. There is no dispute that the claimant will require a high level of privately paid care for the rest of his life. There are, however, issues between the parties as to the number of hours of care that the claimant will require during the three care periods and, during the third care period, as to the structure of the care regime that should be adopted. Before discussing the specific issues relating to each of the three care periods, it is necessary to consider a number of general points of difference between the parties which have a bearing on the claim for future care.

General points of difference

The employment of a team leader

157. The first of these points of difference is whether or not it is necessary to employ one carer as a team leader. The care experts agree that, until the claimant attains the age of 19 years, it would be reasonable for carers to be recruited and employed directly (rather than through an agency), as they have been in the past. Thereafter, Ms Douglas favours arranging part of the care package through an agency and part directly, whereas Mrs Sargent advocates the continued use of a team of directly employed carers. It is agreed that, for directly employed carers, the current appropriate hourly rates are £13 per hour Monday-Friday and £15 per hour Saturday and Sunday. These are described as “good” London rates for the job.
158. Mrs Sargent’s evidence was that the care regime is likely to work more effectively if one carer with an appropriate degree of experience is designated as “team leader” and is paid an enhanced rate for carrying out additional duties over and above his/her role as part of the care team. Those duties would include providing advice and support for the care team, arranging training sessions, planning care rotas and acting as co-ordinator between the care team, therapists and anyone else involved with the claimant’s care. The team leader would also be responsible for dealing with day to day problems such as covering staff absences. Mrs Sargent said that she would also expect the team leader to assist the case manager to draw up a detailed plan for the claimant’s care. The team leader would then have day to day responsibility for ensuring that the care plan was implemented. The team leader would be paid a higher hourly rate than the other carers (agreed by the experts at £16) to reflect his/her greater level of experience and additional responsibilities. Mrs Sargent has allowed for the team leader to work for 30 hours a week, to include his/her ordinary caring duties.
159. The defendant’s case is that the appointment of a team leader is unnecessary and may well be counter-productive. Ms Douglas’s evidence was that the claimant’s needs are not sufficiently complex or unpredictable as to require the input of a team leader. She considers that the claimant’s care regime has worked well in the past without a team leader.

She acknowledges that there is a need for a greater degree of cohesion between members of the care team and for the development of recognised goals and objectives for those working with the claimant. However, her view is that this can be achieved by more active case management. She said that the case manager should undertake any necessary training and supervision for the care team. Meanwhile, day to day problems (e.g. covering staff absence) could be dealt with by the carers jointly, without the need for a team leader. In the event of a crisis, the carers could call upon the case manager. Ms Douglas said that the appointment of a team leader could potentially result in confusion as to who is in charge. The pay differential between a team leader and the other carers could also lead to resentment within the care team.

160. In the event that I decide that it would be appropriate to employ a team leader, the defendant contends that he/she should be paid an enhanced rate for only a few hours a week to cover the time spent on additional duties. At other times, it is suggested, he/she should be paid at the usual carer's rate.
161. Although the claimant does not present the most complex physical or behavioural difficulties, there will be a considerable number of carers and therapists involved in his management. There is a real need for a clear and consistent channel of communication between carers, therapists, members of staff at the claimant's school, his parents and his case manager. At present, Mr Whiten continues to play a large role in the co-ordination of the claimant's carers and therapists. He has been able to do this recently because he has been working from home. However, it is possible that his employment circumstances may change in the future, so that he is unable to continue to fulfil this role. In any event, he and Ms Nowell should be free to pursue their careers without the need to undertake the day to day responsibility for organising the claimant's care. The claimant would also benefit from the development of an agreed care plan, to be followed by all those involved with his care. Close supervision will be necessary to ensure that the care plan is properly implemented.
162. Ms Douglas's suggestion that the necessary co-ordination and other functions should be undertaken by the case manager is, I consider, unrealistic. The amount of case management time proposed by both care experts would be insufficient to permit the kind of day to day involvement described by Mrs Sargent, in addition to the case manager's other responsibilities. Moreover, it would be uneconomic for the case manager (whose hourly rate is agreed at £90) to undertake these duties in preference to a team leader (at £16 per hour).
163. For all these reasons, I accept that the claimant's needs would best be met by the appointment of a team leader in accordance with the arrangements described by Mrs Sargent. She has very considerable experience of setting up and monitoring private care regimes and of evaluating their success. I accept her evidence that the team leader model works well in practice and is required in this case in order to give the care regime the best possible chance of achieving continuity and stability. The appointment of a team leader

will provide promotion prospects for members of the care team. I do not consider that the employment of a team leader, if properly managed, would give rise to the difficulties described by Ms Douglas.

164. The team leader will be a member of the care team and, for much of his/her time, will perform the usual duties of a carer. The suggestion that he/she should be paid an enhanced rate for only a small proportion of his/her working hours does not seem to me appropriate. The object is to attract a person of suitable experience to give real leadership to the care team. I am satisfied that this is most likely to be achieved if an enhanced rate is paid for all the hours worked by the team leader. The enhanced rate of £16 per hour should secure a really good candidate. It seems to me that Mrs Sargent's provision of 30 hours per week of team leader time is entirely reasonable.
165. I shall, however, take account of the fact that a team leader is to be employed when reaching my conclusions about the appropriate number of hours to be allowed for a case manager.

The allowance to be made for replacement care to cover carers' holidays, sickness and training periods

166. The second general point of difference between the parties is their approach to calculating the allowance to be made for replacement care to cover carers' holidays (including bank holidays), sickness and training periods.
167. Mrs Sargent's approach is to allow for an additional 8 weeks per annum of carers' salaries over all three care periods. For the first two care periods, 6 of the 8 weeks are assumed to fall in term time and the remaining 2 weeks in the school holidays. Her calculation covers replacement care at the rates payable for weekends and nights, as well as that payable for weekdays. Ms Douglas also allows approximately 8 weeks of replacement care. She calculates the number of hours of care required by reference to the average hours per week worked by each carer and the number of carers employed. She applies the basic weekday rate to those hours, with no uplift for "unsocial" hours.
168. Periods of carers' sickness and carers' holidays will span weekends, as well as weekdays, and will necessitate the payment of increased hourly rates of pay during "unsocial" hours. Ms Douglas's approach appears to ignore this fact. I consider that Mrs Sargent's approach provides a far more realistic estimate of the costs that are likely to be incurred. I have therefore adopted her method of calculating the costs of replacement care.

Additional costs associated with the employment of carers

169. The third general point of difference between the parties concerns the various additional costs (over and above carers' salaries) associated with the employment of carers.
170. The experts agree the costs of advertising for staff (at £1,000 per annum for the first two care periods, rising to £1,500 for the third care period) and insurance (£134 per annum for all three care periods). They also agree the cost of training carers at £1,000 per annum for the second and third care periods. However, there are differences between them in relation to (i) the cost of food and other expenses for all three care periods; (ii) the cost of training for the first care period; and (iii) the cost of payroll services, i.e. the cost of employing an individual or company to compute and document the salaries, tax, national insurance and other payments to be paid to or for the claimant's carers.

(i) the cost of food and other expenses for carers

The employment of carers necessarily involves incidental expenses relating to food, drinks and other supplies which have to be provided for their use when working at the claimant's home. In addition, when the carers accompany the family on outings and holidays, there are expenses (e.g. meals and snacks, entry to leisure facilities and other attractions) which will have to be met. There is also the cost of the necessary Criminal Records Bureau checks. Mrs Sargent estimates these expenses at £2,080 per annum (£173 per month) for the first period of care, £3,280 per annum (£273 per month) for the second period and £4,680 per annum (£390 per month) for the third period. Ms Douglas's figures are £1,820 per annum (£152 per month), £2,340 per annum (£195 per month) and £3,640 per annum (£304 per month) respectively.

Having regard to the number of hours for which carers will be working and the fact that, at weekends and holiday periods, they will be going out and about with the claimant and his family, I consider that Mrs Sargent's estimates – which are based on her extensive experience of private care arrangements – are likely to reflect the expenses likely to be incurred by the family more accurately than the lower figures suggested by Ms Douglas. I have therefore adopted Mrs Sargent's figures for all three care periods.

(ii) the cost of training during the first period of care

Mrs Sargent estimates the likely costs of training carers during the first care period at £1,000 per annum, whereas Ms Douglas puts the figure at £750 per annum. I have little evidence to assist me in resolving this dispute and, since the costs are likely to depend largely on the experience and training needs of individual carers, no really accurate estimate is possible. However, on the basis that the parties are agreed that an annual cost of £1,000 is likely to be incurred during the second care period, when there will be a need for more hours of care, I consider that the lower figure of £750 per

annum is probably appropriate for the first care period.

(iii) the cost of payroll services

Up to now, the claimant has incurred no separate costs for the provision of payroll services, since the work has been done by the claimant's deputy and has been included within past deputyship costs, which are agreed between the parties. There is no evidence that this arrangement will not continue. The costs of this work are no doubt included in the claim for future deputyship costs which are also agreed. No award under this head is appropriate.

Employers' pension contributions

171. The fourth general point of difference relates to the incidence of employers' pension contributions for carers in the future. The Pensions Act 2008 (the Act) will impose obligations on employers to designate a pension scheme into which all their employees, who are aged between 22 years and state pension age and whose earnings are above a level which is yet to be specified, should be automatically enrolled. The employer would be required to make pension contributions of not less than 3% of the employee's earnings. Currently, the proposal is that an employee should qualify for automatic enrolment into the scheme once his/her earnings reach the income tax threshold (£7,475 per annum) and that pension contributions should be based on earnings above the threshold for national insurance contributions (£5,715 per annum). It will be open to an individual employee to opt out of the scheme although it is not expected that many people will choose to do so.
172. The Act is due to come into force in 2012 for some employers. The documents I have seen show that the proposed date for the extension of the scheme to small employers such as the claimant is currently set at 2016, although this may change.
173. Mrs Sargent has included estimated future pension contributions within her costings and a claim is made in respect thereof. On behalf of the claimant, it is said that, although the precise details of the scheme are not yet certain, the payment of pension contributions for employees will be a legal requirement in the future. It is likely that most members of the claimant's care team will fall within the relevant provisions and that contributions will have to be made for them. If no award is made under this head, there will be a shortfall in the claimant's periodical payments for the costs of care and he will be under-compensated.
174. Miss Whipple argued that the conditions and start dates for the scheme are unknown at present. The whole scheme is still under consultation. The earliest time when a liability might arise in the claimant's case appears to be 2016. It is, she said, not possible to predict how many of the claimant's carers might qualify for inclusion in the scheme and how

many might opt out. Miss Whipple submitted that claimants are always vulnerable to changes in taxation rates in the future and no attempt is made to provide for those changes in damages awards. She contended that I should ignore any future liability for the purposes of my award in this case.

175. It does not seem to me that I should ignore the effect of the provisions of the Act, which are already enshrined in statute, albeit not expected to come into force (at least insofar as the claimant is concerned) for some time. Whilst I accept that awards of damages cannot be tailored to anticipate every future change in taxation arrangements, the position here is that, as a result of the change in the law, the claimant will almost certainly become subject in the future to a wholly new liability to pay pension contributions for at least some members of his care team. It is true that there are uncertainties as to precisely when the liability will arise, what percentage of earnings will be payable and how many employees will be affected. However, these uncertainties do not necessarily mean that no award at all is appropriate under this head.
176. It does not appear likely that the claimant will have to make any pension contributions until 2016 at the earliest. Consequently, I have not included any award for pension contributions during the first care period. For the second care period, I have reduced the annual sum from that which would have resulted from a strict calculation of 3% of carers' earnings over the national insurance contributions level (£5,715). In doing so, I reflect the general uncertainties about the scheme, including those as to the start date. I also take account of the fact that it seems likely that, initially, employers' contributions will be payable at only 2%. I have also worked on the basis that contributions will not be payable for all the members of the care team, since some may work only part-time or may choose to opt out. Consequently, I have reduced Mrs Sargent's figure of £2,625 per annum for this period to £1,500 per annum. During the third care period, I have made a reduction to reflect the fact that contributions will not be payable for all members of the care team. I have reduced Mrs Sargent's annual figure of £4,446 to £3,000.

Should there be an offset for childcare costs?

177. The final general point of difference arose only at the resumed hearing, when the defendant contended for the first time that the costs of childcare for the claimant after school and during the school holidays should be offset from future care costs until he attains the age of 16 years. The claimant's response was that the claimant's parents will need childcare for the claimant's brothers in any event so any future costs will be incurred regardless of his disabilities.
178. If the claimant had been uninjured, he would have been at school now, whilst Dexter would probably have been at nursery full-time. As I have found, the claimant would have required some childcare after school and during the school holidays. Once Dexter started school, however, he too would have required additional childcare. No doubt the

claimant's parents would have arranged for both boys – and Victor, in due course – to be cared for by the same person at the relevant times. In the future, Dexter and Victor will still require additional childcare which will have to be paid for. Thus, no deduction for the costs of that care is appropriate from the time that Dexter goes to school. As I understand the position, that will be in December 2011. Given the short time and the limited sums involved, I do not regard it as appropriate to make any deduction for childcare costs from the future claim for care.

The three care periods

179. I shall now go on to consider the issues relating to the three care periods. Details of my calculations for each period are set out in Appendix E to this judgment. The annual cost for each care period will be paid by means of periodical payments.

The first care period: from now until the claimant attains the age of 11 years

180. Mrs Sargent estimates the annual cost of care during this care period at £103,456, excluding employers' pension contributions. Ms Douglas's estimate is £88,865 per annum.

181. The care experts now agree that, on weekdays during the school term, the claimant requires 6 hours per day of paid care, to be available in the early morning before he goes to school and in the late afternoon/evening after he returns home. They also agree that he requires 7 nights per week of sleep-in care. The rates for sleeping carers are agreed at £65 per night Monday to Friday and £75 per night Saturday and Sunday. The difference between the experts during this care period lies in their estimates of the amount of care required at weekends and during school holidays. Mrs Sargent considers that the claimant requires 12 hours' paid care per day at weekends and during school holidays. Ms Douglas assesses his need at 7 hours per day at weekends and 9 hours per day during school holidays.

182. In oral evidence, Ms Douglas explained that she had restricted the amount of paid care to be provided at weekends and in the school holidays so as to enable the family to enjoy some "quality time" and privacy together, without any third parties being present. She understood that this accorded with the wishes of the claimant's parents. She pointed out that her allowance of 14 hours of paid care per weekend could be used flexibly as the claimant's parents chose. Mrs Sargent's view was that, in order to make the best use of their time as a family and to fulfil the needs of their other two children, the claimant's parents would need significantly more paid assistance with his care than that proposed by Ms Douglas.

183. Ms Nowell's evidence was that, under the current arrangements, the claimant has no paid care on most Sundays. She said that she and Mr Whiten enjoy doing things with the children on Sundays without a carer being present. However, she said that, in the future, as the claimant becomes bigger and heavier and there are the needs of their other children to be considered, it may become necessary to have a paid carer on both days at weekends. Mr Whiten was more emphatic about the need for paid care at weekends. He said that, because of the claimant's disabilities, it was getting harder and harder to go out on Sundays as a family. He considered that a carer was necessary throughout the day on both Saturdays and Sundays if the family were to make the best use of their time together.
184. The evidence of the claimant's parents revealed an obvious – and entirely understandable – tension between their need for assistance with the claimant's care, so as to enable them to undertake weekend activities with the claimant and their other children, and their desire to have some private life as a family. I am satisfied that, with Victor's arrival, and as he and Dexter grow up and become more active and demanding of attention, it will be increasingly difficult for the claimant's parents to provide the necessary care for the claimant at the same time as meeting the needs of their other children and enjoying some leisure time themselves. If a high level of paid care is not available, this will severely curtail the family's activities. Nevertheless, I am satisfied that, at least for the next few years, they will still want some time most weekends when they can be together as a family without a carer being present. Having said that, I do not consider that the allowance of 7 hours per day of care at weekends proposed by Ms Douglas is sufficient. Instead I have allowed for 10 hours per day of care at weekends, to be used flexibly in order to fit in with the family's arrangements.
185. Ms Douglas's allowance of 9 hours' paid care per day during school holidays is plainly insufficient. One or both of the claimant's parents is/are likely to be working for much of the holidays. It cannot be assumed that they will be available to care for the claimant. Even if one parent is at home, it will be impossible for him/her to care for the claimant in addition to their other two children. I accept Mrs Sargent's assessment that 12 hours of paid care will be necessary on weekdays in the school holidays during the first care period.
186. The care experts agree that there will be times when a second carer will be required to assist the claimant with physical activities, in particular visits to a swimming pool. Mrs Sargent estimated the additional costs on the basis that there would be 3 such occasions per week. Ms Douglas doubted whether the claimant would go swimming (or undertake other activities requiring a second carer) as frequently as 3 times a week during this care period.
187. The claimant has a busy schedule during the week in term time, when therapy sessions, as well as times for play, have to be fitted in around the school day. It is difficult to see how there will be time for as many as 3 swimming sessions each week in addition to other activities. He already has a weekly session in the school pool as part of his curriculum. I consider that it is more realistic to allow for a second carer to provide 2 hours' assistance

for one swimming session per week during term time and a total of 4 hours' assistance for 2 sessions per week during school holidays. I have assumed that all these sessions will take place during the week, since a carer will be available to assist his parents with physical activities at weekends.

188. Ms Douglas considers that, in addition to the regime of paid care advocated by her, the claimant's parents will spend 7 hours a week during this care period providing additional care in the form of taking the claimant to appointments, attending meetings arising from his condition, overseeing his care and liaising with the case manager. She therefore includes in her estimate the value of the gratuitous care to be given. Mrs Sargent has not included any allowance for gratuitous care in her estimate of the cost of future care.
189. Having regard to the amount of paid care which is to be provided for the claimant, I do not consider that it is appropriate to include in the award of damages any sum for gratuitous care of the kind identified by Ms Douglas. In any event, I would hope that the team leader will take from the claimant's parents a great deal of the day to day work of co-ordinating the care regime and liaising with the case manager.
190. I have assessed the total annual costs of care and associated expenses for this care period in the sum of **£94,982**.

The second care period: from 11 years until the claimant attains the age of 19 years

191. Mrs Sargent estimates the annual cost of care and associated expenses during this care period at £141,976, including pension contributions of £2,625 per annum. Ms Douglas's estimate is £121,794 per annum.
192. Mrs Sargent used as the basis for her estimate of the claimant's care needs during this period the regime she had recommended for the first care period. Ms Douglas adopted the same approach, although she increased her estimate of the number of hours of care required at weekends from 7 hours to 9 hours per day.
193. I consider that, by the time the claimant is 11 years old, it will be necessary for his parents to have full-time care for him over the weekends so that his needs can be reconciled with those of the other members of the family. I have therefore increased the provision for paid care at weekends from 10 hours per day to 12 hours per day, in line with Mrs Sargent's estimate.
194. The experts agree that, from the age of 11 years, the claimant will require two persons to assist him in many of the activities of daily life, including transfers into and out of his various chairs and wheelchairs, on and off his physiotherapy equipment and in and out of

the bath and shower. Mrs Sargent considers that he will require a second carer for 5 hours per day in term time and 8 hours per day at weekends and during school holidays, these hours to include the provision for assistance with swimming and other physical activities which she allowed for during the first care period.

195. Ms Douglas takes the view that the need for a second carer will be limited to periods of 4 hours on school days, and 6 hours at weekends and during school holidays. Her assessment is made on the basis that the claimant's parents will be available to assist with some of the manoeuvres for which a second person is required.
196. The claimant will have a number of different chairs, a walker, a trike and other pieces of equipment for his use. If he is to be adequately stimulated and is to play a full part in family life, he is likely to require a considerable number of transfers during the course of a day. It is important that his activities are not restricted as a result of the absence of a second person to assist in transfers. It cannot be assumed that either or both of his parents will always be available to assist. Their other children will also require a good deal of attention, particularly at the beginning and end of the day. At times, one or both of the claimant's parents may be working and not available to help. At weekends and in school holidays, the family may wish to go on outings which will necessitate the presence of a second carer. Nevertheless, I consider that the period of 5 hours per day on school days proposed by Mrs Sargent is a little high. Provision for 4 hours per day of care from a second carer on school days seems to me reasonable. I accept Mrs Sargent's evidence that 8 hours of additional care will be necessary at weekends and during school holidays.
197. I have assessed the total annual costs of care and associated expenses, inclusive of employers' pension contributions, for this care period in the sum of **£137,240**.

The third care period: from the age of 19 years onwards

198. Mrs Sargent estimates the annual cost of care and associated expenses during this care period at £224,245, including pension contributions of £4,446 per annum. Ms Douglas's estimate is £194,644 per annum.
199. Mrs Sargent and Ms Douglas differ significantly in their approaches to the claimant's care from the age of 19 years. Mrs Sargent's view is that his needs will best be met by continuing the previous regime of a directly employed team of carers, expanded so as to provide him with two carers for 14 hours per day, together with a night sleeper for 10 hours per night.
200. Ms Douglas considers that a better arrangement would be to provide a live-in carer (in practice probably a number of live-in carers, working in rotation) working in conjunction with directly employed carers (including a sleep-in carer) working shifts. The live-in carer

would work for 8 hours during the day and would be entitled to 3 hours' rest within that 8-hour period. Other carers would provide 10 hours' care per day during the week and 12 hours per day at weekends, together with sleep-in care every night.

201. Ms Douglas explained that her proposed care regime would have a number of advantages over a regime composed entirely of directly employed carers working shifts. It would, she said, be cost effective and relatively easy to manage. The live-in carer would be at hand to assist the sleep-in carer in the event that the claimant was taken ill or some other emergency arose overnight. During the day, there would be a primary carer who would deal with the claimant's care needs, whilst the live-in carer would be responsible for the domestic chores and would also be available (save in his/her rest periods) to assist with lifting and transferring of the claimant and with outings. Thus, the second carer would be fully occupied and would not merely be waiting around until the assistance of a second person was required.
202. Ms Douglas suggested that her proposed scheme would introduce a more diverse type of carer into the claimant's home, would achieve a greater degree of continuity and would cause less disruption to the claimant and his family since it would reduce the number of different carers coming into the home. She said that, in her experience, this type of arrangement worked well. There are a number of agencies which specialise in providing live-in carers of the type required. They would liaise with the claimant's case manager to provide suitable staff and would organise relief/replacement staff when necessary.
203. Mrs Sargent's evidence was that the use of agency staff was unlikely to work satisfactorily. Although a good agency will attempt to provide continuity of care, in practice it is difficult to find live-in carers who are prepared to do the job on a permanent basis. People often take live-in posts as temporary "fill-in" jobs because of their own personal circumstances at the time. When their circumstances change, they move on. In addition, agency staff are paid significantly less than the rates paid to directly employed carers. Mrs Sargent's experience is that agency staff tend to be of lower calibre than staff who are recruited directly and often have less commitment to their clients than members of a directly employed care team. Mrs Sargent said that the fact that the live-in carer would be entitled to a 3-hour rest period in the middle of the day would also present problems. The claimant would require the assistance of a second carer throughout the day. He may wish to go on an outing lasting all or most of the day. The fact that, for 3 hours of every day, he would have only one carer available would place a significant restriction on his activities.
204. On this issue I have no hesitation in preferring the evidence of Mrs Sargent to that of Ms Douglas. No doubt there are cases in which Ms Douglas's proposed care model works well. However, it is entirely dependent on the calibre and commitment of the individual whom the relevant agency is able to provide at any given time. There is an obvious potential for rapid turnover of live-in staff and for difficulties in ensuring that any replacement/relief staff provided by the agency – perhaps at short notice – are fully and properly trained in the claimant's needs. There is also a potential for confusion of

management responsibilities between the case manager and the agency, and for conflict to be caused by an arrangement whereby live-in carers are working alongside higher paid, directly employed staff. Moreover, Ms Douglas's proposed regime would inevitably leave the claimant for 3 hours every day without a second carer. That would not be in his best interests.

205. I am satisfied that the claimant's needs would best be met by the recruitment by his case manager of a team of carers who would, between them, provide care for him round the clock and would work under the direct control and management of the case manager, assisted by the team leader. I consider that this arrangement has the best chance of providing continuity of care for the claimant and of ensuring that, at all times, those caring for him are fully trained to meet his specific requirements, in particular his mobility, communication and feeding needs. The existence of a team of carers should mean that periods of illness, holidays and other absences can be covered by carers known to the claimant and appropriately trained. I recognise that such a care regime will inevitably mean that a significant number of people will be visiting his home on a daily basis. I also recognise that, during the night, only one carer will be present. However, since it is envisaged that the claimant will be living with his parents throughout his life, it is likely that one or other of them would be available to help in the event of an emergency. In any event, I consider that the advantages of Mrs Sargent's proposed regime significantly outweigh any disadvantages. I therefore accept her costings for this period.
206. I have assessed the total annual costs of care and associated expenses, inclusive of employers' pension contributions, for this care period in the sum of **£221,998**.

Indemnity

207. It is possible that, in the future, the claimant may become a boarder at Linden Lodge, whether because the proposed move to new accommodation makes the daily journey to and from school impracticable or for some other reason. If the claimant was a boarder, this would reduce the amount of care required for him at home. The defendant has indicated that it will seek an indemnity from the claimant's litigation friend, designed to protect the defendant from over-compensating the claimant if he should become a boarder. Miss Whipple told me that the defendant's advisers would draft the indemnity that the defendant seeks for my consideration. I agree in principle that the claimant should not be over-compensated. However, I await the defendant's draft, and the submissions of the parties thereon, before expressing any concluded view on this issue.

CASE MANAGEMENT

208. Since December 2006, the claimant's parents have retained the services of a case manager, primarily to advise and assist in obtaining the appropriate care, therapy and specialist

equipment for the claimant. Between December 2006 and November 2007, case management services were provided by a firm known as Independent Living Solutions. Between November 2007 and March 2011, case management was provided by an organisation named Harrison Associates.

209. In her oral evidence given in December 2010, Mrs Sargent was critical of the existing case manager, whom she did not consider had been sufficiently proactive. She considered that more structure and management was necessary so as to relieve the claimant's parents from the management role. She was critical of the fact that there was no care plan in place for the claimant's carers to follow and that no clear goals and objectives had been set. She considered that, at £99 per hour, the existing case manager's charges were high. Her own organisation charges £90 per hour and that figure has been agreed by Mrs Sargent and Ms Douglas as a reasonable rate for a case manager. It was plain that Mrs Sargent felt that the claimant's parents could obtain better value for money.
210. In March 2011, during the period when the case stood adjourned, the claimant's parents engaged Ms Lucinda Ongley-Dellar, of CCMSL (Mrs Sargent's organisation), as the claimant's new case manager. Subsequently, she has undertaken a considerable amount of work on the claimant's behalf and, as I detail below, the case management fees and costs over the last few months have increased sharply, to a level well above the estimates given by the two care experts.
211. Understandably, the defendant is unhappy at the appointment, during the course of the litigation, of a member of an organisation run by the claimant's care expert as the claimant's case manager. It is an arrangement which inevitably gives rise to a concern that the expert may have had a conflict of interest. In the event, I am quite satisfied that the evidence that Mrs Sargent gave in December 2010 was entirely untainted by any hope or expectation she may have had that her organisation would in the future take over the claimant's case management. Nevertheless, I regard the decision to accept the claimant as a client at a time when the litigation was still in progress as unfortunate and ill-judged. Furthermore, I consider that Ms Ongley-Delgar's decision (one of her "Goals for April") to proceed with employing a team leader in advance of the court's decision in relation to that issue was both unattractive and unwise. It was unattractive because it appears to have been an attempt to pre-empt the court's decision by establishing a *fait accompli*. It was unwise because, it might have had the effect of raising expectations in the minds of the claimant's parents which, because of lack of funds, could not ultimately have been fulfilled.

Past case management

212. The Schedule of Loss claimed case management fees of £28,163, together with travel costs and expenses of £11,483, up to December 2009. It was estimated that case management from December 2009 to December 2010 would cost a further £10,395, with associated

costs of £5,024. The total amount claimed in the Schedule of Loss was £44,670. In fact, the available records show that, up to the end of December 2010, case management fees and associated costs of only £40,556 had been incurred. In her final submissions on the care claim made in December 2010, Miss Whipple indicated that the past case management costs up to that time would not be challenged if they were properly evidenced. That has now been done. It seems, therefore, that the figure of £40,556 is now accepted. Even if this is not the case, I am satisfied that it is the correct figure.

213. The records show that, during January and February 2011, a further sum of £467 was paid to Harrison Associates. In March 2011, a first payment of £3,211 was made to CCMSL. The Supplementary Schedule of Loss states that a further payment of £2,834 was made to CCMSL in April and that it is expected that further case management fees totalling £6,000 will be incurred in May and June 2011, making a total claim of £12,512 from the end of December 2010 to the end of June 2011.
214. The defendant's case is that the costs incurred and/or predicted since March 2011 are wholly excessive and completely out of line with the assessment of both care experts. Miss Whipple contended that a reasonable allowance for the period from January 2011 to the end of June 2011 would be £967 per month, based on Mrs Sargent's assessment of the future annual cost of case management (£11,600 per annum). This produces an additional figure of £5,802.
215. No proper explanation has been offered for the sudden increase in case management costs and/or for the fact that the sums claimed are well in excess of those estimated by the claimant's own care expert. Thus, it is impossible for me to form a view as to whether the expenditure has been reasonable and/or necessary. In the circumstances, I consider that it is appropriate to adopt figures which accord with Mrs Sargent's estimate of future annual costs, as the defendant has suggested. The total award for past case management fees and associated costs will therefore be **£46,358**.

Future case management

216. The experts have assessed the claimant's need for case management using the same periods as for care. The hourly rates are agreed at £90 for contact time and £45 for travelling. Details of my calculations for each period are set out in Appendix F to this judgment. The annual cost for each care period will be paid by means of periodical payments.

The first care period: from now until the claimant attains the age of 11 years

217. Mrs Sargent's estimate of the case management time required during most of this period is 120 hours per annum, at an annual cost of £11,600. Ms Douglas's assessment is 96 hours per annum, at an annual cost of £10,590. In reality, there is very little difference between the experts, since Mrs Sargent includes travelling time (at half rate) within her 120 hours whereas Ms Douglas costs 30 hours' travelling time (at half rate) in addition to her 96 hours. Taking travelling time into account, Ms Douglas's assessment for this period would be 111 (96 + (30 ÷ 2)) hours. Mrs Sargent allows travelling costs of £800 per annum, whilst Ms Douglas allows only £600.
218. Mrs Sargent had advised that, for the first year after trial, an additional allowance of 20 hours' case management should be made. However, the Schedule of Loss indicated that, having regard to the amount of case management which had already been provided, no additional claim was made for the first year.
219. As I have indicated, there is little to choose between the assessments of the experts. I take account of the various issues relating to the provision of care, therapy and equipment which will have to be dealt with by the case manager over the coming years. I consider that Mrs Sargent's estimate of 120 hours per annum at an annual cost of **£11,600** is fair and reasonable.

The second care period: from 11 years until the claimant attains the age of 19 years

220. For this period, Mrs Sargent increases her estimate of the amount of case management time to 160 hours for the first year, at a cost of £15,520 (inclusive of travelling time, together with travelling expenses of £1,120). For the remainder of the period, she considers that there will be a need for 140 hours per annum of case management time, at a cost of £13,600 (inclusive of travelling time, together with travelling expenses of £1,000). During this period, a second carer will be required at some times which will, Mrs Sargent said, generate additional work on tasks such as recruitment and appraisal, together with associated paperwork. Ms Douglas's assessment of the amount of case management likely to be required during this period remains as before, i.e. 96 hours per annum plus 30 hours' travelling time and travelling costs. Her estimated annual cost remains at £10,590.
221. By this time the basic care regime should be well established, together with the arrangement for the provision of therapy. I accept that the addition of a second carer will produce some extra work. However, I do not consider that there will be a need for as much as an additional 40 hours during the first year and 20 hours per annum thereafter estimated by Mrs Sargent. Throughout this period, I allow an additional 10 hours per annum, i.e. 130 hours per annum, at an annual cost of **£12,600**.

The third care period: from the age of 19 years onwards

222. Ms Douglas accepted that, if I were to adopt Mrs Sargent's proposed care regime for this period, it would be appropriate to adopt also her estimate of the requirement for case management. Mrs Sargent considers that 140 hours per annum of case management time will be necessary, at an annual cost of **£13,600**.
223. Mrs Sargent estimates that, during the first year of this period, an additional 40 hours of case management time will be required for the work associated with setting up the full care regime. I consider that her estimate is reasonable and realistic. At the time when the claimant ceases full-time education, there are likely to be major changes to his care regime and the organisation of this will be time-consuming. The additional cost will amount to **£3,900** and will be required in or about June 2023. The Schedule of Loss claims this sum as a lump sum (rather than by way of periodical payment order). It must be discounted for accelerated receipt.

DEPUTYSHIP COSTS

224. The claimant's solicitor, Mr Tom Cook, was appointed as his deputy in 2007. Since then, he has been dealing with the claimant's financial affairs. Each party instructed solicitors with expertise in deputyship work, Mr Adrian Mundell of the claimant's solicitors on behalf of the claimant and Mr Hugh Jones of Pannone LLP for the defendant, to assess the likely costs of the future work to be undertaken by the deputy. They prepared witness statements, together with a Joint Statement following a discussion on 2 September 2010.

Past costs

225. Past costs are agreed in the sum of **£57,580**.

Future costs

226. It is further agreed that, for the first year following trial, the deputyship costs will be **£17,898** and that, thereafter, they will annual cost will be **£9,211**.
227. The claimant will require a statutory will to be made on his behalf when he attains the age of 18 years at an agreed cost of **£5,380**. The solicitors agree that, at the age of 25 years and every 10 years thereafter, if the claimant survives, the deputy will have to revise the will. The Schedule of Loss claims that, during the claimant's lifetime, two revisions will be necessary. The defendant argues that only one revision will be required. I accept the defendant's contention on this point. A further sum of **£5,380** will be incurred in about

June 2029. Both sums should be discounted for accelerated receipt.

228. The Joint Statement indicates that the solicitors agreed that there should be provision for replacement of the deputy every 10 years at a total cost of **£1,700** on each occasion. That will arise in 2017, 2027 and 2037. It is also agreed that costs of **£1,200** will be incurred in winding up the claimant's estate after his death.
229. Details of my award under this head are set out in Appendix G to this judgment.

THE PROVISION OF THERAPIES

Introduction

230. The claimant's parents have been anxious to explore every possible avenue by which the claimant's mobility and functional abilities might be improved. To that end, they have for several years arranged for the claimant to have regular input from a qualified physiotherapist, in addition to the physiotherapy provision at school. He has also had "vojta" therapy provided by Jana and physiotherapy administered by Aga. The claimant has undergone an assessment and a course of intensive therapy at the Bobath Centre. He has also been assessed at another establishment, the Footsteps Centre, in Oxford, with a view to being treated there. He has had sessions of craniopathy and hydrotherapy and courses of "hippotherapy". One of his current carers, Lida, carries out a "sensory integration" technique known as "HANDLE" with him on a daily basis. His father works with him on a power plate. He has also had input from a speech and language therapist and an occupational therapist.
231. Some of the experts who have reported for these proceedings (notably the physiotherapy experts) have expressed concern about the number of different therapies to which the claimant has been exposed in the past and the possibility that this might continue in the future. They consider that there is a potential for confusion and conflict between the different therapies techniques. In general, the various experts consider that a programme of therapy activities, incorporating clear short term and long term objectives, should be developed and implemented. Some of the experts (in particular, Mr Baldwin and Mrs Lesley Carroll-Few, the speech and language therapy expert instructed on behalf of the claimant) have referred to the danger that, if those involved in the claimant's care make unrealistic demands of him, he will become de-motivated and will not make the progress of which he may be capable.
232. The defendant submits that the amount of therapy of various types claimed for the future is excessive and unnecessary, particularly since the medical evidence is that there will not be any significant development in the claimant's mobility skills. Miss Whipple submits

that, when making my decisions in relation to each individual claim for therapy, I should keep in mind the whole package of therapy that is proposed. This I have done. I share the view that the regime of therapy needs to be reviewed and rationalised so that everyone participating in the claimant's care is pursuing common and agreed objectives.

Physiotherapy and related therapies and activities

233. Physiotherapy Reports have been provided for the purpose of these proceedings by Mrs Susan Filson for the claimant and Mrs Sandra Holt for the defendant, both of whom gave oral evidence at trial. Both experts are chartered physiotherapists with considerable experience of dealing with severely disabled children. They examined the claimant and expressed their views about the level of physiotherapy treatment which has been provided for him to date, together with an assessment of his future needs. They prepared a Joint Statement following a telephone discussion on 3 September 2010.

Past costs

234. The claimant claims a total of £17,868 for the costs of physiotherapy and various related therapies and activities provided to date. The defendant agrees the sum of £11,779. The defendant does not accept that it is liable to pay £6,089 for family membership of the Virgin Active club, a private leisure club with a swimming pool, from April 2008 to date.

235. The claimant's case is that, had it not been for his disability, his parents would not have incurred the cost of private leisure club membership for the family. Instead, they would have taken the children swimming at a public pool. As it is, the claimant derives considerable benefit from exercising in water and, because the temperature of the water and the conditions for changing at the local public pool were unsuitable, his parents have had to pay for the family to join the Virgin Active club. In cross-examination, Ms Nowell conceded that it was possible that they would have become members of such a club in any event.

236. I accept that exercising in water is enjoyable for the claimant and that he derives physical benefit from the activity. However, I find that the overwhelming probability is that the claimant's parents would in any event have taken out membership of a private leisure club so as to enjoy swimming and other activities with their children in more comfortable conditions than those offered by a public facility. I make no award for this item. The total award for the past costs for physiotherapy and related therapies and activities is therefore **£11,779**.

Future costs

Physiotherapy

237. The physiotherapy experts agree that ongoing physiotherapy will be necessary in order to maintain the range of movement in the claimant's joints, to prevent the development of contractures and other deformities, to discourage increased muscle tone and to maximise the claimant's functional and physical potential.
238. The role of the physiotherapist will be to carry out physiotherapy directly with the claimant, to liaise with the physiotherapists at his school, to train his carers in a programme of exercises to be carried out with him on a daily basis and to advise on equipment such as seating systems and walkers. The experts differed markedly in the amount of direct input by a qualified physiotherapist (as distinct from trained carers carrying out techniques in which they had been appropriately trained) that they considered will be necessary in the future.
239. Before considering the experts' assessments in detail, it is necessary to refer to the provision of physiotherapy at the claimant's school. It seems that, until about 2009, the claimant had direct contact with one of the physiotherapists attached to the school on a regular (usually weekly) basis. Since then, however, the physiotherapy input has been much reduced. The evidence of Ms Mia Dodsworth, Assistant Headteacher of the school, was that the visiting physiotherapists rarely have direct contact with pupils. Their activities are confined to advising staff on programmes to be followed with individual children. Those programmes are then implemented by staff, including (in the claimant's case) the one to one classroom assistant whose function it is to support him at school. In Ms Nowell's latest witness statement, made in May 2011, she said that the claimant is currently receiving 15 minutes' direct input each half term from the school physiotherapist. That time includes training for his one to one assistant and the preparation of a written programme of therapy for him. Ms Nowell observes that there is a great deal of concern amongst parents about the inadequate level of physiotherapy input available at the school. Having heard the evidence of Ms Dodsworth, I have no difficulty in accepting that this is the case.
240. The experts gave their views about the level of input from a physiotherapist which they consider that the claimant will require in the future during the various periods of his life. Mrs Filson estimated the cost per session at £90 per hour (inclusive of travelling expenses within a radius of 10 miles), whilst Mrs Holt quoted a cost of £100 per hour. Details of the annual costs awarded for each period are set out in Appendix H to this judgment.

From now to the age of 19 years

241. Mrs Filson had originally suggested that the claimant should have two sessions a week with a physiotherapist up to the age of 9 years, in order to maximise any potential for

improvement that he may currently have. However, having read the evidence given by the medical witnesses to the effect that the claimant had now reached the peak of his physical and functional potential, she revised her views. When she gave oral evidence, she expressed the view that, from the present time until he leaves school, the claimant will require one session a week with a physiotherapist (or 45 sessions per annum, to take account of holidays). The priority will be to maintain his existing level of function.

242. In addition, Mrs Filson identified a requirement for an additional 12 hours per annum of physiotherapist time for training and other purposes. She explained that her experience was that it was necessary to set aside separate time for the purpose of training, rather than to carry out all training during the regular therapy sessions. This was necessary because of carers' differing work schedules and the inevitable turnover of carers. Also, she would expect to spend some sessions explaining to carers the physiological reasons for the techniques they are being instructed to use. The additional sessions could also be used for reviewing the claimant's equipment and for participating in meetings with therapists from other disciplines who are involved in the claimant's care. Mrs Filson's assessment results in an annual claim of £5,130 for this period.
243. Mrs Holt does not consider that such frequent input by a physiotherapist will be necessary. She accepts that there is a need for a physiotherapist to provide some one to one treatment for the claimant and to undertake regular reviews of his physical condition. However, she emphasises that a crucial part of the physiotherapist's role is to provide advice and training for the carers in the correct techniques to be applied whenever they handle, mobilise and/or position the claimant, as well as carrying out appropriate therapeutic techniques. She says that, if a proper programme of home physical activities is established, much of the claimant's physical maintenance will in fact be carried out by the carers in the course of the claimant's day to day activities.
244. Mrs Holt assesses the claimant's need for physiotherapy for the period from now to the age of 11 years at 24 sessions per annum, to include time spent on training carers and liaising with the school physiotherapist. The annual cost would, on her assessment, be £2,400. From the age of 11 years to leaving school, Mrs Holt assesses the required provision of physiotherapy at 16 sessions per annum at an annual cost of £1,600.
245. In oral evidence, Mrs Holt explained that she intended the physiotherapy sessions to be used flexibly. Her experience is that "blocks" of intensive physiotherapy treatment, followed by periods of a maintenance programme undertaken by carers, are more effective than regular sessions of physiotherapy. If a problem arose between "blocks", the physiotherapist could be contacted and would then attend to deal with it.
246. As for training, Mrs Holt said that, if she were treating the claimant, she would carry out the training of carers in the course of her sessions of therapy with the claimant, rather than setting aside separate sessions for the purpose of training. She had found that, if carers

were experienced, they did not require much training. Two or three times a year, she would observe each carer and ensure that he/she was meeting the required competencies. She made no additional allowance for training sessions.

247. The experts agree that, during this period, an annual two-week course of intensive treatment at the Bobath Centre would be beneficial to the claimant. The cost is agreed at **£3,450** per annum.
248. The Schedule of Loss includes a claim for two intensive courses of physiotherapy, each of 24 sessions, in the event that the claimant has to undergo orthopaedic surgery in the next few years. The total cost is claimed in the sum of £4,320. The Counter Schedule makes no allowance under this head.

From the age of 19 years onwards

249. Mrs Filson considers that, from the age of 19 to 30 years, the claimant will require 12 sessions of maintenance physiotherapy per annum. There will also be a continued need for 12 sessions of carer training per annum. The annual cost claimed is £2,160. From the age of 30 years, she adds to that provision a further 6 sessions of musculoskeletal/respiratory physiotherapy to order to treat any acute conditions (e.g. respiratory infections) from which he might suffer, making a total of 30 sessions per annum. The annual cost is claimed in the sum of £2,700.
250. Mrs Holt considers that, from the age of 19 years, the claimant will need four physiotherapy reviews (each a double session) per annum, together with 10 sessions per annum for treatment when necessary. The annual cost of this regime is £1,800. She does not consider that extra treatment will be required to deal with acute medical conditions since the claimant's carers will be trained to administer the appropriate programme of therapy. She agreed that, in the event that the claimant undergoes surgery, he will require additional physiotherapy input but suggested that, in those circumstances, he could expect to receive physiotherapy treatment through the NHS.

Conclusions on future physiotherapy costs

251. It is possible that the current provision of physiotherapy at the claimant's school might improve in the future. However, given the current financial climate, this seems unlikely. I therefore consider it appropriate to approach my assessment of the need for physiotherapy on the basis that the claimant will have minimal direct contact time with the school physiotherapist in future, although he will have the benefit of following a programme of physical activities implemented by the school staff. That approach affects my assessment of the claimant's need for physiotherapy in two ways. First, I consider that more direct

contact by the home physiotherapist will be necessary than would be the case if the claimant were having regular direct contact with a physiotherapist at school. Second, it seems to me that, if the school physiotherapist is not seeing the claimant on a regular basis, there may well be a greater need for liaison between the home and school physiotherapists (and, possibly, the home physiotherapist and school staff) so as to ensure that the school's programme of activities is updated as necessary to take account of any developments in the claimant's physical condition. In making my assessment of the claimant's needs, I have taken these matters into account.

252. I consider that Mrs Holt's proposed provision of direct physiotherapy is insufficient to take account of all the functions which the physiotherapist will be required to perform. In particular, it does not, in my view, take account of the very limited physiotherapy provision at the claimant's school. I accept Mrs Filson's evidence that, throughout the period until the claimant attains the age of 19 years, there will be an ongoing need for a physiotherapist to provide one to one therapy, in addition to monitoring the suitability of the claimant's seating, walking aids and other equipment and conferring with other professionals involved with his care and treatment. I accept also that it is not possible for all training and other functions to be performed effectively during the course of one to one therapy sessions.
253. Nevertheless, I regard Mrs Filson's estimate of 45 sessions per annum as too high. It seems to me that fortnightly one to one therapy sessions (say 24 per annum, allowing for holidays) will be sufficient. Those sessions will be reinforced by a programme of physical activities to be devised by the physiotherapist and implemented on a daily basis by the claimant's carers. I consider that it is also reasonable to provide for additional sessions to be spent in training the claimant's carers, liaising with the claimant's school and carrying out other necessary functions which cannot be incorporated into the one to one sessions. I would allow a further 12 sessions for these purposes, making a total of 36 sessions per annum. The annual cost (at the claimant's suggested rate of £90) will be £3,240. When added to the cost of attendance at the Bobath Centre, that given an annual sum of **£6,690**.
254. From 19 years onwards, I consider that Mrs Filson's provision of 24 sessions a year, to be used for one to one reviews and treatment of the claimant's condition, together with training, is entirely reasonable. During this period, there will be no requirement to liaise with the claimant's school and there is likely to be less change in his equipment needs. However, there will be a larger number of individuals involved in his care and they will require careful training and supervision. The annual cost of 24 sessions per annum will be **£2,160**.
255. I also consider that Mrs Filson's provision of an additional 6 sessions per annum from the age of 30 years to deal with specific medical problems is reasonable and appropriate. As she points out, early intervention may well prevent a respiratory condition from worsening. I do not accept that the claimant's carers would necessarily have the experience to deal with such incidents without close supervision and guidance from a

qualified physiotherapist. The annual cost of 30 sessions will be **£2,700**.

256. I have previously referred to the orthopaedic evidence and to the real risk that the claimant might have to undergo surgery in the future. I accept that, if he has surgery, he will require one or more intensive courses of physiotherapy. In order to reflect that risk, I shall make an award of **£1,500** (taking into account accelerated receipt) under this head.

Aquatic physiotherapy

257. The Schedule of Loss contains a claim of £60,681 for hydrotherapy, now known as “aquatic physiotherapy”. It is proposed that, up to the age of 18 years, the claimant should have weekly aquatic physiotherapy sessions with a physiotherapist who is an expert in water-based therapy. These sessions would take place in a special hydrotherapy pool. The cost of the therapy is claimed at £150 per session (£7,800 per annum) on the basis that the sessions will take place in the pool at the claimant’s school. The cost of an annual assessment by the therapist is also claimed at £260 per annum. There is no claim for aquatic physiotherapy beyond the age of 18 years.
258. The claim for weekly sessions of aquatic physiotherapy was not based on the evidence of Mrs Filson. In her Report, she merely suggested that the claimant would benefit from having “regular” (not weekly) aquatic physiotherapy. In oral evidence, she said that she envisaged that some of the physiotherapy sessions for which she had made provision would be spent in a pool. She did not appear to be suggesting that there should be aquatic physiotherapy over and above that provision. Moreover, she did not specify that the sessions should take place in a specialised pool. Her evidence was that all that is required is a warm pool, hoisting apparatus and changing rooms.
259. During the summer of 2007, just before he started school, the claimant had some aquatic physiotherapy sessions with a physiotherapist, Dr Heather Epps. From the time he started school, he has had – and continues to have – weekly sessions of aquatic physiotherapy as part of his school curriculum. Initially, it was intended that he should continue to have private aquatic physiotherapy sessions with Dr Epps during school holidays. He had at least one session in 2008, after which private aquatic physiotherapy was discontinued. Recently, Ms Nowell has been attempting to arrange for him to have some further sessions with Dr Epps during the school holidays. So far, that has proved impossible to arrange.
260. Both the claimant’s parents are convinced that aquatic physiotherapy has a therapeutic effect on the claimant. Ms Nowell’s evidence was that they had seen an improvement in the claimant’s flexibility and mental state following hydrotherapy. She considers that, ideally, he should have 3 or 4 aquatic physiotherapy sessions per week. It was suggested that this could be achieved only if he had his own private aquatic physiotherapy pool at home.

261. Mrs Filson's evidence was that aquatic physiotherapy therapy would be beneficial to the claimant because immersion in water gives him a greater freedom of movement than he has on dry land. This would assist in reducing the tightness of his muscles. By contrast, Mrs Holt's opinion is that there is no clinical need for regular aquatic physiotherapy. Her evidence was that aquatic physiotherapy is a specific therapy which is beneficial for patients who have undergone surgery. It enables them to move without pain and thus to gain confidence and progress to performing the same movements outside the water. For patients such as the claimant, no such progress is possible. Although it may be pleasurable for them to be able to have some freedom of movement in the water, the increased movements will not be replicable on dry land and therefore have no lasting therapeutic benefit. Mrs Holt does, however, accept that there may be times during the claimant's life (e.g. following surgery) when a course of aquatic physiotherapy might be beneficial.
262. The claimant already has weekly aquatic physiotherapy sessions during the school term. There appears no reason to believe that these sessions will not continue until he leaves school. The only evidence in support of a clinical need for any additional provision of aquatic physiotherapy comes from Mrs Filson. She suggests it as only one aspect of the activities to be undertaken in the course of the claimant's general physiotherapy provision. Her evidence does not support the extensive claim for aquatic physiotherapy contained in the Schedule of Loss. I have no doubt that the claimant enjoys his aquatic physiotherapy sessions, just as he enjoys his visits to the swimming pool with his family and/or carers. I readily accept that exercising in water is generally beneficial for him. However, I am not satisfied that the claimant has established a clinical need which cannot adequately be met by physiotherapy exercises carried out in an ordinary swimming pool with suitably trained carers and, occasionally, his treating physiotherapist. Consequently, I make no award for the costs of future aquatic physiotherapy.
263. Whilst it might be convenient for the claimant to have a pool at his new home, there is no evidence of a real need for that facility. The claimant will have trained carers and a suitably adapted vehicle to take him for sessions in a swimming pool at a local private leisure club whenever he wishes to go. The availability of suitable pool facilities will be one factor to be considered when the family come to decide where their new home should be sited.

Other water-based activities

264. The claimant claims for the future cost of continued family membership of the Virgin Active leisure club, where he can undertake water-based activities (i.e. exercising and playing in the pool) with his family and/or carers at an annual cost of £1,800, together with an estimated future annual cost of £68 per annum for the training of his carers by a club instructor. The total claim under this head is £8,777.
265. The claim for continued membership of the Virgin Active club extends until the claimant is

11½ years. That was on the assumption that, after that time the claimant would have his own hydrotherapy pool, so that continued membership of a private leisure club would be unnecessary. As I have indicated, I do not consider that a private hydrotherapy pool is required. The claimant's fallback position is that the claim for membership of a private leisure club should continue for life. In that event, the total claim under this head is increased to £54,531.

266. The defendant's case is that the family would have had membership of a leisure club such as the Virgin Active club in any event. Miss Whipple suggests that the proper approach is for me to award an annual allowance of £1,000 to cover the additional costs of accessing suitable swimming and/or other specialised exercise facilities which the claimant might require in the future, together with any necessary training for his carers. She suggests that the allowance should be awarded up to the time when the claimant attains the age of 19 years.
267. Although, in their Joint Statement, the physiotherapy experts stated that they disagreed about whether the claimant had a clinical need for water-based activities other than aquatic physiotherapy, in reality their opinions do not appear far apart. Both experts consider that such activities provide a good opportunity for the claimant to exercise in an environment in which he can move more freely. They both recommend that he should have access to a suitable swimming pool and that his carers should be trained in an appropriate programme of physical activities to be undertaken with him in the water.
268. For the reasons I gave when rejecting the claim for the past costs of membership of the Virgin Active club, I decline to make an award for the future costs of club membership whilst the claimant is in full-time education. After that time, however, it seems to me less likely that he would have had membership of a private leisure club, at least for some years. I am satisfied that, from the age of 19 years, it would be appropriate to award an annual sum to cover membership of the Virgin Active club or a comparable facility for the claimant and his carers. I intend to adopt the defendant's proposal of awarding an annual sum to cover the additional cost attributable to the claimant's disabilities of accessing suitable leisure facilities (including a swimming pool) and of funding any necessary training for carers. I consider that this annual allowance will be required throughout his lifetime. When considering the annual sum that would be appropriate, I have taken into account various factors, including the fact that the need for additional facilities will decrease towards the end of the claimant's life and that, from his late twenties, he might well have had membership of a private leisure facility in any event. I conclude that a fair award under this head is **£1,000** per annum until the claimant attains the age of 19 years and **£1,500** per annum thereafter.

Hippotherapy

269. In the past, the claimant has attended sessions at the Diamond Riding Centre, Carshalton

(the Centre), a well known equestrian establishment offering riding for people with disabilities. The claimant is not able to ride a pony in a conventional manner but has in the past undergone courses of “hippotherapy”, i.e. exercises performed in lying and other positions on a pony. Hippotherapy sessions take place under the supervision of a member of staff at the Centre and with the assistance of volunteers. Because of the high level of demand, attendance at the Centre is “rationed” to one school term per annum. Although it was at one stage suggested at trial that, if an individual was prepared to pay for attendance, rationing did not apply, this did not accord with the evidence of the claimants’ parents.

270. The claimant’s parents say that he enjoys his hippotherapy sessions and that his balance and muscle tone have improved as a result. They have been unsuccessful in finding an alternative riding establishment where it would be possible for the claimant to have sessions all the year round. At the suggestion of the Centre, they have purchased for his use a device known as an “I Joyride”, which simulates the movements of a horse and which he can use for exercise at times when hippotherapy sessions are not available to him.
271. The claim is put on the basis that, until the age of 30, the claimant will have three 12-week terms per annum of weekly hippotherapy sessions at a cost of £15 per session. The annual cost claimed is £540. The defendant’s case is that the claimant will not be able to attend the Centre for more than one term per year. In any event, the defendant contends that any costs that might be incurred should be met out of the allowance already made for the additional costs of accessing suitable leisure facilities. The physiotherapy experts agree that a continuation of his hippotherapy sessions will be of benefit to the claimant and is clinically reasonable.
272. I accept the evidence of the experts that the activities in which the claimant takes part at the Centre are therapeutically beneficial to him and will remain so until the age of 30 years. That being the case, and since the annual figure I have allowed for the additional cost of accessing specific leisure facilities (see paragraph 268 above) was not intended to include the cost of hippotherapy sessions, I consider it appropriate to make an award for the annual cost of riding sessions to the age of 30. Currently, the claimant can attend sessions for only one term per annum and there is no evidence that the position will change in the future. I therefore allow one third of the annual cost claimed, i.e. **£180**.

Speech and Language Therapy

273. A speech and language therapy (SLT) Report has been provided for the purpose of these proceedings by Mrs Carroll-Few, a paediatric speech and language therapist instructed on behalf of the claimant. She examined the claimant, visited his school and provided an assessment of his future SLT needs. Her evidence was accepted by the defendant and she

was not required to give oral evidence.

Past costs

274. Until recently, all the SLT received by the claimant had been provided at school free of charge. In the summer of 2010, the claimant's parents arranged for additional private SLT sessions to be provided for the claimant by Ms Hazel Ellis, a qualified speech and language therapist. The costs to the start of the trial in November 2010 were estimated in the sum of £700, which was agreed. However, total costs of £4,540 were incurred during the period between November 2010 and June 2011. The defendant contends that recent expenditure on SLT has been excessive and out of line with the estimates of future costs given by Mrs Carroll-Few.
275. I recognise that a significant initial input by Ms Ellis would have been necessary when she started work with the claimant. However, the sum claimed for SLT costs to date represents one and a half times the annual cost of SLT over the next few years, as estimated by Mrs Carroll-Few and agreed by the defendant. No explanation has been advanced as to why expenses on this unexpectedly large scale have been incurred. In those circumstances, I cannot be confident that all the expenditure has been reasonably required. For that reason, I award the reduced sum of **£3,000** under this head.

Future costs

276. Mrs Carroll-Few made recommendations about the amount of direct SLT she believed would be necessary during various periods of the claimant's life. Details of the annual costs awarded for each period are set out in Appendix H to this judgment.
277. When she visited the claimant's school in October 2009, Mrs Carroll-Few was satisfied that the claimant was receiving a good level of SLT and, in particular, that his communication needs were being met. She recounted the progress which had been made in introducing the claimant to the use of communication aids up to the date of her visit to the school. She noted that he had recently refused to use the communication book that had been developed for him. She emphasised that, if the claimant were not to become demotivated, the demands made of him in the field of communication must be realistic and achievable and must take into account his severe motor and learning disabilities.
278. Mrs Carroll-Few observed the claimant being fed a thickened drink at school. She said that the claimant's physical problems were liable to cause difficulties in ensuring that he maintained a safe position when eating and drinking. She noted that, at times, he was drinking with his neck extended, thus increasing the risk of aspiration.

From now until the claimant attains the age of 11 years

279. Mrs Carroll-Few considers that, up to the age of 11 years, there is a need for additional SLT in order to train the claimant's carers in the safe management of his eating and drinking and to ensure that the work on his communication skills done at home is consistent with that being done by his school therapists. She estimates that 6 hours per annum will be needed for the training of the claimant's carers in relation to his eating and drinking and a further 16 hours for communication work at home and liaison with the claimant's school. She estimates the hourly rate for SLT (including travel and expenses) at £135. The annual cost claimed is £2,970.

From 11 to 19 years

280. From the age of 11 to 19 years, Mrs Carroll-Few considers that the claimant's communication systems will be more established, as a result of which he will need a total of only 20 hours' SLT per annum. The annual cost is claimed at £2,700.

From the age of 19 years onwards

281. From the age of 19 years, Mrs Carroll-Few assesses that there will be a need for 12 hours' annual carer training in the claimant's feeding and communication requirements. She considers it likely that, by this time, he will be using a "low tec" symbol system of communication and a "high tec" voice output system. She identifies a need for 12 additional hours of SLT whenever his voice output system is replaced or updated in order to familiarise his carers with the changes. The annual cost is claimed at **£1,620** and it is assumed that this expense will be incurred every three years from the age of 19 years.
282. Mrs Carroll-Few also considers that there may be a need for 10 hours' SLT on a one-off basis for dietetic services and in the event that the claimant develops increasing difficulty with swallowing, at a cost of £2,650.
283. The defendant accepts the claimant's multiplicands of **£2,970** per annum to age 11, **£2,700** per annum from 11 to 19 years and **£1,620** per annum from 19 years. The defendant also accepts the additional sum of **£2,650**. The Schedule of Loss assumes that this cost will be incurred when the claimant is aged 30 years. The cost must be discounted for accelerated receipt.

PSYCHOLOGICAL AND EDUCATIONAL ISSUES

284. The educational psychologists were asked to consider what, if any, psychological intervention the claimant was likely to require in the future. They were also asked to

consider possible costs that might arise in connection with his education.

Psychological intervention

285. The educational psychologists observed that the claimant was sociable and demonstrated a real desire to communicate. He was able to communicate to a limited extent by facial expression and by gesture (e.g. licking his lips when he is hungry) and could answer “Yes/No” questions by eye pointing. They described the steps that were being taken to enable him to communicate more effectively. He had been provided with an e-tran frame, by which he could use his eyes to point to objects, pictures and symbols. He had then progressed to a communication book, but his use of this was inconsistent and, at the time the educational psychologists saw him, he was refusing to use it at all. The school speech and language therapist was preparing to introduce the claimant to a communication aid known as a Pragmatic Organised Dynamic Display (PODD) to practise scanning and selection. He has subsequently been provided with a PODD which, at the time of the trial, he appeared to be using with some success. The educational psychologists noted that the long term objective was for him to be able to use a “high tec” communication aid.
286. The educational psychologists were told that attempts were being made to develop the claimant’s ability to use a variety of hand switches. He was experiencing difficulty in doing this due to his poor hand control and to changes in muscle tone which caused his motor ability to change from day to day. As a result, his efforts were slow and laborious. He had succeeded in using a hand switch to stop and start a SMART platform. (I shall refer at greater length to this activity later in this judgment). The educational psychologists consider that the claimant will always have difficulty in manipulating switches speedily and accurately enough to communicate satisfactorily by that means. They consider that he is more likely to benefit from the use of the newly developed “eye gaze” technology. Shortly before the educational psychologists’ assessments, he had been given an opportunity to try out a communication aid known as a “My Tobii”.
287. In his Report, Mr Baldwin expressed concern about the claimant’s previous reluctance to use the communication book which had been provided for him. At the time of his assessment, he considered that, given the importance to the claimant of developing his communication skills, there was an urgent need for a systematic language programme to be put in place for him. He noted that the school staff had described a number of avoidance techniques which the claimant used when he did not want to co-operate. Mr Baldwin said that it was important that the claimant’s progress was not impeded by behavioural issues.
288. In his Report, Mr Baldwin expressed the view that, in order to address these problems, an intensive programme (10 sessions at £200 per session, to include travelling) of psychological support was required over a period of two years following trial, to be implemented by a psychologist who would work with the claimant at home and liaise

closely with staff at his school. In oral evidence, Mr Baldwin noted that the claimant was now using a PODD and accepted that some progress appeared to have been made since his assessment. He therefore reduced his proposed provision for intensive therapy to 5 sessions. The defendant agrees that provision, although it is contended that the cost per session will be £150, not £200. Mr Baldwin said that his estimated cost of £200 per session was intended to include travelling and liaising between home and school.

289. In the longer term, Mr Baldwin considers that psychological intervention will be necessary from time to time throughout the claimant's life. In his Report, he said that a total of 100 sessions would be needed at a cost of £150 per session. He explained that the intervention would probably be needed during critical periods in the claimant's life, such as moving house or school, moving to college, leaving college, following the death of his parents, etc. In oral evidence, Mr Baldwin sought to justify the 100 sessions on rather different grounds. He suggested that the family as a whole had psychological issues which needed to be resolved by psychological input. They were, he said, a high achieving family and the claimant's parents (in particular, Mr Whiten) would need help to come to terms with the emotional effects of the claimant's condition and with the restrictions placed upon them by the claimant's disabilities. They would also need advice and support in resolving practical questions such as whether or not they should move out of London. This would involve looking at suitable alternative schools for the claimant and considering the needs of his brothers. A psychologist would give "holistic care" to the whole family which would, he said, be of direct benefit to the claimant's mental health.
290. In her Report, Dr Hood described how during her visit to Linden Lodge, she had observed two episodes, when the claimant had become distressed. Because of his inability to communicate, it was impossible to determine what had caused his distress. She noted that, as he grew older, he appeared to be becoming increasingly frustrated, probably because of his inability to communicate his wants and needs. She recommended that he should have some sessions with a psychologist who would provide advice about the management of his distress. Although some support from an educational psychologist would be available through his school, she recommended that funds be provided for an additional 20 sessions @ £150 per session.
291. In a letter dated 23 November 2010, Dr Hood suggested that 8 of the 20 sessions should be used over the next two years, with the remaining 12 sessions to be used for obtaining further psychological advice for the claimant's parents and carers on managing him at critical points in his life when specific problems might occur. In oral evidence, she accepted that an additional 3 sessions (making 23 sessions in all) would be required for advice to be given to the claimant's parents and carers about the claimant's management during adolescence. However, she did not consider that someone with the claimant's profound learning disabilities would benefit from the type and scale of psychotherapeutic intervention suggested by Mr Baldwin. She explained that the psychological input would instead be confined to advising those caring for the claimant about his management. She considered that Mr Baldwin's provision of 100 sessions during the claimant's lifetime was

far more than would be needed.

292. As to the suggestion that the claimant's parents require help from a psychologist in order to come to terms with the claimant's disabilities, Dr Hood said that she had not been asked to undertake any assessment of his parents' mental state. If she had been instructed to consider the needs of the claimant's family as a whole, her recommendations would have been very different.
293. I accept the agreed provision of 5 sessions over the next 2 years at a cost of £150 per session, making a total of **£750**. I find that Mr Baldwin's proposed provision beyond that time is wholly excessive. There is no reason to believe that any change of carers will precipitate the type of psychological crisis envisaged by him. Many of the other events identified by Mr Baldwin are unlikely to occur or, if they do, will not necessarily cause psychological upheaval. Even if they, or other events, give rise on occasion to the need for psychotherapeutic input, such input is likely to be limited in scale and duration. The intervention would not be directed at the claimant himself. Its purpose would be to assist the claimant's parents and carers in managing his behaviour. If the advice given does not produce a positive result within a relatively short time, it is not working and there would be no point in persisting with further sessions.
294. As to the suggestion, made by Mr Baldwin for the first time in oral evidence, that the psychological input should be directed at the needs of the claimant's parents, rather than at the claimant himself, such a claim would have no basis in law and is unsupported by evidence, there having been no assessment of the psychological state of the claimant's parents or their need for future psychological intervention. I can only think that Mr Baldwin made this suggestion because, by the time he gave oral evidence, he realised that the reasons given in his Report could not possibly justify the extensive provision of psychological input he had recommended.
295. I am satisfied that a total of 25 additional sessions (in addition to the 5 sessions previously mentioned) will be adequate to enable appropriate psychological advice to be given about the claimant's management at times in his life when his parents and carers are experiencing particular difficulties in handling him. The cost of each session is agreed at £150. The cost of 25 sessions will be **£3,750**.

Legal representation at a Disability and Special Needs Tribunal and the cost of employing a one to one education assistant

296. The Schedule of Loss contains a claim in the sum of £20,000 for legal representation at a Disability and Special Needs Tribunal (a Tribunal) which, it is suggested, may be necessary when the family move into an area served by a local education authority other than Borough of Wandsworth. Another authority might refuse to fund the claimant's one

to one classroom assistant. If that happened and the Tribunal upheld the decision, the claimant would have to employ a privately paid one to one assistant. The cost of employing an assistant is claimed in the sum of £15,000 per annum, plus national insurance contributions of £1,920 per annum. The total claim under these heads is £97,460.

297. In December 2009, when Mr Baldwin assessed the claimant, there was no provision in the claimant's Special Education Needs Statement (Statement) for a one to one assistant to support him in the classroom. Despite that omission, the claimant had in fact been allocated a one to one assistant since he started at Linden Lodge. She is funded partly by the local authority, the Borough of Wandsworth, and partly by the school. In his Report, Mr Baldwin pointed out that the fact that the claimant's Statement did not formally identify the need for one to one assistance meant that funding could be withdrawn at any time. He advised the claimant's parents to request an amendment to the claimant's Statement. He further advised that, if the Borough of Wandsworth refused the amendment, the claimant's parents should appeal to a Tribunal.
298. The claimant's parents duly requested an amendment to the Statement. When this did not materialise, Mr Whiten threatened to start Tribunal proceedings if a satisfactory response was not received within seven days. On 7 October 2010, an official from the special needs assessment team of the Borough of Wandsworth responded to him by email, attaching a copy of the proposed amended Statement which included provision for full-time one to one support for the claimant at school. A copy of the email and the proposed amended Statement were in the trial bundle. The email informed Mr Whiten that a hard copy of the proposed amended Statement was in the post and that, once Mr Whiten had approved it, the final amended Statement, signed and dated, would be sent to him.
299. When Ms Nowell began to give oral evidence on this topic at trial, the clear impression she gave was that there had been no change of circumstances since Mr Baldwin had reported and that the Borough of Wandsworth was still not prepared formally to acknowledge the claimant's need for one to one support. She said:

“The thing that concerns Simon and I about it is not what he's actually receiving at the moment so much as what he's legally entitled to in his Statement of Needs ... we have requested it a number of times from the local education authority... they answer by saying “He will be getting what he needs at the moment and the arrangement is working”. That worries Simon and I because legally I believe the local authority are not obliged to provide it if it is not written in that part of his Statement... So it doesn't provide Leo with the security if it's not in black and white in his Statement ...”

This part of her evidence plainly suggested that the uncertainty remained. When Miss Whipple referred Ms Nowell to the email and proposed amended Statement, she said that

she did not recall seeing either document but accepted that, as long as the wording in the amended Statement was correct, she and Mr Whiten would have no residual concerns.

300. When Mr Whiten gave oral evidence, he professed to be “surprised” about the contents of the amended Statement, stating that he did not remember seeing the email or the attached proposed amended Statement. I do not accept his evidence on this matter. In the unlikely event that he did not see the email and/or open the attachment, there is no reason why he should not have received the hard copy of the proposed amended Statement. If he had not done so and been satisfied by its contents, I have no doubt that he would have carried out his original threat and lodged an appeal to a Tribunal in October 2010. If, as I find, Mr Whiten was well aware that the Statement had been amended, it seems inconceivable that he would not have told Ms Nowell of the fact. Yet, until the documents were specifically drawn to her attention by counsel, her oral evidence was to the effect that the Borough of Wandsworth would not give the claimant the security he needed. I find – with regret – that the claimant’s parents were intending deliberately to give the impression that the Borough of Wandsworth had not agreed to amend the Statement in an attempt to strengthen the claims for the legal costs associated with Tribunal proceedings and for the salary of a one to one assistant.
301. In the event, the defendant having now accepted the need for the claimant to move out of the Borough of Wandsworth school catchment area at a time when the claimant is still of school age, I accept also that there is a risk that a different local education authority might not accept his need for a one to one assistant and that his parents might have to incur the legal costs of taking the issue to a Tribunal. The claim for **£20,000** is therefore agreed, subject to discounting for accelerated receipt.
302. The claim for the cost of employing a one to one assistant privately is not agreed. This cost would be incurred only if both the local education authority and the Tribunal were to take the view that the claimant did not require a one to one assistant. His physical and cognitive needs are so severe that it seems improbable that this would happen. However, given the current economic stringencies, the risk cannot be discounted entirely. I shall therefore make an award of **£7,500** to reflect that risk. That figure takes into account a discount for accelerated receipt.

OCCUPATIONAL THERAPY

303. Occupational therapy (OT) Reports have been provided for the purpose of these proceedings by Ms Rachel Jenkins for the claimant and Ms Sabina Page for the defendant, both of whom gave oral evidence. Ms Jenkins has experience of working as an NHS paediatric occupational therapist in child development centres and special schools. She currently works as a private practitioner for Jacqueline Webb and Co. Ltd., providing OT input and case management to children and adults with complex neurological injuries (e.g. cerebral palsy) and acquired head injuries. Ms Page works as a community occupational

therapist in the Adults' Disability Team at Brighton and Hove Social Services. She has a long experience of providing assessments and ongoing therapy for individuals of all ages with physical, psychological and developmental disabilities, both as a private occupational therapist and through the NHS and Social Services. Both experts have seen the claimant at his home and have assessed his future need for OT. They have also reported on his future need for specialised equipment and on additional expenses that are likely to be incurred as a result of his disabilities. I shall deal with the latter aspects of their evidence later in this judgment.

Past costs

304. In the past, the claimant has received some OT input from the statutory services. In October 2008, his parents engaged a private occupational therapist, Mrs Margaret Ellis, to assess the claimant and provide OT advice and support. She arranged for the manufacture of two hand orthoses (splints) for the claimant's use. During 2008 and 2009, she visited him at home and at school to give advice about such matters as seating, use of the orthoses and exercises to promote hand control. In August 2010, Mrs Ellis was replaced by Ms Daphne Neethling. The Schedule of Loss claimed OT costs incurred up to the end of October 2010 in the sum of £1,735 and estimated the likely further costs to the date of trial at £700, making a total of £2,435. That figure was agreed. In the event, however, the sum of £2,265 is claimed for the period from November 2010 to May 2011, making a total claim of £4,000. The defendant contends that the recent provision of OT has been excessive and that past costs should be no more than £2,435.
305. I note that, during recent months, Ms Neethling has been involved in assessing the suitability of a vehicle and other pieces of equipment for the claimant's needs. In the circumstances – and having regard to the fact that more than six months have passed since the date up to which the original assessment was made – I accept that the recent costs have been reasonably incurred and allow the past costs of **£4,000** in full. In addition, the defendant has now agreed to pay training costs incurred in respect of the claimant's carer, Lida. The training was in the HANDLE therapy which the defendant does not accept has any clinically proven benefit. Nevertheless, the defendant concedes that some OT training for the claimant's carers would have been required. The sum claimed is £2,586. The defendant queries whether this amount is correct, suggesting that the true figure is £2,006. Invoices evidencing the higher figure appear at TB8/225-6 and I therefore allow the sum claimed of **£2,586**.

Future costs

306. The OT experts agreed the appropriate hourly rate for a private occupational therapist at £65 plus travel and mileage. Ms Jenkins estimated these additional costs at £18 per hour. Ms Page's estimate was £30 per hour. The experts' assessments of the amount of OT that will be required at the various stages of the claimant's life differ markedly. Details of the

annual costs awarded for each period are set out in Appendix H to this judgment.

307. The vast majority of the equipment with which the claimant has so far been provided has been purchased by him. That will be the same in the future. Ms Jenkins explained that state-funded occupational therapist will not advise on equipment that is privately funded. Consequently, the claimant will have to engage the services of a privately paid occupational therapist to carry out periodic reviews of his equipment, to advise on appropriate replacement and to train his carers how to use the equipment appropriately. She said that the claimant has complex needs and advising on new equipment to meet those needs will be a time-consuming business. It will involve reviewing available products, dealing with equipment suppliers and, on occasion, obtaining for inspection a range of different products from which a choice can be made. All the therapist's actions will require appropriate documentation.
308. Ms Page agreed that the claimant will require periodic reviews of his equipment and advice on appropriate replacement equipment. However, she said that he already has most of the equipment he needs at present and his requirements are unlikely to change very greatly in the future. He attends a school where the staff are highly skilled and will be able to alert his parents to any future equipment requirements he may have. The case manager will deal with the maintenance and repair of equipment. Ms Page accepted that the occupational therapist will have a role in training, guiding and encouraging the carers in a co-ordinated approach to handling the claimant. He or she should contribute to the development of the care plan and should help set targets for progress. However, she said that, because of the claimant's physical condition, those targets will be modest and will not change very frequently.

From now until the claimant attains the age of 19 years

309. Ms Jenkins considers that, until the claimant attains the age of 19 years, there will be a need for 42 hours per annum of OT at an annual cost of £2,730 (excluding travel and mileage). She said that, during this period, the claimant will be growing, necessitating changes in the equipment he requires. She explained that her estimate assumes three-monthly visits by the occupational therapist to assess the claimant's ongoing equipment needs. An allowance has been made for follow-up work, including liaison with the claimant's school and with the case manager. The therapist will also be responsible for training carers in the correct use of new equipment. Ms Jenkins assessed the annual cost of training in the sum of £750.
310. Ms Page's evidence was that, up to the age of 12, the claimant would require 12 hours of OT per annum during school holidays, at an annual cost (exclusive of travel and mileage) of £780. She said that there would be no need for regular visits throughout the year. The claimant's carers and members of staff at his school will be monitoring his needs on a daily basis and following his care plan. The items of equipment upon which OT advice

will be required are relatively limited. His seating will need regular monitoring and advice. However, once a suitable seating system has been identified, the identical system can be used in each of his various items of equipment. From the age of 12 until he attains the age of 19 years, Ms Page considers that only 8 hours per annum of OT will be required at an annual cost of £520 (exclusive of travel and mileage). She agreed that annual training costs of £750 would be incurred.

From the age of 19 years

311. From the age of 19 years, the claimant will have ceased to grow and his equipment needs are likely to be more stable. Ms Jenkins considers that, during this period, the number of hours of OT required will reduce to 20 hours per annum at an annual cost of £1,300 (exclusive of travel and mileage). There will also be training costs of £750 per annum.
312. Ms Page said that, by the time the claimant reaches the age of 19 years, his care package and day to day routine will be well established and, since he will no longer be growing, his equipment will require replacing mainly on a “like for like” basis. She considers that there will be some years when no therapeutic intervention at all will be required. She has allowed 3 hours per annum of OT during the claimant’s adult life, to be used flexibly when the need arises. The annual cost will be £195 (exclusive of travel and mileage). She accepts that the annual training costs of £750 will continue.

Conclusions on occupational therapy

313. The claimant will have a considerable amount of specialist equipment throughout his life. In addition to his immediate needs, the OT experts have provided for the replacement of various items of equipment throughout the claimant’s life. Each purchase of new equipment will require some research into available products and an informed decision as to which will best meet the claimant’s needs. OT input will be necessary in order to ensure that the right decisions are made and that the various items of equipment, when purchased, are used correctly. Equipment for persons with disability is constantly changing and developing and it cannot be assumed that, throughout the claimant’s life, replacement will always be of “like with like”. If it were, the claimant would be denied the opportunity to take advantage of more advanced technology.
314. In my view, Ms Page’s estimate of the need for OT fails to take account of these various factors and is unrealistically low. However, I consider that Ms Jenkins’ allowance is too high, given the amount of equipment with which the claimant has already been provided and the assistance he will also receive from his physiotherapist and case manager and from members of the school staff. Whilst I accept that a high level of OT input may be necessary in some years, when large items of equipment have to be replaced, I do not consider that such a high level of input will be required on an annual basis. In some years,

the need will be considerably less. I am satisfied therefore that an allowance of 24 hours' OT per annum is reasonable for the period from trial until the claimant is aged 19 years. Taking the defendant's figure of £30 per hour for travel and mileage, the annual cost of OT during this period, including training, will be **£3,030**.

315. From the age of 19 years, the claimant will not be growing and his physical needs are unlikely to change a great deal. The need for liaison with his school will no longer exist. However, there will be a continuing requirement for advice on the purchase of new or replacement equipment and for research and assessments to be carried out. I consider that an allowance of 12 hours' OT per annum will be sufficient during this period. There will be a continuing need for training. The total annual cost will be **£1,890**.

The claim for HANDLE therapy

316. The Schedule of Loss claims the cost of employing a therapist trained in the HANDLE technique at an annual cost of £990. HANDLE is a type of sensory integration therapy. It is currently administered to the claimant by his carer, Lida. It is clear from her evidence and that of the claimant's parents that they believe that the claimant benefits from this technique. During the course of her oral evidence, Lida made a number of what I considered to be extravagant and unrealistic claims about its beneficial effects.
317. In their Joint Statement, the physiotherapy experts agreed that there is no medical or scientific literature to support the use of HANDLE. They agreed also that the costs of providing HANDLE cannot be justified in terms of physical benefit to the claimant. The OT experts were prepared to support the cost of Lida's training course and of ongoing training for carers in HANDLE and/or conventional OT methods. However, they did not refer to the provision of HANDLE therapy by anyone other than Lida and (perhaps) other carers. I accept the evidence of the physiotherapists. There is no adequate basis for making an award under this head.

SPECIALISED AIDS AND EQUIPMENT

318. A considerable amount of specialised equipment has already been purchased for the use of the claimant and his carers. The various experts have assessed the claimant and expressed their views on the equipment with which he has been provided. They have also identified the equipment which they consider will be required by him in the future.

Past costs

319. The equipment which has already been purchased is listed at Section 14 of the Schedule of Loss and up-dated in the Supplementary Schedule of Loss. The total cost of that

equipment is agreed in the sum of **£33,564**.

Future costs

Specialised equipment recommended by the physiotherapy experts

320. The physiotherapy experts have recommended a range of specialised equipment for use by the claimant. The equipment is intended to assist him to maintain correct posture and to maximise his physical potential. The need for and cost of the majority of these items of equipment are agreed. I shall deal in this judgment only with the items which are in dispute. Details of the agreed items and my decisions in respect of disputed items are set out in Appendix I to this judgment.

321. The disputed items of equipment are as follows:

(a) Lycra hand splint and Lycra body suit

The claimant has had these items in the past and there is evidence that a Lycra suit was purchased privately in 2007. There is no dispute about the need for the items in the future.

The issue is whether they will be supplied by the NHS free of charge. I accept that, in order to secure regular replacement of Lycra items of appropriate quality, it will be necessary for the claimant's parents to source them privately in the future as they have in the past. The claim, which I allow, is for the immediate purchase of the items at a total cost of £2,400 with replacement every 2 years until the age of 19 years and every 5 years thereafter.

(b) Trike

A trike has already been purchased for the claimant and the cost thereof is agreed. It is also agreed that the claimant will use a trike up to the age of 18 years or so. The experts agree that the trike will require replacement every 7 years. The claimant provides for one replacement whereas the defendant contends that no such replacement will be necessary.

The trike is likely to get a good deal of use and suffer consequent wear and tear. The claimant may grow out of it. I consider that one replacement of the trike will be required when the claimant is aged about 14 years.

Specialist equipment recommended by the orthotist

322. Since August 2008, the claimant has been supplied with orthotic aids from the London Orthotic Consultancy in accordance with the recommendations of Mr Samuel Walmsley, one of their orthotists. Mr Walmsley provided a witness statement to which were exhibited documents detailing his past meetings with the claimant and his parents and the advice he has given. In his statement, he set out his recommendations for the provision of orthoses in the future. The defendant did not challenge the factual content of Mr Walmsley's witness statement and he was not called to give oral evidence.
323. At the time when the claimant's parents first consulted Mr Walmsley, the claimant had been provided by the NHS with ankle foot orthoses (AFOs) and leg gaiters, together with Pedro boots, to be worn when using his walker. His parents were concerned that these aids did not enable him to maintain the correct foot, knee and hip positions when standing and walking. Having assessed the claimant, Mr Walmsley recommended that he should be fitted with a pair of dynamic ankle foot orthoses (DAFOs) in an attempt to control and maintain a correct foot position. The DAFOs were to be worn all day inside normal trainers or inside his Pedro boots, when he was standing or walking. Mr Walmsley also recommended clip-on AFOs to be used in conjunction with the DAFOs for standing and therapy. The DAFOs and AFOs have been adjusted and replaced as necessary since they were first provided.
324. Mr Walmsley recommends replacement DAFOs and AFOs every year on average (depending on the claimant's rate of growth) until the age of 16-18 years. He estimates the total annual cost, including consultations, fitting and the provision of Pedro boots, at £1,246. He suggests that the claimant will require orthotics of some sort throughout his lifetime. The Schedule of Loss claims £1,246 per annum to the age of 18 years. From the age of 19 years, there is a claim for three-yearly replacement of the items at the same cost.
325. The defendant accepts the need for DAFOs and Pedro boots to the age of 18 years and beyond. However, the need for AFOs in addition to DAFOs is disputed. Up to the age of 18 years, the defendant has allowed the sum of £796 (the cost of DAFOs and Pedro boots plus associated costs) every 9 months, making an annual figure of £1,061 per annum. Thereafter, the defendant has allowed £796 every 3 years.
326. Mrs Holt said that the object of both AFOs and DAFOs is to keep the foot in a good position. She said that AFOs are rigid whereas DAFOs allow some movement at the ankle and are therefore more suitable for active children. Her evidence was that the usual practice within the NHS is to provide either AFOs or DAFOs. She noted that, in March 2009, the claimant's father had reported to Mr Walmsley that the claimant had not been wearing his AFOs as much as his DAFOs. In April 2010, he told Mr Walmsley that the AFOs had not been worn as much at home as at school. Mrs Holt said that she was not surprised about that since DAFOs were plainly more suitable for the claimant.
327. Mrs Filson supported the need for both DAFOs and AFOs. She said that she was under

the impression that the claimant used his AFOs when he was static and his DAFOs when moving. This would reduce strain on the DAFOs which are liable to become damaged with wear. Mrs Holt did not consider that there was any real risk of damage to the DAFOs in the claimant's case. She said that such damage usually occurs when a child is walking and very active.

328. In the past, both AFOs and DAFOs have been purchased. Mr Walmsley's recommendation was that AFOs should be used in conjunction with DAFOs "for standing and therapy with long sitting". It does not seem that they were intended to be used merely to reduce strain on the DAFOs, as Mrs Filson suggested. In any event, it is clear that the AFOs have been used, albeit not to the same extent as the DAFOs. I note that the AFOs are used when the claimant is at school. This suggests that the school recognises that there is a therapeutic need for them in certain circumstances. I am satisfied that there is a need for both AFOs and DAFOs and I allow the claim in full.

Specialised equipment recommended by the occupational therapy experts

329. The OT experts have recommended a range of specialised equipment designed to assist the claimant in the activities of daily living. The need for, and cost of, the majority of these items of equipment are agreed. I shall deal in this judgment only with the items which are in dispute. Details of the agreed items and my awards in respect of disputed items are set out in Appendix J to this judgment.
330. The disputed items of equipment (excluding powered wheelchairs which I shall deal with as a separate topic) are as follows:

(a) All terrain buggy

A 3-wheel Delichon all-terrain buggy has been purchased in order that the claimant can accompany his family on expeditions such as trips to the beach and walks in the countryside, for which a conventional wheelchair would be unsuitable. The defendant accepts that the purchase of the buggy was reasonable. The issue between the parties relates to the period for which a replacement buggy will be necessary. The claim is for four-yearly replacement of the buggy for life. The defendant accepts that the purchase of a larger buggy when the claimant is aged 11 or 12 years is reasonable but does not accept that any further replacement will be necessary or appropriate.

The buggy has a rigid back and does not afford good postural support. The level of support can be improved by the use of a moulded insert but it is still not ideal for a person with the claimant's problems. As a consequence, the buggy will have to be used in conjunction with a tightly fitting garment known as a "second skin". Ms Page's view was that, as the claimant gets older, he will not be prepared to tolerate wearing the "second

skin” for long periods of time. Even with the “second skin”, the buggy would not give sufficient postural support to be used for long periods. Moreover, it would not be possible for the claimant to travel in a vehicle whilst sitting in the buggy so that he would have to be transferred from his wheelchair to the buggy at the start of an expedition and back into his wheelchair after it. At present, Mr Whiten is able to lift him into his buggy. However, that will become impossible when the claimant gets heavier and he will have to be lifted using a portable hoist or lifting sling. This would be inconvenient and would involve a degree of risk. As the claimant becomes heavier, the buggy will need a considerable amount of effort to push it on uneven surfaces. For all these reasons, Ms Page did not consider that it would be practicable for the claimant to use the buggy beyond the age of about 18 years.

Ms Jenkins acknowledged that there would be problems with the claimant using the buggy as an adult. In particular, the lack of postural support would not be clinically desirable. However, she considered that the problems would have to be balanced against the claimant’s right to access more rugged terrain and against the family’s understandable wish to include him in their expeditions.

I am satisfied that, once the claimant reaches adulthood, the problems associated with the use of the buggy are likely to outweigh any benefits to the claimant in having it available. In particular, the “second skin” is likely to be hot and uncomfortable to wear and the fact that he will be able to tolerate it only for short periods of time will place a restriction on any expedition undertaken. Moreover, the degree of manual handling which will be required to get the claimant in and out of the buggy is likely to prove a discouragement to both him and his carers. The difficulty of pushing the buggy on uneven surfaces will also be a deterrent. I have therefore allowed for only one replacement buggy at the age of 12 years.

(b) Specialised bath

The claimant already has an Aquanova Gemini rising bath installed in his current house. The OT experts agree that this bath is suitable for the claimant’s needs and that its purchase was necessary and reasonable. They also agree that a new bath will be required when the claimant and his family move to a new property. There are issues between the parties in relation to the cost of the bath and the appropriate replacement period. Ms Jenkins quotes a cost of £8,760, whilst Ms Page’s costing is £7,476, the difference being that Ms Jenkins has included the cost of a whirlpool facility which Ms Page considers is not required. I accept Ms Page’s evidence on this point and have allowed the lower cost.

Ms Jenkins costs for 10-yearly replacement of the bath thereafter. She bases the replacement period on her personal experience with this type of bath, together with the manufacturers’ advice. Ms Page suggests that 15-yearly replacement will be sufficient. I am satisfied that the bath will be in regular use and that a replacement period of 10 years is

more realistic.

The claimant claims the annual cost of a four-year service contract at £522 per annum to cover any mechanical problems with the bath. The defendant accepts the cost of the first service contract but, at its expiration, contends for an annual cost of £580. Since this is more than the claimant's claim, I have adopted the claimant's figures.

(c) *Bath seat*

The claimant already has a small bath seat, the purchase of which is accepted by the defendant as reasonable. The Schedule of Loss claims for the purchase of a medium-sized replacement seat at the age of 10 and a large seat at 18 years. When she wrote her Report, Ms Page was under the impression that the claimant already had a medium-sized seat so that the only requirement in the future would be for a large seat. The matter was clarified at the experts' meeting and the Joint Statement makes clear that the experts agree that both sizes of seat will be required.

(d) *Changing table*

The claimant already has a changing table, the need for and cost of which are agreed. Although it was at one stage being suggested that an immediate replacement would be necessary, the evidence was that the existing table could be repaired. Ms Jenkins' view is that replacement will be required every 15 years whereas the claimant contends that there should be a replacement when the claimant is aged 21 years and every 15 years thereafter. The two contentions appear to me to come to much the same thing. I have adopted the claimant's formulation.

The claim for powered chairs

331. The Schedule of Loss contains a very substantial claim for powered wheelchairs in the total sum of £238,126. This aspect of the claim was the subject of a considerable amount of evidence and argument.
332. The claimant is able to use a walker and a trike with assistance and can propel himself around his home and garden whilst lying over a purpose-made padded skate board (skate). For all functional purposes, however, his sole means of mobility is and will in the future be by means of a buggy or wheelchair. The OT experts agree that, in the future, a powered wheelchair will be necessary for outdoor use.
333. The conventional way of operating a powered wheelchair is by means of a joystick. However, the OT experts consider that, because of his poor hand function and his

involuntary movements, the claimant is unlikely to be able to manipulate a standard joystick. Other types of switch, capable of being operated manually or by pressure of the head, are available and could possibly be used. Attempts have already been made to introduce him to hand switches. He has demonstrated that he is capable of using a single hand switch, although his ability to do so varies from day to day because of fluctuations in his muscle tone. It is not yet clear whether, in time, he will be able to use more sophisticated types of hand switch. Nor is it possible to say at this stage whether he will be successful in operating wheelchair-mounted head switches. This may be difficult because of his lack of head control.

334. As I have already indicated, the educational psychologists agree that, for the claimant, the best method of accessing mobility, communication and other aids is likely to be the newly developed eye gaze technology. Eye gaze systems allow a disabled person to control a computer (and, by means of the computer, other devices) using his/her eyes. The system has a camera which detects, by means of an infra-red device, where on the computer screen the disabled person is looking. By this means, the person can make choices between different symbols and thus has the potential to communicate and to operate a wheelchair or other device.
335. Whether or not the claimant will be able to use an eye gaze system effectively will depend primarily upon his ability to maintain adequate head control and to fix his gaze on the intended object so as to enable the eye gaze system to recognise and track the position of his eyes. The extent to which he will be able to use an eye gaze system in order to operate a conventional wheelchair at even a very basic level is not clear and will depend on a number of factors, including his future cognitive development. The claimant has recently been using a "My Tobii" eye gaze system and I was told that the indications are that he may be able to use eye gaze technology successfully. There is general agreement that he should be given every opportunity to do so as, if he is successful, this would greatly enhance his quality of life.

The SMART chair

336. The Schedule of Loss includes a claim for the provision of a SMART chair, at a cost of £15,000, for the claimant's lifetime. The SMART chair would be used in conjunction with a R82 x:panda seating system identical to that already used by the claimant for therapeutic seating at home, at a cost of £2,200.
337. At school, the claimant has had access to a SMART system whereby his manual wheelchair is mounted on a platform which runs along a track in the school corridor. The platform can be operated by means of a single switch which causes the chair to stop and start. Additional switches can be introduced in order to cause the chair to turn left or right. When first introduced to the SMART system, the claimant demonstrated that he was physically able to use a single switch to stop and start the SMART platform, but rapidly

lost interest in the activity which, as a result, was discontinued. I am told that it has since been re-introduced with some success. The claimant will continue to have access to the SMART system at school under the supervision of a member of staff. It is possible to purchase a powered chair (a SMART chair) with similar controls to the SMART platform. The SMART chair is a heavy and cumbersome piece of equipment which is not suitable for use in a community setting or as a functional means of transport. Its primary use is as an aid to learning how to control a powered chair at a basic level and in a safe setting.

338. Ms Jenkins has set out the three stages of mobility that might be achieved using the SMART system and has identified the functional skills which the claimant will require in order to attain the various stages. Mr Baldwin has provided evidence about the cognitive functions required at each of the three stages.
339. Ms Jenkins said that, for the first stage, the claimant will have to recognise basic cause and effect by operating one switch to stop and start the SMART platform or chair on its track. If he can learn that skill reliably, he will be ready for the second stage. The second stage would be aimed at giving him greater independence by teaching him to control a SMART chair independent of the track. The chair would be fitted with sensors which would automatically cut off the power to the chair in the event of a collision with any object. The claimant would have the option of moving in different directions, rather than just in a straight line. He would have to learn to anticipate obstacles and to stop or change course in time to avoid them. Ms Jenkins and Ms Page agreed that it is only at the second stage that they would expect the claimant to start to use eye gaze technology to control the SMART chair.
340. If the claimant demonstrated the ability to control the SMART chair reliably at the second stage, the sensors could be reduced in number or made less sensitive so that he had more independent control over the chair. This third stage, if successful, could lead to him being able to use eye gaze technology or SMART controls to operate (at least to a limited extent) a conventional powered wheelchair. Ms Page agreed with Ms Jenkins' analysis of the three stages of progress.
341. Mr Baldwin was asked to comment on the time at which the claimant might reach the three stages. He said that the claimant has not yet consolidated the skills necessary for completion of the first stage. He will have to learn to anticipate when he wishes to stop (or when the SMART chair is about to reach the end of the track) and to operate the on/off switch at the appropriate time. Mr Baldwin suspects that it may be several years before he is able to achieve this. He said that the second stage will require a higher level of cognitive functioning. He believes that the claimant will be about 12 years old before he is able to progress to the second stage. He does not consider that the claimant will ever be able to drive a powered wheelchair independently without a high level of support and supervision.
342. The parties are agreed that provision should be made for the claimant to have his own

SMART chair from the time when he moves to a new home at the age of 11½ years. The move will coincide almost exactly with the time when Mr Baldwin considers that the claimant should be ready to move on to the second stage of SMART chair use. It is expected that the new property will have a good sized garden area in which the claimant will be able to practise using the SMART chair safely.

343. However, the claimant contends that a SMART chair is required immediately, to be kept at school during term time and at home during the school holidays. Ms Jenkins suggests that this would enable the claimant to practise and develop his use of switches to operate the chair. She considers that the independent mobility which the claimant could achieve using the SMART chair would provide valuable motivation for him to progress with his use of switches. She acknowledges that there would be insufficient room for the SMART chair to be used inside the house at 192 Crowborough Road but says that the track could be put down in the garden and the claimant could use it there.
344. Ms Page does not consider that there would be any advantage to the claimant in having his own SMART chair at present. If he had a SMART chair at school, he would be able to use it – as he uses the SMART platform at present – only as part of his timetabled activities, under the supervision of a member of staff. Time would be wasted transferring him out of his manual wheelchair in order to access his SMART chair. Ms Page agreed that the claimant might be able to use his own SMART chair on a track in the garden at home but said that it was not yet clear whether he would progress to being able to use additional switches to change direction. If he did not, the SMART chair would be of very limited use. At home, the claimant can already achieve a degree of independent mobility using his “skate” and (with assistance) his trike and walker. Mrs Page doubts whether the SMART chair would offer him any greater degree of freedom or fun and points out that, when he was introduced to it at school, he rapidly lost interest in using it. However, she accepts that he should be provided with a SMART chair from the age of 11½ to 25 years. She agreed the costs of the chair and seating system as claimed.
345. I do not consider that the claimant requires a SMART chair at present. He has regular access to the SMART system at school. I am not satisfied that, if he were to have his own SMART chair there, it would result in him being able to spend significantly more time practising in it. Indeed, it is possible that his time might actually be reduced by the need to transfer him from his wheelchair into the SMART chair and back again. As to use of the SMART chair at home, whilst the claimant is in the first stage of his learning, this could only take place on the paths in the garden and would be limited to travelling in a straight line on a track. There is in my view a real danger that, if he spends too long on this activity, he will tire of it as he did in the past. I consider that the need for a SMART chair will arise at the age of 11½ years, when the family move house and he is ready to move to the second stage.
346. There is a further issue between the parties as to whether the claimant should be provided with a SMART chair throughout his life. The experts agree that he will never be able to

control a conventional powered wheelchair fully and independently in the community. At best, he might acquire the ability to use eye gaze technology or SMART controls so as to be able to control his powered wheelchair for short periods under supervision in a protected environment such as an uncrowded public park. For the claimant, it is contended that, if he can achieve the capacity to operate his SMART chair, to however limited an extent, it will give him a degree of independent mobility of which he should not be deprived.

347. The defendant contends that, beyond the age of 25 years, there will be no need for the SMART chair. The claimant will have a manual wheelchair for use indoors. For outings, he will use a conventional powered wheelchair. The SMART chair is too heavy and cumbersome to be taken out and about on a regular basis. Thus, its only function will be to enable the claimant to have a very limited degree of independent mobility (assuming that he progresses that far) around the house and garden. By that time, the SMART chair will, essentially, be a recreational – rather than a functional – piece of equipment. Ms Page’s view was that the claimant will lose interest in the SMART chair by his mid twenties, if not earlier.
348. Before reaching my conclusions in relation to the provision of a SMART chair in the long term, it is necessary for me to deal with the issues relating to the choice of powered wheelchair.

The Groove/Spectra wheelchairs

349. As the claimant gets older and heavier, it will become more difficult for the claimant’s carers to push him in his manual wheelchair. A powered wheelchair will be needed for use on outings. The claimant contends that a powered wheelchair will be required from the age of 10 years. The defendant says that it will be needed from about the age of 11 years.
350. There is a dispute between the experts as to the type of wheelchair that would best meet the claimant’s needs. Ms Jenkins favours the Sunrise Medical Groove wheelchair (the Groove) at a cost of £9,020. The Groove is a powerful, hard-wearing, and easily manoeuvrable wheelchair. The specification selected by Ms Jenkins includes facilities enabling the seat to be raised and lowered and to be tilted “in space”.
351. Ms Page recommends the Spectra XTR powered wheelchair (the Spectra) at a cost of £3,500. It can be fitted with high/low and tilt facilities at an additional cost of about £2,500. However, Ms Page does not consider that the claimant will require those facilities. She said that they are appropriate for persons who suffer from pressure sores or other similar conditions. The claimant does not have those problems. She agreed that the Groove would give the claimant a smoother ride than the Spectra and that it has the

advantage of having power to all four wheels, rendering it very stable. However, she considers that the Groove is larger and more powerful than the claimant will require, bearing in mind that it is likely to be controlled by his carers for most, if not all, of the time. Her evidence was that the Spectra would meet the claimant's requirements satisfactorily.

352. The Groove cannot be operated using eye gaze technology or SMART controls. Thus, if the claimant had the Groove and was unable to operate it by conventional means, he would be reliant on his carers to control the wheelchair at all times. There would be no opportunity for him to operate the wheelchair himself, even if he were able to. By contrast, the Spectra wheelchair can be operated using both eye gaze technology and SMART controls. In the Counter Schedule, the defendant agreed the addition of SMART controls, at a cost of £5,500, to the basic Spectra wheelchair. In the latest version of the Scott Schedule, however, they indicated that they no longer agree that the claimant should have SMART controls for the Spectra.
353. When Ms Jenkins gave evidence in December 2010, she said that she did not consider that the Spectra was sufficiently robust for use with SMART controls. At that time, she believed that the Groove could be used in conjunction with SMART controls or eye gaze technology. Before the resumed hearing, Ms Jenkins carried out some more research and identified another, more expensive, model of powered wheelchair, with similar specifications to those of the Groove, for which eye gaze technology can be used. That is the Alex 3 wheelchair which costs £13,000. This model was mentioned at a late stage and I have little information about it. According to the latest version of the Scott Schedule, the claimant's claim is still based on the Groove.
354. The debate about which of the models of powered wheelchair currently available should be purchased in 3 or 4 years' time is somewhat artificial. By the time the choice has to be made, new models will be on the market. Eye gaze technology is currently in its early days and I have no doubt that, before long, it will be capable of being used with a range of wheelchairs. What I must determine, by reference to the attributes and cost of the models about which I have received evidence, is the level of financial provision that should be made in order that the claimant's needs will properly be met when the time comes.
355. I am satisfied that a powered wheelchair will be required at or about the time when the claimant and his family move to alternative accommodation, i.e. in January 2016 when he is 11½ years old. At the same time, he will also be provided with a SMART chair and will, it is hoped, be starting to use the SMART chair in conjunction with eye gaze technology. At that time, he will not need SMART controls or eye gaze facilities on his powered wheelchair. However, in my view he will need high/low and tilt facilities. The high/low facility will be of obvious benefit to him on occasion in order to bring his eye level to or nearer to the level of people standing around him, or to enable him to get a better view of something which is of interest to him. The tilt facility will enable his carers easily to change his position within the wheelchair in order to relieve discomfort of any sort. If the choice of wheelchair model were to be made now, it would be between the Groove at

£9,020 and the Spectra (with the additional facilities) at about £6,000. The fact that the Groove gives a smoother ride is of considerable importance to the claimant's comfort, particularly in the event that he is suffering from pain in his hip or elsewhere. Therefore I have no doubt that the Groove would better meet his requirements at this stage.

356. I accept Ms Page's view that, by the age of 25 years if not earlier, the claimant will no longer require the SMART chair. Either he will be making no further progress with it (in which case he will be bored by it) or he will have progressed well enough with it to be able to transfer his skills to a powered wheelchair. At that stage, I consider that, on a balance of probabilities, his needs will best be met by the provision of a powered wheelchair which can be operated using SMART controls or eye gaze technology. By that arrangement, the wheelchair will serve a dual purpose. It will have attendant controls, enabling the claimant's carers to operate it. In addition, the provision of SMART controls or eye gaze technology will give the claimant the opportunity to retain a degree (albeit in all probability a very limited degree) of independent mobility throughout his life by operating his powered wheelchair in a protected environment such as a public park whilst under the supervision of his carers. It is possible that he may never progress to that stage. However, I consider that he should not be denied the opportunity to do so.
357. Given that I have little information about the Alex 3 (and the claimant's claim is still based on the Groove), the only model which would serve this dual purpose would be the Spectra. Thus, notwithstanding the fact that it would provide a less comfortable ride than the Groove, it would best meet the claimant's needs from the age of 25 years on. The cost of fitting SMART controls to the Spectra is £5,500. The total cost of the Spectra, including high/low and tilt facilities, would therefore be £11,500.
358. The claimant claims £270 per annum for a service contract and insurance for the powered wheelchair and £100 per annum for servicing of the seating system. The defendant's figures for servicing and insurance of the powered wheelchair amount to £245 per annum, with no allowance for servicing of the seating system. As to the cost of servicing and insurance of the powered wheelchair; I accept the claimant's figure of £270. I am not persuaded that an additional sum will be incurred for service of the seating system. The cost of replacement tyres and batteries is agreed. There is a claim for the purchase an extended warranty for the powered wheelchair at £340 every 5 years which I am satisfied is required.
359. The claimant contends for replacement of the seating systems for both the SMART chair and the powered wheelchair every 3 years, whilst the defendant contends that replacement every 5 years will suffice. I consider that it is probable that replacement will be required on average every 4 years.

Aids and equipment recommended by the assistive technology expert

360. Mr Andrew Lysley is an expert in the field of assistive technology (AT) for children and young people with special educational needs and is the deputy director and co-ordinator of research and development at the ACE Centre in Oxford. AT is the term used to describe the use of computers and communication aids to assist people with disabilities. The claimant attended the ACE Centre in 2006 and 2009 for the purpose of undergoing assessment of his AT needs. Mr Lysley, who carried out the assessments (with the assistance of a speech and language therapist and an occupational therapist) was instructed on behalf of the claimant to provide Reports for the purpose of these proceedings. He also gave oral evidence. The defendant did not adduce evidence from an expert in the field.
361. On the basis of the assessments carried out, Mr Lysley considers that a range of equipment will be required in order to enable the claimant to fulfil his potential for communication and to exercise a measure of control over certain aspects of his daily life. The items of equipment recommended include a personalised laptop computer fitted with special switches, together with a variety of specialist and non-specialist software to encourage development of literacy and communication skills and the “My Tobii” device. Mr Lysley also makes provision for payment for additional time which will be spent by the claimant’s one to one assistant in preparing materials for use with his communication aids, together with training in the use of the aids for his family, carers and other key professionals involved with him. He costs for regular AT reviews throughout the claimant’s life.
362. The majority of the equipment identified by Mr Lysley, together with the costs of purchase and the relevant replacement periods, are agreed. The only item now in dispute is the provision of an environmental control system.
363. Mr Lysley considers that, in the future, the claimant should be able to operate a system which would enable him to exercise some independent control over his environment, e.g. by opening and closing doors and windows and by operating leisure equipment such as a television, radio and sound system. He suggests that, in due course, the claimant should be assessed by a specialist in the field who would advise on a suitable system for him. Eye gaze technology can be used for this purpose and a suitable environmental control system could be fitted in the claimant’s current and/or future home. Mr Lysley estimated that the cost of installation would be between £10,000 and £15,000 with a replacement period of 10 years.
364. The defendant’s case is that an environmental control system is not appropriate for the claimant, who will always have very limited cognitive abilities. The defendant contends that the claimant will be able to operate his leisure equipment without the necessity of a separate environmental control system by using other devices which have already been included in the claim. Miss Whipple submitted that it will be unnecessary for the claimant to be able to switch lights on and off or open and close curtains as he will have carers to do these tasks for him. There is, she suggests, a risk that, given his limited understanding, he would use the environmental as a plaything or as a means of thwarting his carers. She

argued that, given the marginal benefit that the claimant would derive from an environmental control system, the expense would not be justified. She argued also that Mr Lysley is not an expert in the field and his cost estimates cannot therefore be relied upon.

365. It is unlikely that the claimant will ever have the requisite level of cognitive ability to make it necessary or appropriate for him to be able to control lights and curtains. The cost of a system that would permit him to do this would be disproportionate to the benefit he would derive from it. He will have carers to attend to his needs and comfort. I am satisfied, however, that it would be of real benefit to him to be able to operate and adjust his leisure equipment. My understanding is that it will be possible for him to do this by means of the “My Tobii” or a similar device, provided of course that he can develop the necessary skills to use it. I therefore make no award for this item.

366. Details of my award under this head are set out in Appendix K to this judgment.**ACCOMMODATION**

367. In the Schedule of Loss, past accommodation costs are claimed in the sum of £382,760 and future accommodation costs (including the costs of a hydrotherapy pool attached to the new property) in the sum of £1,081,288. I have already indicated that I do not consider that the claimant requires a hydrotherapy pool at home so I have excluded that from my considerations.

368. Evidence about the claimant’s current and future accommodation needs have been provided by Mr Tom Wethers for the claimant and Mr David Cowan for the defendant, both of whom gave oral evidence. Both the experts have a considerable amount of experience in assessing the housing needs of people with disabilities. They prepared their first Joint Statement following a discussion in August 2010 and a second Joint Statement following the hearing in May 2011.

369. The claimant lives with his parents and two brothers. Given the extent of his cognitive disabilities, he is likely always to require the emotional support of his parents. Recognising this, it is their intention that he should continue to live with them throughout his life. Thus there is no claim for independent accommodation for the claimant once he reaches adulthood.

370. A number of issues arise in relation to the accommodation claim. Before considering those issues, it is necessary to set out the history of events which forms the background to the claim.

The history of events

The property at 99 Lucien Road

371. At the time of the claimant's birth, his parents were living in one of a block of maisonettes at 99 Lucien Road, Tooting, which had been purchased by Mr Whiten for £244,000, with a mortgage of £240,000. Ms Nowell owned a house in the North East which she rents out.

372. The living area of the maisonette was situated on the first floor of the block, with a loft space above. Access to the maisonette was gained by a narrow staircase leading from the entrance on the ground floor into a small hallway, off which a narrow corridor led to the rooms: a living room, kitchen/diner, three bedrooms and a bathroom. There was a small private garden/courtyard accessed by means of a steep set of iron steps leading from the kitchen. Before the claimant's birth, his parents had carried out refurbishment work on the property, including installing a new kitchen/diner and a new bathroom, repairing the roof, fitting dormer windows, boarding the floor of the loft, installing a power supply there and redecorating throughout the property.

The purchase of 192 Crowborough Road

373. As the claimant grew and began to acquire various items of specialist equipment, his parents found it increasingly difficult to manage in the maisonette. Accordingly, they decided to look for alternative accommodation in the same area. In early 2006, they sold the maisonette for £295,000 and purchased their current home, 192 Crowborough Road, Tooting, at a price of £400,000. Initially, £360,000 of the purchase price was funded by a mortgage. The amount of the mortgage has since been increased to £420,000. The property at 192 Crowborough Road was a two-storey terraced house with an unconverted loft. Although the house was in poor repair, it offered considerably more space than the maisonette, together with the potential for adaptation and extension. It also had the benefit of a good-sized garden.

The first proposed scheme for adaptation

374. The claimant and his parents moved into 192 Crowborough Road in February 2006. In March 2006, the defendant conceded the issue of causation (having previously admitted negligence) so that it was clear that the claimant would recover damages in this action. At that stage, the claimant's parents began to explore the possibility of carrying out work to make the house suitable for the claimant's needs. With the help of the then case manager, they obtained advice from a specialist firm of architects, ARa, who drew up plans for limited adaptations, including the installation of a lift from the ground floor to the claimant's bedroom on the first floor, the provision of specialist bathing and changing facilities for him and some redecoration work. According to Ms Nowell's witness statement of 23 October 2006, the estimated cost of the adaptations was initially £75,000. Planning permission was obtained for these limited works and, in October 2006, an interim payment of £175,000 was made for the purpose, *inter alia*, of funding the adaptations. In the event, however, the first proposed scheme was not carried out.

Instead, the claimant's parents commissioned plans for more extensive adaptation works.

The second proposed scheme for adaptation

375. In December 2006, ARa produced a second proposed scheme for adaptation of the property. This scheme included an extension to one of the downstairs rooms and the construction of a conservatory for storage. If carried out, the scheme would have provided, in addition to the claimant's accommodation, two bedrooms for the family and/or carers, a fourth bedroom for use as a study and a shower room for the use of the claimant's parents.

376. Mr Cowan visited 192 Crowborough Road in January 2007 and provided a first Report dated 20 March 2007. He considered that, in its existing state, the house was unsuitable for the claimant's needs. He was shown the second proposed scheme for adaptation put forward by ARa. He considered that the works would meet the needs of the claimant's family during his "early years", but would not be appropriate when he was in his teens. Indeed, he did not consider that it would be possible to adapt and/or extend the house so as to provide suitable accommodation for the claimant in the long term.

377. In February 2007, Mr Wethers visited 192 Crowborough Road. His findings are set out in his first Report, dated 12 June 2007. He too considered that, as it stood, the house was not suitable for the claimant. Mr Wethers' view was that, although the second proposed scheme for adaptation would be an improvement on the existing situation, it would not make the accommodation suitable for the needs of the claimant and his family, even in the short term.

The third proposed scheme for adaptation

378. Following the visits of the experts, a third proposed scheme for adaptation was drawn up by ARa. The revised plans were shown to Mr Wethers in May 2007. In his first Report, he observed that the third proposed scheme (which included the conversion of the loft, with the creation of a bedroom for the claimant's parents, a family bathroom and a further smaller bedroom) would enable carers' accommodation to be created on the first floor and would afford the claimant's parents a reasonable degree of privacy. He considered that the revised plans were "a vast improvement" on the second proposed scheme and would render the house suitable for the claimant in the short term. However, he identified a number of drawbacks which would remain. He pointed out that the carers' accommodation would not have an entrance separate from that used by the rest of the family, that the claimant's bathroom would not be en suite (this, however, was later remedied), that there was no garage or undercover access to the front door and that the ramp leading to the front door was steeper than was ideal. He expressed the view that, even with the proposed adaptations and extension the house would remain suitable only up to the point when the claimant's equipment and care needs increased and he needed

“reasonable independence”. At that time, the claimant would require a “differently constituted and larger home”. Mr Wethers noted that ARa estimated that the final proposed scheme would cost about £285,000, including professional fees and V.A.T., but excluding the cost of specialist equipment.

Alternatives to the adaptation of 192 Crowborough Road suggested by the accommodation experts

379. Mr Wethers advised that, as an alternative to altering 192 Crowborough Road, the family should consider other possible options. One possible course would be to purchase a larger property in the area of 192 Crowborough Road and adapt it to meet the claimant’s needs. Mr Wethers identified an example of such a property which would have been capable of adaptation to provide suitable accommodation. The property was a substantial and elegant detached house set in a landscaped garden. It was on the market for £1,395,000 and would have required alterations costing about £200,000 to make it suitable for the claimant’s needs. It would have been a very expensive option. The second possibility identified by Mr Wethers was to purchase a four-bedroomed bungalow outside London (e.g. in Surrey) and to alter and extend it to meet the claimant’s needs. Mr Wethers had carried out a preliminary investigation into available properties, as a result of which he estimated the cost of a suitable bungalow at £560,000-£600,000. He estimated that the likely cost of the necessary adaptation work (including specialised equipment, professional fees and V.A.T.) would be £267,933. He said that a reasonable estimate of the increase in the value of the property which would result from the work was £50,000.
380. Mr Cowan had also identified two possible alternatives to the adaptation of 192 Crowborough Road. The first option was to purchase a plot of land and construct a bungalow designed specifically to meet the claimant’s needs. He rejected that option immediately on the ground that it was highly unlikely that it would be possible to find a vacant plot of land at a reasonable price. The second option was the same as that suggested by Mr Wethers, namely to purchase a four-bedroomed bungalow in South London/Surrey and to adapt and/or extend it. He considered that it would be possible to purchase a suitable bungalow for about £500,000. He estimated the cost of extending and adapting such a property at £250,958, inclusive of the necessary equipment, professional fees and V.A.T..

The views of the claimant’s parents

381. At the time of Mr Cowan’s visit to 192 Crowborough Road, Mr Whiten had made clear that he and Ms Nowell would not entertain the option of moving to an adapted bungalow outside London. They were determined to stay in the Tooting area and, for the foreseeable future, at 192 Crowborough Road. Mr Whiten told Mr Cowan that he planned to carry out work on the house in accordance with the plans (at that time, the second proposed scheme) produced by ARa. However, Ms Nowell’s witness statement of 4 May 2007

made clear that, even if the adaptations were made in accordance with the third proposed scheme, she and Mr Whiten did not envisage the family remaining at 192 Crowborough Road indefinitely. She said that they hoped that the house, once adapted, would last them into the claimant's teenage years.

The interim payment application

382. Ms Nowell's witness statement of 4 May 2007 had been made in support of an application by the claimant for a further interim payment to enable the third proposed scheme for adaptation to be put into effect. A hearing of the application was fixed for July 2007.
383. In a letter dated 15 June 2007 written to the defendant's solicitors, the claimant's solicitors told them that the care and therapy experts instructed by the claimant had advised that the third proposed scheme for adaptation and extension would not make 192 Crowborough Road suitable for the family until the claimant's adolescence, as his parents had hoped. The experts believed that the claimant and his family would outgrow the adapted property within five years or so, i.e. around the time of the claimant's seventh or eighth birthday. The claimant's solicitors said that, in those circumstances, the claimant's parents were prepared to abandon the idea of adapting 192 Crowborough Road, provided that a suitable property within the Borough of Wandsworth could be identified, purchased and suitably adapted. They explained that it was necessary for the family to remain in the Borough of Wandsworth in order to preserve access to local services, established support networks and their preferred school placement for the claimant at Linden Lodge. The claimant's solicitors said that it was estimated that purchase of such a house would require additional funding of £1 million, together with the cost of adaptations.
384. The defendant's solicitors responded by letter dated 22 June 2007. They enclosed with their letter Dr Thomas's first Report which gave his provisional view that the claimant had a life expectancy to the age of only 15 or 16 years. They indicated that they would resist an application for an interim application of £1 million, observing that it would represent far more than the value of the accommodation claim. They suggested that one way forward might be to attempt to agree the accommodation claim. It does not appear that this suggestion was taken any further and, since both paediatric neurologists had advised that no reliable assessment of life expectancy could be made until the claimant was aged five or six years, it is difficult to see how any agreement would have been possible at that stage.
385. The application for an interim payment proceeded and was heard by Master Yoxall on 17 July 2007. The claimant did not pursue an application for a sum sufficient to purchase a larger house in the Tooting area; instead, his application was confined to a sum which would cover the costs of adapting 192 Crowborough Road. He was awarded a further interim payment of £425,000. At the hearing, the defendant contended that it was not reasonable to undertake major adaptation work on 192 Crowborough Road when the property would not provide a long term solution to the family's housing needs. In his

Order, Master Yoxall recorded that he had made no finding as to the reasonableness or otherwise of the claimant's proposed expenditure.

Completion of the adaptation works

386. Tenders were invited for the adaptation works and the contract was awarded to the contractor who quoted the lowest price. In January 2008, the family moved out of 192 Crowborough Road into rented accommodation and the work began shortly afterwards. The family returned to the house in October 2008 after the work had been completed.

The current accommodation

387. The claimant and his family have now been back at 192 Crowborough Road for over two and a half years. The property comprises, on the ground floor, a hall, an open plan sitting room (with lift to the claimant's bedroom on the first floor), a kitchen/dining area, a conservatory, which is used as an equipment store and gives access to the garden, a physiotherapy/play room with storage cupboard, a small utility room and a lavatory with specially adapted shower. The claimant's bedroom and en suite bathroom are on the first floor, together with a small bedroom used as a study, a carers' bedroom with en suite shower and another bedroom currently used by Dexter. The loft has been converted so as to provide a large bedroom and store for the claimant's parents, a family bathroom and a small bedroom which is at present being used as a nursery for Victor. Further storage space for equipment is available in a garden shed which was erected as part of the adaptation work.

The parties' cases

388. The cases advanced by both parties have changed, at least to some extent, during the course of these proceedings.

The claimant's case

389. The claimant's case is that he is entitled to the past costs of adapting 192 Crowborough Road, as well as the future costs associated with purchasing and adapting another property outside London which will meet his long term needs. In his original Schedule of Loss served in January 2010, the claim for future accommodation was put on the basis that the move to a new property would take place in about 2023 when he would be aged 19 years. In April 2010, the Schedule of Loss was amended to bring the need for future accommodation forward to the end of 2015, when the claimant will be aged 11½ years.

390. The defendant's case is that it was unreasonable of the claimant's parents to purchase 192

Crowborough Road without proper advice as to its long term suitability and to proceed with expensive adaptations to the property when they had been told that, even when the work was carried out, the property would not meet the claimant's long term needs. Until a late stage in the trial, the defendant's contention was that, since the claimant's parents had opted to continue with the adaptations regardless of the views of the experts, they would have to accept the consequences and continue to live at the property despite the fact that it was not ideal. As to damages, its position was that the claimant was entitled to recover the cost of the adaptations to 192 Crowborough Road up to (but not beyond) the cost of adaptations that would have been incurred had his parents acted reasonably and purchased and adapted a bungalow outside London. The claimant was not, the defendant contended, entitled to recover the costs associated with any future move since that would involve requiring the defendant to pay for adaptation work to be carried out twice over.

391. The Reports of the accommodation experts did not contain very strong grounds for their shared view that 192 Crowborough Road would not meet the long term future needs of the claimant and his family. The reasons advanced by Mr Wethers (see paragraph 378 above) suggested (to me at least) that the property fell short of being ideal, but was not entirely unsuitable. Mr Cowan referred to the fact that the house did not provide single storey accommodation and had no private parking or covered access but gave no further reasons for its unsuitability. At their joint meeting, they were asked:

“Do the experts agree on whether 192 Crowborough Road is suitable for the claimant's long term needs?”

Their agreed response to that question was:

“The experts agree that there may come a time when the family will want to move”.

That was not a satisfactory response to what was an important question. It certainly did not convey their joint view that the property would in a few years be wholly unsuited to the needs of the claimant and his family.

392. The oral evidence of the experts, given on 12 May 2011, was much stronger. When asked whether the property would meet the needs of the claimant and his family in the long term and, if not, why not, Mr Wethers referred to the disadvantages of the property to which he had already referred. He then went on to say that the dimensions of the claimant's bedroom, bathroom and therapy room are all well below the recommended levels and will be too small for him before he is fully grown. There is no shower in the claimant's bathroom and he has to be taken downstairs in order to be showered which is unsatisfactory and will not be acceptable when he is older. The open plan design of the ground floor and the fact that the carers' accommodation is situated in the main body of the house mean that there is no privacy for the family. This will become particularly difficult as the claimant's brothers grow up. The dining area of the kitchen will be too small to accommodate the family as well as carers. Mr Wethers said that, for those reasons, the

family would have to look for an alternative property in the long term.

393. Mr Cowan agreed with all that Mr Wethers had said save that he considered that the size of the claimant's therapy room was adequate. He also mentioned the arrangements for storage of the claimant's equipment which he said were inadequate and sub-standard. He said that, in time, the claimant will become too big to be manoeuvred in his bedroom and bathroom. That would, he said, be an "insuperable problem" and, in order to avoid it, the family will have to move.
394. Having seen the property myself, I agree with the experts. Whilst the adaptations have made good use of the available space and meet the current needs of the claimant and his family, there is no doubt in my mind that, as the claimant and his brothers grow up and the number of carers increases, the house will become too small for the family and a move will be essential. It is unfortunate that the experts did not make their views (and the reasons for those views) clearer at an earlier stage. If they had done so, a considerable amount of time and argument would have been saved.
395. Once Mr Cowan had given his evidence, the defendant's position changed. It now accepts that the claimant and his family will have to move to a suitably adapted property when the claimant is aged 11½ years. However, the defendant's case on damages remains substantially the same. It contends that the claimant should be awarded damages on the basis that his parents should have followed the experts' advice and purchased and adapted a property outside London in 2006 or 2007. Had they done so, the defendant contends, no further move would have been necessary and the costs of adapting 192 Crowborough Road would not have been incurred.

Past costs

The issues to be determined

396. The issues to be determined in connection with the claim for past accommodation costs are as follows:

- i) Was the move from the maisonette reasonable in the light of the claimant's disabilities?
- ii) If the claimant had been uninjured, would the family have moved from the maisonette to alternative accommodation and, if so, when and at what cost?

- iii) Was the purchase of 192 Crowborough Road reasonable in all the circumstances?
- iv) At the time they made their decision to carry out the adaptations to the house and garden at 192 Crowborough Road, were the claimant's parents aware of the view of the experts that the property would be suitable for the claimant only in the short term?
- v) Was the decision to remain at 192 Crowborough Road and to proceed with the third proposed scheme of adaptation reasonable? If not, what are the consequences?
- vi) If so:
 - a) what was the cost of the works which were reasonably required?
 - b) are the mortgage costs paid by the claimant recoverable?
 - c) is the claimant entitled to a *Roberts v Johnstone* award in respect of the betterment which has accrued to 192 Crowborough Road as a result of the adaptation works?
 - d) have any additional running costs been incurred at 192 Crowborough Road as a result of the claimant's disabilities?

397. I shall consider each of those issues separately

Was the move from the maisonette reasonable in the light of the claimant's disabilities?

398. The situation of the maisonette on the first floor, the narrow staircase, the width and changes in level of the internal corridors and the small size of some of the rooms made it entirely unsuitable for managing a child with severe disabilities, together with his equipment. There can be no doubt that the move from the maisonette was entirely justified and the defendant did not seek to argue otherwise.

If the claimant had been uninjured, would the family have moved from the maisonette to alternative accommodation and, if so, when and at what cost?

399. The evidence of the claimant's parents was that, had it not been for the claimant's disabilities, they would have continued to live in the maisonette for some time after the

claimant's birth and would, if necessary, have converted the loft to provide further accommodation. Mr Whiten's evidence was that the couple had never discussed moving from the maisonette prior to the claimant's birth. I have seen witness statements from several of the couple's friends, who confirm that, before the claimant's birth, they had no intention of moving in the short term. Ms Nowell's mother says that they intended to stay at the maisonette for at least five years after the claimant's birth but that does not accord with the evidence of Mr Whiten and Ms Nowell, which was far less certain. They said in oral evidence that they would probably have moved to larger accommodation at some time, but professed themselves unable to say when they would have done so or even whether or not it was likely that they would have done so by the time of the trial.

400. I am quite satisfied that the claimant's parents would have wanted to move from the maisonette within a fairly short time of the claimant's birth, probably no later than the summer of 2007, when they were expecting their second child. Those same features of the property which made it entirely unsuitable for the claimant with his disabilities would also have made it difficult to bring up one small child – let alone two small children – there. The iron staircase leading to the garden would have been a particular hazard and the garden itself had little room for children to play. Even if it had not previously been the couple's intention to move on, I am confident that the disadvantages of the property would have become evident shortly after the claimant's birth and a decision to move would have been taken.

401. I do not accept Mr Whiten's evidence that, before the claimant's birth, the couple had never discussed moving to a larger property. They were a hard working and ambitious couple and it would be surprising if they had not had some discussions about their accommodation plans for the future. The evidence of Mr Whiten's brother, Dr Christopher Whiten, was that such discussions did indeed take place. In his witness statement, he said:

“[The claimant's parents] had often talked about buying a larger property when they had children but I do not remember them being in a rush to leave their [maisonette].”

402. I consider that Dr Whiten's words correctly summarise the position of the claimant's parents as it was before the claimant's birth. Whilst it is true that the refurbishment work they carried out on the maisonette would have enabled them to convert the loft and remain there had they chosen to do so, the work would also have had the effect of enhancing the value of the flat in the event that they wished to sell it. I am satisfied that, in doing the work, they had this very much in mind. I do not consider that they (in particular Mr Whiten) have been frank with the court about their plans prior to the claimant's birth or their probable accommodation arrangements thereafter. No doubt they realised that, if they were, it would have the effect of reducing the claim under this head of damage.

403. I find that, on a balance of probabilities, the claimant's parents would have moved

approximately 18 months later than they actually did, i.e. in mid-2007. I find that, at that time, they would have wished to progress up the housing ladder and, if necessary, would have sold Ms Nowell's property in the North East in order to facilitate this. I am satisfied, that they would have purchased a property of a similar value to 192 Crowborough Road and in the same area, which, as they told Mr Wethers in early 2007, was convenient for their work and friends. They may have chosen a property in better repair than 192 Crowborough Road, but I am satisfied that their capital outlay would have been of the same order. Consequently, the expenses associated with moving to 192 Crowborough Road (£27,835) would have been incurred in any event (albeit in connection with a different property) and I make no award under that head.

Was the purchase of 192 Crowborough Road reasonable in all the circumstances?

404. At the time when the claimant's parents purchased 192 Crowborough Road, causation had not been agreed and they could not be certain that the claimant would be compensated in respect of his disabilities. They were finding it impossible to manage in the maisonette and urgently required larger accommodation. They considered it vital to stay in the Borough of Wandsworth in order not to disrupt the arrangements that had been made for the claimant's care and for his medical supervision and treatment. To quote Ms Nowell's witness statement of 28 July 2006, they considered that:

“...it would have most definitely been to [the claimant's] detriment to move him out of the Borough and start again”.

I regard that view as entirely reasonable.

405. Ms Nowell's evidence was that they looked at houses in the area costing around £300,000 but they were too small with no outdoor area or potential for expanding the accommodation. They also looked at larger houses, which were outside their price range. In 192 Crowborough Road, they managed to identify a property which was large enough to accommodate the claimant and his growing collection of equipment, had a garden and also had some potential for adaptation and extension.

406. The defendant contends that it was unreasonable of the claimant's parents not to seek the advice of a specialist architect as to the suitability of the property for the claimant before purchasing it. They were represented by solicitors and had access to the necessary advice. However, that contention does not take into account the pressures upon the couple at the relevant time. They were both working, Ms Nowell part-time. They were trying to obtain the appropriate therapy and other support for the claimant. They were living under difficult conditions. There was no certainty that the claimant would receive damages at all. The causation aspect of his claim might have remained unresolved for months, even years. His parents took the view that they had to solve the problem by purchasing the most

suitable house they could which was affordable for them and situated in the area where they were already living. In the circumstances, it does not seem to me that it can properly be said that their decision to purchase 192 Crowborough Road was unreasonable.

At the time they made their decision to carry out the adaptations to the house and garden at 192 Crowborough Road, were the claimant's parents aware of the view of the experts that the property would be suitable for the claimant only in the short term?

407. I have recounted earlier in this judgment the history of events leading up to the adaptation and extension of 192 Crowborough Road. In his oral evidence, Mr Whiten insisted that, prior to the decision to go ahead with the adaptations to the house, no one had told him that, even when adapted, the house would still be unsuitable for the claimant, whether in the short or the long term. He suggested that he cannot have read the experts' Reports in which that view was expressed. I reject his evidence on this point. It is quite clear from the contemporaneous evidence (in particular, the claimant's solicitors' letter of 15 June 2007) that the decision to proceed with the adaptations was taken by the claimant's parents in the knowledge that the care and therapy experts instructed on the claimant's behalf had advised that the adapted property would be suitable for the claimant only up to the age of seven or eight years.

408. The claimant's own accommodation expert had advised that the adapted house would be unsuitable in the long term and the view of the defendant's expert was that the house could not be adapted so as to be entirely suitable for the claimant. Both accommodation experts had suggested the alternative of adapted single storey accommodation outside London. Ms Nowell and Mr Whiten would have been well aware of the experts' views. Indeed, Mr Whiten had discussed the matter with the defendant's expert at the time of his visit and had made clear that he and Ms Nowell were determined to stay at 192 Crowborough Road for the foreseeable future.

Was the decision to remain at 192 Crowborough Road and to proceed with the third proposed scheme of adaptation reasonable? If not, what are the consequences?

409. In the summer of 2007, at the time when they made their decision to proceed with the adaptation work to 192 Crowborough Road, the claimant was aged three years and was already attending a local nursery, a playgroup and another special needs playgroup at Linden Lodge. He was due to start school at Linden Lodge, which was ideal for his needs and situated near to his home, in September 2007. He was having regular physiotherapy sessions at a local hospital and at a private clinic nearby. The family was employing a carer, Aga, who lived locally. All these arrangements, together with the availability of the medical and other services from which the claimant was benefiting, would have been jeopardised by a move to a different area. Moreover, Mr Whiten was employed in Central London and Ms Nowell was intending to resume work in Central London when she was able to do so. They wanted to remain close to Central London for this purpose. In

addition, they wanted to maintain contact with their friends and with the network of support which they had built up since the claimant's birth.

410. By the summer of 2007, the family had been in 192 Crowborough Road for over a year. No adaptations had yet been undertaken, the house was in a poor state and the need for suitable facilities for the claimant was becoming urgent. Ms Nowell was expecting her second child, who was born in October 2007. The couple were unwilling to face the considerable disruption that would result from a move to an area outside London, together with the delay that would inevitably ensue. Such a move would have involved selling 192 Crowborough Road, finding and purchasing an alternative property, planning and executing the adaptations, and moving the family there. In addition, it would have been necessary to identify local carers and therapists, together with statutory, medical and other services for the claimant. It might have involved moving the claimant from Linden Lodge to a school nearer the new property. All this would have taken a great deal of time, effort and upheaval. The move would have resulted in the claimant's parents having longer distances to travel to work, at a time when they were already under great pressure. Furthermore, the move would have been possible only if the defendant had been prepared to provide an interim payment large enough to enable a suitable new property to be purchased and adapted.
411. The alternative of purchasing and adapting a larger property in the area of Tooting was not realistic. The cost would have been too great. The claimant's parents could not have afforded to buy such a property without a substantial interim payment. Under the principle established in *Roberts v Johnstone*, a claimant does not receive an award equivalent to the capital cost of purchasing a suitable property. Instead, he receives only the notional investment income (at the rate of 2.5% per annum) he would have earned on the capital cost incurred. Thus, the funds for purchasing a suitable property inevitably have to be "borrowed" from the awards made under other heads of damage (e.g. for pain, suffering and loss of amenity; loss of earnings, capitalised awards for therapy and other costs). Given that the defendant's paediatric neurologist was expressing the view that the claimant may well have a very short life expectancy, there would have been considerable doubt at that stage as to whether, if he were given an interim payment of £1 million or so to spend on a property, he would be left with a sufficient capital sum to meet his other needs at the conclusion of the case.
412. Furthermore, it was highly likely to be in the claimant's interests to have his damages under some heads (in particular, care and case management) paid by way of periodical payments. That being the case, a court considering the issue of an interim payment would not have wished to make an order which might have the effect of fettering the freedom of the trial judge to allocate as large a proportion of the award to a periodical payments order as he/she considered appropriate. Nor would the court want to make an interim award of a sum which might constitute more than a "reasonable proportion" of the lump sum that would be finally awarded: *Cobham Hire Services Limited v Benjamin Eeles* [2009] EWCA Civ 204. It is highly unlikely therefore that the defendant would have agreed – or

the Master would have ordered – an interim payment in the sum necessary to purchase a larger property in the same area.

413. A decision to proceed with the adaptations to 192 Crowborough Road would inevitably mean that the costs of adapting two different properties would be incurred. Miss Whipple contended that it was wasteful and unreasonable to undertake extensive adaptations to 192 Crowborough Road when it was never going to be more than a “stop gap” solution to the family’s accommodation problem. She submitted that the behaviour of the claimant’s parents in failing at first to seek, and then to take, expert advice and in failing even to consider or discuss the possibility of alternative properties was wholly unreasonable.
414. I have considerable sympathy with the defendant’s position. I recognise that, in most cases, the incurring of duplicate adaptation costs will not be reasonable and should not be borne by a defendant. However, I do not consider that the defendant’s arguments take sufficient account of the stress and pressures on the claimant’s parents in 2006/7 and the very unsatisfactory conditions under which they and the claimant were living. As I have explained, they faced a choice between staying at 192 Crowborough Road and adapting it, or moving out of London. Their reasons for staying at 192 Crowborough Road were compelling and I am not surprised that they came to the conclusion that it was in the best interests of the claimant and of the family as a whole to remain there. A move at that stage would have placed a very significant further strain on them and would have disrupted the claimant’s education only shortly after it had begun.
415. Of course, it may be said that the family will face disruption and difficulties whenever they move and, to an extent, this is true. However, when they move in the future they will not be under the same pressure of time as they would have been if they had attempted to move house in 2007. They will be able to plan and execute any future move whilst living in a house fitted with the facilities necessary to care for the claimant. They now have paid carers to assist with the claimant’s day to day care and are therefore under less pressure. They are no longer reliant on employment which requires them to commute daily into Central London. The necessary funding for the purchase and adaptations will be available. I am satisfied that these and other factors will make any future move very much less difficult than it would have been in 2007.
416. The cost of the adaptations to 192 Crowborough Road is claimed in the sum of £385,000. Miss Whipple contended that, if the claimant’s parents were determined to stay at 192 Crowborough Road, they should have undertaken the minimum work necessary to make it possible to stay there (namely the work initially proposed by ARa in mid 2006), at a much more modest cost. According to Ms Nowell’s witness statement of 23 October 2006, that work was intended to provide suitable bathing and changing facilities for the claimant, as well as a lift to his bedroom and some redecoration at a cost of about £75,000. In written submissions, Miss Whipple suggested that, with V.A.T. and other costs and fees, the total cost of the work would have been in the region of £110,300. The work would, she says, have enabled the family to manage at 192 Crowborough Road until the claimant was aged

seven or eight years old. At that time, they could have made the move to more suitable accommodation.

417. I am satisfied that to have done the minimum amount of work on 192 Crowborough Road would not have achieved a satisfactory or acceptable result or met the claimant's needs even in the short term. The house was in poor repair and work was required to put it into a decent condition. Without the conversion of the loft, there would not have been enough room for a carer to stay overnight. The care experts had already identified the need for an overnight carer. Once Dexter and Victor arrived, the property would have been very cramped. There would have been insufficient storage space for the claimant's specialist equipment. Without work being carried out in the garden, it would have been impossible for the claimant to benefit from it as he is currently able to do. These are only some examples of the problems that would have arisen. I note that it was Mr Wethers' view that even the work contained in the second proposed scheme (which was much more extensive than that envisaged by the first scheme) would not have met the claimant's immediate needs.
418. I consider that, having made the reasonable decision to stay at 192 Crowborough Road, it was also reasonable for the claimant's parents to undertake whatever work was necessary to meet the claimant's needs and to provide the accommodation necessary for other members of the family. Whilst they knew that 192 Crowborough Road would not be a permanent solution to the claimant's housing needs, they did not intend to move in the short term. Indeed, they plainly hoped (somewhat optimistically) that they would be able to stay at 192 Crowborough Road until the claimant was well into his teens. As it is, by the time the family moves (which, for the purposes of this judgment I have assumed will be on 1 January 2016), they will have been at 192 Crowborough Road for almost 10 years. They will have had the benefit of the adaptations for over seven years. During those important years, the claimant will have had the opportunity to develop in an environment which has been designed and equipped to meet his specific needs. The costs of adaptation cannot, therefore, be said to have been entirely wasted.
419. In the particular circumstances of this case, therefore, I consider that the expenditure upon adaptations to 192 Crowborough Road was reasonably required to meet the claimant's needs and that the defendant is liable for the reasonable costs of those adaptations. The cost of the adaptations should not be based on the notional cost of adapting a wholly different property, as the defendant suggests. The starting point must be the costs actually expended on adapting 192 Crowborough Road.

Were all the adaptation works undertaken reasonably required as a result of the claimant's disabilities? If not, what was the cost of the works which were reasonably required?

420. As a result of moving out of 192 Crowborough Road whilst the adaptation work was being carried out, the family incurred costs of **£27,488** which are agreed. The other costs

claimed are in dispute. I shall deal in turn with each of the matters in issue

421. In their Joint Statement, the accommodation experts agreed that the cost of the adaptation works to the house, inclusive of V.A.T., was £304,019. From that amount must be deducted the cost of the specialised bath (£6,876) which, it is now agreed, has been counted twice. The net figure is therefore £297,143. The experts further agreed that the cost of landscaping works was £45,772. Mr Cowan considers that there are five items which were not reasonably required for the claimant's needs and for which the claimant should not be required to pay. It is now agreed by the experts that two of these items (various house maintenance work and the varnishing of stair spindles costing a total of £4,998) should not be included in the claim. The remaining disputed items are as follows:

(a) The vanity unit

The list of additional building works records that a vanity unit was installed in the claimant's bathroom and later had to be removed. The total cost of the work was £1,083. Mr Wethers' evidence was that the vanity unit had to be removed and relocated in order to allow the correct installation of the soil pipe. He said that the work was clearly necessary and should form part of the claim. Mr Cowan contended that the work must have arisen as a result of an error in the architects' plans or by the building contractor and the defendant should not be required to pay for it.

I have very little information about this item. However, it does appear that the original fixing and the removal were unnecessary and arose as a result of an error on someone's part. In those circumstances, I am not satisfied that this was work for which the defendant should be required to pay.

(b) Alterations to the family bathroom

It appears that it was necessary for a wall to be removed in the family bathroom on the second floor in order that a standard-sized bath could be accommodated. The cost of this work was £662. Mr Wethers said that this work was plainly necessary. Mr Cowan pointed out that the architect's drawings had shown a full-sized bath in the room. His view was that, if the dimensions had been measured incorrectly and this led to abortive work, the defendant should not have to pay.

Whether or not the dimensions on the architect's drawings were correct, it seems that the bathroom was not large enough to take a standard bath and that some alterations were therefore necessary. It is in my view reasonable for a standard bath to be fitted in the family bathroom and I consider that the costs should form part of the award.

(c) Landscaping

The final item of dispute is the landscaping work carried out on the garden at 192 Crowborough Road. I have seen an estimate for the landscaping scheme (adapted by Ms Nowell from a previous (higher) estimate provided by the landscaping contractors) which amounted to £45,772 (inclusive of V.A.T. and 5% contingencies). I have not seen an invoice for the work actually done but, as I have indicated, the experts agree that the sum of £45,772 was paid.

Mr Cowan considered that three items in the estimate were not required for the claimant's needs. One was a "timber cube" at a cost of £2,750 plus V.A.T.. It is not certain whether that was ever installed. He also considered that the garden lighting (estimated at £3,525, including V.A.T.) was unnecessary for the claimant's needs. He observed that the cost of clearing the garden before the start of the work, which was estimated at £5,500, excluding V.A.T., seemed very high. He allowed £3,500 for clearance. He suggested that a reasonable cost for the work would have been £34,360, inclusive of V.A.T. and contingencies of £1,630.

The defendant's case, as set out in the Counter Schedule, reflected Mr Cowan's opinion. In her latest written submissions, however, Miss Whipple argued that, in the event that I allow the cost of adaptations to 192 Crowborough Road, I should reduce significantly – she suggested by 50% – the claim for landscaping works.

Having seen the garden, I am satisfied that much of the landscaping works were necessary in order to provide a safe and stimulating area in which the claimant can use his "skate", trike and walking frame and play with his brothers and parents. However, the overall cost of the landscaping was very high and I consider that the work went beyond that which was reasonably required for the claimant. I accept Mr Cowan's view that the timber cube (and the paving on which it was to stand) would fall outside the boundary of what was reasonably required, as would the garden lighting. I share his view also about the cost of the clearance, which has not been satisfactorily explained.

I have taken Mr Cowan's figure as a starting point, but without the allowance for contingencies since I have heard no evidence about the items for which additional payments were made. I have also deducted the cost of the paving for the timber cube. That gives a figure of £30,776. Since I heard no detailed evidence about the landscaping works and the extent to which they were or were not necessary, this is necessarily a somewhat broadbrush approach.

422. I have therefore allowed the cost of adaptations to 192 Crowborough Road in the sum of £321,838, inclusive of V.A.T.. A schedule of the costs I have allowed is set out at

Appendix L to this judgment.

423. The agreed evidence of the accommodation experts is that, as a consequence of the adaptation work carried out on 192 Crowborough Road, its value will have increased by between £70,000 and £90,000. The parties have agreed the figure at £80,000. That “betterment” figure, together with the amount of the disabled facilities grant of £30,000 received in respect of the work, must be deducted from the total adaptation costs. The net figure is **£211,838**.
424. In their Joint Statement, the experts agreed the fees for the architects and other professionals and costs associated with the adaptation works in the sum of **£57,339**.

Are the additional mortgage costs and the claim for interest on the betterment in the value of 192 Crowborough Road recoverable?

425. The purchase of 192 Crowborough Road was funded in part by a mortgage advance in the sum of £360,000 made jointly to Mr Whiten and Ms Nowell by Northern Rock. The Schedule of Loss contains a claim for mortgage payments of £640 per month for the first nine months after the purchase. It seems that Mr Whiten and Ms Nowell were unable to meet the mortgage repayments during that period so used part of the claimant’s interim payments for this purpose. A claim for £5,760 is made under this head.
426. For an initial period, repayments on the mortgage were fixed. Ms Nowell’s evidence was that the fixed term period came to an end in about March 2008. The alternative arrangements offered by Northern Rock were not competitive so she and Mr Whiten attempted to transfer their mortgage to an alternative provider. However, as a result of the work being carried out on 192 Crowborough Road at that time, the house was deemed uninhabitable for mortgage purposes and they were unable to obtain an offer from any alternative provider. Consequently, they had to pay mortgage repayments at an increased rate until the adaptation work was sufficiently advanced to permit transfer of the mortgage. Ms Nowell said that she and Mr Whiten could not afford to pay the increased payments so they continued to pay the fixed amount whilst using monies from the claimant’s interim payment to pay the additional sum of £1,000 per month. This arrangement continued for a period of seven months until transfer of the mortgage was eventually effected. The claimant seeks re-imburement of the payments made by him in the sum of £7,000.
427. The defendant contends that the mortgage payments made by the claimant are irrecoverable in law as being too remote from the defendant’s negligence. In any event, it is argued that the losses could have been avoided by not purchasing 192 Crowborough Road or, in the case of the claim in respect of the increased mortgage repayments, if the claimant’s parents had negotiated the transfer before the adaptation work began.

428. The mortgage costs claimed are costs incurred by the claimant's parents in respect of a property in their names and are irrecoverable by the claimant. Insofar as any loss may have been incurred by the claimant, I accept the defendant's argument that it would be too remote to be recoverable. In any event, it is arguable that the second loss should have been avoided by better planning.

Is the claimant entitled to a Roberts v Johnstone award in respect of the increase in value which has accrued to 192 Crowborough Road as a result of the adaptation works?

429. The Schedule of Loss includes a claim pursuant to the case of *Roberts v Johnstone* in respect of the increase in value consequent on the adaptation works. The claim is made on the basis that the claimant has capital of £80,000 tied up in 192 Crowborough Road and is entitled to interest at 2.5% per annum (i.e. £2,000 per annum) on that sum from October 2008, when the work was completed, until the time when he moves to alternative accommodation. In the light of my findings, the claimant is clearly entitled to an award under this head in the sum of **£5,320**.

Have any additional running costs been incurred at 192 Crowborough Road as a result of the claimant's disabilities and will any such costs be incurred in the future?

430. The parties agree that additional running costs of £809 per annum have been incurred up to the date of trial, making a total past claim of **£4,312**.

Future costs

431. Future costs will be incurred during the remaining period for which the family will live at 192 Crowborough Road and when they move to alternative accommodation outside London.

Continuing additional costs at 192 Crowborough Road

432. The *Roberts v Johnstone* claim in respect of 192 Crowborough Road will continue at the rate of **£2,000** per annum until the family move to alternative accommodation on a date which I have assumed to be 1 January 2016. The additional running cost will continue at **£809** per annum until that date.

The cost of a suitable property

433. As to the future, it is now agreed that, when the claimant is about 11½ years old, the family will move to single storey accommodation somewhere outside – but reasonably accessible

for – Central London. Mr Wethers estimates the cost of a suitable four-bedroomed bungalow in Surrey at £650,000, whilst Mr Cowan puts it rather lower, at £600,000. It seems reasonable to adopt a figure of £625,000 as the likely purchase price.

The cost of the necessary adaptations

434. The experts agree that it will be necessary to add an extension to the bungalow in order to provide additional accommodation to meet the claimant's needs. In addition, some work will be necessary in order to make the existing bungalow accessible for the claimant.
435. In his first Report of June 2007, Mr Wethers estimated that the likely costs of adaptation and extension (including all necessary equipment, professional fees and V.A.T.) would be £267,933. That estimate was on the basis that an extension of 67.85 m² was required. The extension was to comprise a bedroom for the claimant with an en suite bath/shower room, a bedroom/sitting room for a carer, with shower room and kitchenette, and a therapy/activity room for the claimant. Included within Mr Wethers' estimate were the costs of installing a ramp to the entrance of the bungalow, widening the internal doors, upgrading central heating and other services, installing hoists and constructing storage space. The estimate also included some work to the garden at a cost of about £7,600, exclusive of V.A.T..
436. By the time of his second Report of January 2010, Mr Wethers' estimated costs of necessary adaptation and extension work had risen to £384,943 (£390,776 after the recent increase in V.A.T. on certain items). He was then proposing an extension of 81.65 m², with the addition of an office for carers and a store room to the extension as previously described. The balance of the increase in the estimated cost of adaptation was accounted for by a significant rise (to £30,000) in the estimated cost of work to the garden, the provision of the infrastructure for environmental controls (at a cost of £6,742), an increase in the estimated cost of the hoists and the provision of an automatic garage door, body drier and macerator for nappies.
437. In his first Report, Mr Cowan advocated the building of an extension of 43 m² which he suggested would enable the size of the fourth bedroom in the original bungalow to be increased in order to make it suitable for the claimant and would also allow space for an en suite bathroom for the claimant, together with a bedroom, an en suite shower room and a kitchenette for the use of his carers. Mr Cowan estimated the cost of the extension, together with adaptations to the existing accommodation and garden, professional fees and V.A.T., in the sum of £250,958.
438. In his second Report of December 2009, Mr Cowan proposed a larger extension of 51 m², incorporating a therapy room, but omitting the carers' accommodation, which he now

suggested should be sited in the existing bungalow. The effect of that arrangement would be to leave the family with two bedrooms, a bathroom, a living and dining room and a kitchen/breakfast room in the bungalow. The cost of the work was estimated in the total sum of £283,163.

439. Apart from the difference in their costings for the extension (£107,794 as against £67,330, exclusive of V.A.T.), the main disparities between the estimates of the two experts are the cost of external works (£30,000 as against £20,000), the cost of hoists (£16,660 as against £9,800), the widening of the garage (which Mr Wethers, but not Mr Cowan, considers will be necessary) and the purchase and fixing of an automatic garage door (deemed necessary by Mr Wethers, but not by Mr Cowan). In some areas (i.e. the cost of internal structural alterations, consequential redecoration and alterations to the kitchen), Mr Cowan has allowed higher figures than those of Mr Wethers.
440. The first Joint Statement of the accommodation experts sets out their disagreement as to the amount of accommodation necessary for the family in the new property. Mr Wethers considers that the family accommodation should include a study, a utility room, a lavatory separate from the family bathroom and four bedrooms (one each for the claimant's parents, Dexter and a third child (who had not been born at that time) and one for guests). Mr Cowan does not agree that there is a need for a study (observing that there was not a study at the maisonette at 99 Lucien Road), a utility room (although, in his oral evidence, he agreed that this was necessary), a separate lavatory, a bedroom for a third child or a guest bedroom. Nor does he agree that there is a need for a carers' office or store room in the extension. He said that the store room could be located within the existing bungalow. Mr Wethers estimates that a property with an area of about 250 m² (inclusive of the extension) is required, whilst Mr Cowan's view is that a property with an area of 185-200 m² would suffice.
441. I do not consider that the total area allowed by Mr Cowan would provide adequate accommodation for the claimant, his carers and his family. It is necessary in the interests of the family as a whole that the claimant's parents and brothers should have accommodation which is equivalent to that which they would have expected to occupy had it not been for the claimant's disabilities. This is particularly important since it is intended that the claimant should live with his family throughout his life. I am satisfied that, had the claimant been uninjured, the family would have lived in a house with at least four, and probably five, bedrooms (one for the parents and one for each child, together with a guest room), a family bathroom and (very possibly) a separate lavatory. The suggestion made by Mr Cowan that the family should have only two bedrooms is plainly untenable. I am satisfied also that the claimant's parents need a study. Mr Whiten is currently running his business from home and Ms Nowell plans to work from home to some extent in the future as she has in the past. They cannot carry out their work in rooms being used by other members of the family and/or in circumstances where they have to move their working equipment because the room is needed for other purposes. Their circumstances are very

different from when they lived at 99 Lucien Road and the fact that they did not have a study there is, I consider, irrelevant. They have a study at 192 Crowborough Road and, having seen it, it is clear that it is well-used.

442. The effect of my findings as to the accommodation required by the claimant's family is that there will not be space within the original bungalow in which to site the carers' accommodation and store room, as Mr Cowan has suggested. The accommodation for the claimant and his carers will have to be sited in the proposed extension, as will the necessary storage space for the claimant's equipment. In any event, that arrangement is likely to be more satisfactory since it will enable the rest of the family to have some privacy and will not require the carers to go into the family accommodation every time they want to reach the carers' accommodation or fetch a piece of equipment for the claimant.
443. In principle, therefore, I accept Mr Wethers' evidence about the size of extension that will be required. The only point on which I do not agree with him is in relation to the provision of a carers' office. The carers will need a computer, some paper and a few files and a small desk or table on which to do their administration work. I do not consider that an office is required to accommodate these items. A desk or a table and a shelf or filing cabinet can be provided in the carers' bedroom for this purpose. I have therefore reduced the size of the extension by 7 m² (i.e. 6 m² plus circulation space). This reduces the cost of the extension to £98,538.
444. I consider that some further adjustments should be made to Mr Wethers' figures. I regard his estimate of necessary external works to be too high and Mr Cowan's figure of £20,000 for this work to be reasonable. I do not accept that an automatic garage door is a reasonable requirement. The claimant will have carers to open and close the garage. It seems to me unlikely that the garage will require widening, as Mr Wethers suggests. I have removed the cost of wiring for an environmental control system since, as I have already indicated, I do not consider that this will be required. I have already awarded the purchase price of the specialist bath: see Appendix I. On the other hand, I consider it reasonable to increase the sum allowed for alterations to the kitchen to Mr Cowan's figure of £10,000. It seems likely that this will be necessary.
445. Those adjustments, together with the reduction in the cost of the extension, produces a total figure for the adaptation works (inclusive of V.A.T. at 20% and fees) of £334,683. From that figure must be deducted betterment in the agreed sum of £70,000, giving a net figure of **£264,683**. That figure will require discounting for accelerated receipt.

The cost of relocating to the new property

446. There is a claim in the sum of £44,759 for relocation costs, comprising the cost of selling 192 Crowborough Road and purchasing the new property, together with removal costs.

Mr Cowan puts the costs at rather less, the difference being accounted for by the different valuations placed on the two properties by the respective experts.

447. The defendant's contention is that the family would have moved in any event at about the same time as they moved to 192 Crowborough Road. The evidence of the both the claimant's parents was that they had wanted their children to grow up outside London and that, if the claimant had been uninjured, they would have moved out of London into the country whilst the boys were young. In those circumstances, relocation costs would have been incurred even had the claimant been uninjured and I accept the defendant's contention that these costs are not recoverable.
448. The defendant agrees that it is liable to compensate the claimant for the cost of removing disability-related items from 192 Crowborough Road in order to make the house more attractive to prospective purchasers. Mr Wethers considers that the cost will be £25,000, whilst Mr Cowan puts the cost at £15,000. I have assumed a cost of **£20,000**. This will require discounting for accelerated receipt.

Additional furnishing costs of the alternative property

449. When the family move to an alternative property, some additional furnishing costs will inevitably be incurred. Mr Wethers estimates the total cost at £14,798 (i.e. £8,798 for new carpets throughout and £6,000 for new curtains). Mr Cowan points out that the family would have moved in any event and would thus have incurred the costs of new furnishings. He accepts that more expensive floor surfaces will be required to accommodate the claimant's wheelchair and he therefore allows additional costs of £5,780. I accept Mr Cowan's approach in principle since it properly reflects the expenses that will be incurred as a direct result of the claimant's disabilities. However, I have increased his figure to take account of the fact that area of the property will be larger than that on which his calculations were based. I have therefore allowed additional furnishing costs of **£6,500**. That figure should be discounted for accelerated receipt.

Additional running costs of the alternative property

450. It is agreed that the claimant is entitled to those additional running costs of the new property which will be attributable to the claimant's disabilities. The accommodation experts agree that a total additional sum of £1,272 per annum will be incurred for additional heating, telephone, water and waste water charges. They also agree an annual sum of £1,320 for additional building maintenance costs.
451. In addition, there is a claim for additional building insurance premiums which are estimated by Mr Wethers in the annual sum of £186. Mr Cowan's researches led him to believe there would be no difference in premiums. Bearing in mind that the family would

have been moving to a reasonably substantial property in any event, it seems to me unlikely that there would be any significant difference in premiums and I make no award under this head.

452. Additional running costs totalling **£2,592** per annum will therefore be incurred as from 1 January 2016.

Maintenance and replacement of equipment

453. There is a claim for maintenance and replacement of the specialist equipment which Mr Wethers has advised should be installed in the new property. This equipment consists of overhead hoists, a specialist bath, a nappy macerator, a shower floor grille and shower screen, a body drier, the automatic garage door system and the carer's kitchenette. The defendant's case is that all the equipment that is considered necessary for the claimant has been dealt with by the other experts, in particular the occupational therapists.

454. The cost of all the relevant items of equipment (save for the specialist bath and automatic garage door system, which I have disallowed) forms part of the adaptation costs of the new property and was agreed (save as to one small issue, which I have decided in favour of the claimant) by Mr Cowan. Maintenance and replacement costs of the equipment will inevitably be incurred and the claimant is entitled to be compensated therefor. The total claim for maintenance (excluding the specialist bath and the automatic garage door) is £1,637 per annum. Of that figure, £610 refers to the overhead hoists. I have already made provision for annual servicing of the overhead hoists in Appendix I of this judgment. My award for maintenance of equipment is therefore in the annual sum of **£1,027**.

455. The claimant is entitled to the replacement costs of all the items of equipment save for the specialist bath and the automatic garage door system. The capital cost of replacing the overhead hoists, nappy macerator, shower floor grille and shower screen and the body drier (totalling **£24,002**) will be incurred every 10 years from the date of the move to the new property. The cost of replacing the carers' kitchenette (**£1,258**) will be incurred every 12 years from the same date.

The Roberts v Johnstone calculation

456. The intention is that the claimant will purchase the new property outright, using his damages. That will give him the security of sole ownership of the property and will relieve his parents of making a capital contribution to its purchase. The likelihood is that, when 192 Crowborough Road is sold, they will receive little, if any, capital from the sale after the mortgage has been repaid and the claimant has received the sum of £80,000 betterment to which he is entitled.

457. There is a *Roberts v Johnstone* claim for the cost to the claimant of having a large capital sum tied up in the new property. For the purposes of the calculation, the notional purchase price of the bungalow will be £625,000. To that figure must be added the increase in the value of the new property which will result from the adaptations which has been agreed at £70,000. The claimant (but not the defendant) has suggested that there should be a deduction of £80,000 to reflect the betterment element of the value of 192 Crowborough Road. However, the claimant has already given credit for that sum as against the cost of the adaptations to 192 Crowborough Road and it does not seem to me right in principle that he should be required to give credit once again in the *Roberts v Johnstone* calculation for the new property. I have therefore adopted the figure of £695,000 as the starting point for the calculation. Applying the appropriate interest rate of 2.5% produces an annual figure of £17,375. The claimant contends that he is entitled to that annual sum, without reduction, throughout his life.
458. The defendant, however, submits that, during the period for which the claimant, if uninjured, could have been expected to live at home with his parents, there should be deducted from the capital value of the new property a sum representing the value of the property that the family would have had in any event. Miss Whipple suggests that the family would have had a property worth about £500,000. If that amount were to be deducted from the claimant's capital figure, the annual sum to which the claimant is entitled would fall to £4,875.
459. Miss Whipple argued that, if no deduction is made for the value of the home that the family would have had in any event, the effect will be that the claimant's parents and brothers will be living free of charge in the claimant's home and the defendant will, in effect, be required to finance that arrangement. She said that the fair course would be for the claimant to give credit for a notional amount of the capital cost (which should be valued by reference to the house the family would have had) or to charge his parents rent which would then be deductible from the annual sum claimed. Miss Whipple relied on the fact that, in *Roberts v Johnstone*, it appears that the claimant had invited the court to take into account the value of his parents' former home for the purposes of the calculation: see the judgment of Stocker, LJ at 890F. This was done and, Miss Whipple suggests, approved (tacitly at least) by the trial judge and the Court of Appeal.
460. Miss Whipple also relied on the case of *Lewis v Royal Shrewsbury Hospital NHS Trust*, an unreported decision of His Honour Judge MacDuff (as he then was) dated 29 January 2007. In that case, the claimant's parents had moved to accommodation that had been purchased by the claimant and suitably adapted for her use. They still owned the property in which they had formerly lived. Their plan was to let it out and they expected to make a modest annual sum from doing so. The claimant's legal advisers had at first conceded that the value of the previous property should be taken into account for the purposes of the *Roberts v Johnstone* calculation. However, by the time of the trial, they were contending that it was wrong in principle for the value of the claimant's parents' home to be offset against the value of the property owned by the claimant. On the particular facts of that

case, the judge was able to avoid deciding that issue by finding that it was fair and just for the rental income to be brought into account by setting it against the damages awarded for gratuitous care given to the claimant by her parents. He observed that it would be wrong for the defendant to have to pay both for the future care which the parents would give the claimant, and as for all the costs of accommodation, including adaptations to the property to make it suitable for the claimant's parents. He invited the parties to reach agreement as to how the annual rental sum should be brought into account.

461. Mr Melville argued that the *Roberts v Johnstone* claim was made on behalf of the claimant, not his parents. It would be wrong in principle for a deduction to be made from the claimant's award of damages of the value of a property which would have been owned by his parents. Mr Melville relied on the cases of *M (a child) v Leeds Health Authority* [2002] PIQR Q46 and *Iqbal v Whipps* [2007] LS Medical 97. In *M*, the claimant, her brother and her parents had lived in a detached house before the relevant negligence occurred, but thereafter had moved into a bungalow purchased and adapted to meet her needs. The defendant sought to deduct, during the period (to the age of 25 years) for which the claimant was expected to share the house with her family, the value to the claimant's parents of having a house provided free of charge for the whole family. Sullivan J (as he then was) rejected the defendant's argument. At paragraph 47 of his judgment, he said:

"I come back to the basic proposition, which is that this is a compensation claim made on behalf of M. It is intended to compensate her for the effects of her disability. While she, for the purposes of this calculation, notionally lives at home with her parents until the age of 25, it seems to me that she is in no different position from any child who could not reasonably be expected to go out into the market place and buy accommodation."

A further deduction was sought in respect of the value of the property that, if the claimant had not been injured, she would have been likely to have purchased herself when she left home. Sullivan J accepted that such a deduction was appropriate from the time when the claimant could have been expected to leave the family home and acquire her own accommodation.

462. In *Iqbal*, the claimant and his parents had been living in rented accommodation, the rent being paid by means of Housing Benefit, since the claimant's father was unfit to work. They moved into a suitably adapted bungalow, purchased from the claimant's damages. The defendant contended that an allowance should be made for notional rent payable by the claimant's parents and equivalent to the amount previously paid by way of Housing Benefit. It was contended that the claimant's parents would still be entitled to Housing Benefit if he entered into a tenancy agreement with the claimant's representative. There was, it was said, no reason why the claimant's parents should not pay rent to the claimant as they had previously paid it to their previous landlord. The defendant's counsel relied on

Roberts v Johnstone and the deduction that had been made in that case to reflect the value of the previous family home. He said that there was no reason why this should not also apply to a case where the family's previous property had been rented.

463. The judge in *Iqbal*, Sir Rodger Bell, considered that the defendant's argument failed for practical reasons in the particular circumstances of that case. The claimant's parents were not actually paying rent. The arrangement suggested by the defendant's counsel would be cumbersome and would merely result in money being transferred from one public body to another. The claim was that of the claimant himself so that the deduction of notional rent could be justified only by finding that the failure by the claimant (through his receiver or the Court of Protection) to demand rent from his parents constituted an unreasonable failure to take steps to mitigate his loss. It could not be characterised as such. He went on to make a wider point:

“More generally, it is not just to deprive parents of the incidental benefit of living rent free, when there are so many sacrifices on their part, most obviously the detriment to their quality of life, which must go uncompensated under our laws of tort, however high the award in their child's favour”.

464. This is a difficult issue. If no allowance at all is made for the claimant's parents' accommodation costs, the effect will be that they (and, while they are living at home, their other children) will be provided with a home, free of charge, for as long as the claimant lives. Meanwhile, the defendant will be required to compensate the claimant for the whole of the annual interest on the capital value of the property. On the face of it, that result does not seem fair.
465. The solution that is suggested is for the claimant to give credit, as against the capital value of the new property, for the value of the property that, had he not been injured, his parents would have owned and the family would have lived in. I agree with the judges in the cases of *M* and *Iqbal* that the problem with that solution is that the claim is brought on behalf of the claimant, not his parents. I consider that it is wrong in principle for the value of a property that would have been owned by the claimant's parents to be deducted from the value of the new property to be owned by him. To make such a deduction would also be unfair to the claimant. It would inevitably result in him being inadequately compensated for the loss of investment income on the capital value of the new property. It is not the claimant who has been relieved of the expense of purchasing a home; it is his parents. Yet the loss would fall on him. I recognise that, in *Roberts v Johnstone*, a deduction was made for the value of the claimant's parents' home. However, as I have already said, it appears that the claimant's advisers in that case had invited the court to make the deduction, so that the issue was not argued before the lower court or the Court of Appeal. The fact that neither court queried the concession made by the claimant does not necessarily imply that they “approved” it.

466. One way of achieving fairness for both claimants and defendants might be to require parents to pay a claimant an appropriate rent for occupying the accommodation and for the sum paid by way of rent to be deducted from the claim for his annual loss of investment income on the capital value of the new property. In many cases, the parents would be able to afford to pay some rent, even if it fell short of the market rent for the property. However, this would not be possible in all cases since some parents (like those in *Iqbal*) would lack the financial resources to pay rent. There would moreover be a risk that the parents' ability to pay rent might change over time. In that event, a claimant would end up out of pocket if, at trial, a deduction had been made from the annual claim for investment income on the capital value of his new property in order to take account of rent which was not in fact paid.
467. This court cannot require a claimant's parents to pay rent. Whether or not rent is paid is a matter for discussion and negotiation between a claimant's parents, the claimant's deputy and, possibly, the Court of Protection. As the judge in *Iqbal* observed, if there is no agreement that rent should be paid, the only way that a court can make a deduction of the notional amount of the rent from the claimant's damages is to characterise the failure on the part of the claimant to demand rent as a failure to mitigate his loss. The ordinary principles of mitigation of loss require the defendant to prove the failure by establishing that the claimant has unreasonably failed to take certain mitigating steps.
468. In the present case, the claimant's parents have indicated that, because of the severity of the claimant's cognitive disabilities, they intend that he should live with them for the rest of his life. That is a considerable commitment on their part. It is true that the claimant will have paid carers who will be responsible for most of his day to day care needs. Nevertheless, he will always function at the level of a young child and his parents will remain ultimately responsible for him. His condition means that he will require a considerable amount of emotional and other support from them. His disabilities will inevitably restrict the range of choices open to them in the future. If they are to take holidays as a family, their destination and mode of travel will have to be suitable for him. If they want to undertake leisure activities as a family, those activities will have to be tailored to meet his requirements. Once they are in the new property, it will be difficult or impossible for them to move again, because of the substantial costs of adapting another property for the claimant. In these and many other ways, their quality of life in the future will be adversely affected. Having regard to those factors, I do not consider that a failure on the part of the claimant (or those acting on his behalf) to demand that his parents pay rent to him can properly be regarded as "unreasonable".
469. The factors I have described above will be present, to a greater or a lesser extent, in the vast majority (if not all) cases involving children with severe disabilities, where the family has to move to alternative, disability-related accommodation. The context and circumstances of those cases will not, in my view, be appropriate for a finding of a failure to mitigate loss to be made. The view expressed by the judge in *Iqbal* - to the effect that it is not just to deprive parents of the incidental benefit of living rent free having regard to the

uncompensated effects of the defendant's negligence on them - can perhaps be regarded as another way of expressing the same conclusion.

470. For the reasons set out, I do not accept the defendant's contention that a deduction should be made from the annual sum calculated pursuant to *Roberts v Johnstone* up to the time when the claimant might have been expected, had he been uninjured, to have acquired a property of his own. From 1 January 2016 until that time, the annual *Roberts v Johnstone* figure will be **£17,375**.
471. From that time, it is plainly appropriate for a deduction to be made. The defendant contends that the claimant would probably have acquired his own accommodation in his mid twenties. The accommodation experts agreed that the cost of a "starter home" would have been between £100,000 and £150,000 and the cost of the type of family home he might have bought later (with a partner) would have been between £200,000 and £250,000. The claimant contends that it is likely that he would probably have bought a property jointly with a partner at the age of about 28 years.
472. I accept that it is likely that the claimant would have been about 28 years old when he first acquired his own property. I consider that the cost to him would probably be about £125,000, whether he bought a property on his own or a larger property jointly with a partner. Thus, the capital sum for the purpose of the *Roberts v Johnstone* calculation will reduce to £570,000 from the time when the claimant attains the age of 25 years and, for the remainder of his life, the annual *Roberts v Johnstone* figure will be **£14,250**.
473. My awards for accommodation costs are set out in Appendix L to this judgment.

TRANSPORT AND TRAVEL

Transport costs

Past costs

474. When the claimant was young, it was possible to transport him and his equipment in an ordinary family car. However, as he grew older, this became more difficult because of the increasing amount of equipment required for him. Consequently, in March 2008, his parents leased through the Motability scheme a Ford Galaxy people carrier for the use of the claimant and his carers, using monies from interim payments. The down payment on the Galaxy was **£10,625** which is agreed.

Future costs

475. The Galaxy will not accommodate a wheelchair so the claimant has to be lifted in and out of the vehicle. A suitable replacement vehicle has now been identified, namely a VW Caravelle, which can be adapted so as to be accessible for a wheelchair. The cost of purchasing and adapting such a vehicle would be £42,963. However, since the vehicle is to be leased under the Motability Scheme, the claimant will be required to pay only a deposit of **£17,708**. It is agreed that the vehicle will require replacement every five years, when a similar deposit will be payable. The annual cost of insuring the vehicle to be driven by the claimant's parents and carers is agreed by the OT experts in the sum of **£1,500**.
476. The defendant seeks to offset from the future transport claim the cost of the car which it is contended the claimant would have had in any event. The Counter Schedule seeks a deduction of £5,000 from the net cost of the claimant's disability-related vehicle from the age of 20 years. The claimant contends that no such deduction should be made.
477. I accept the defendant's contention that some deduction should be made to reflect the fact that the claimant would probably have purchased a car costing about £5,000 at some time. I do not accept that he would have done so as early as at the age of 20 years. Cars are expensive to run and are of limited use in a city. I regard it as probable that the claimant would have acquired a car at the age of, say, 25 years. From that time, the sum of £5,000 should be deducted from the deposit of £17,708 on the Caravelle, giving a figure of **£12,708**. My future awards under this head are set out in Appendix M to this judgment.

Additional travelling costs

Past costs

478. There is a claim for additional travelling costs occasioned by the need for the claimant to attend medical and other appointments. The claimant cannot travel by public transport so that the family have to use a car in circumstances when they would not otherwise have done so. I have no evidence of past vehicle mileages. The claims for both past and future costs are based on estimates made by the OT experts.
479. Ms Jenkins estimates that the claimant's parents and carers have in the past travelled an additional 3,500 miles per annum as a result of the claimant's disabilities. She has used a mileage rate of 25.13p per mile which is agreed by Ms Page. This gives a figure of £880 per annum or £6,160 to date. Ms Page has allowed for 2,000 additional miles per annum, which gives an annual sum of £463. The defendant has reduced that figure to £400 per annum, which produces a figure of £2,800 to date.

480. In the absence of any information about the mileages covered over the past few years, it is difficult to assess this item. I have taken into account the fact that, if the claimant had been uninjured, significant sums would have been spent on public transport. Doing the best I can, I consider that past additional travelling costs will have amounted to £3,500.
481. In addition, there is an agreed claim for taxi fares in the sum of £283, making total past costs of **£3,783**.

Future costs

482. For the future, the claimant has claimed for an additional 3,500 miles per annum and the defendant contends for an additional 2,000 miles per annum. I have assumed an additional 2,500 miles, at an annual cost of **£628**. This award is included in Appendix M to this judgment.

MISCELLANEOUS ITEMS

483. There are claims for a number of miscellaneous items not already included under other heads of damage. I deal with these items below and my awards are set out in Appendix N to this judgment.

Furnishings and equipment for carers' accommodation

484. The Schedule of Loss contains a claim for £11,244, comprising claims for furnishings and equipment for the carers' bedroom and office, a computer and printer for the use of carers, provision for stationery, postage and additional telephone calls and replacement of the relevant equipment. The claim is based on the evidence of Ms Jenkins. Ms Page deferred to the accommodation experts' views about furnishings and fittings and suggested that the care experts should deal with office equipment and stationery.
485. The carers' bedroom at the current house contains appropriate furniture and fittings which have been provided by the claimant's parents. Ms Page's evidence, which I accept, was that most of the necessary items had already been purchased, with the exception of a television, desk and chair. I have allowed the sum of **£250** to enable these items to be purchased immediately.
486. I have already indicated that I do not consider that a carers' office is required. However, when the family move, the carers' bedroom will have to be furnished and equipment for the kitchenette will have to be provided. Various estimates for the cost of furnishing the carers' accommodation have been provided. Mr Wethers estimated the cost of furnishing the carers' bedroom (excluding carpet and curtains) at £2,344. Ms Jenkins allowed

£1,220, inclusive of carpet, curtains and some kitchen equipment, plus £96 for a desk and chair. Mr Cowan's assessment (also inclusive of carpets and curtains) was £3,245. Taking into account these various views, and bearing in mind that it should be possible to re-use some of the items from the current house, I consider that a reasonable sum for furnishing and equipping the carers' accommodation at the new property would be **£2,500**. Ms Jenkins has provided replacement periods for every individual item of equipment. I consider that I should take a broadbrush approach to this item. I therefore allow replacement of all the relevant equipment every 10 years after 1 January 2016.

487. The defendant contends that there is no need for the carers to have a computer and printer, telephone and stationery for their use. I do not agree. A computer and printer will be required for producing rotas, care plans and other documents and for communicating by email with other members of the care team, the case manager and other professionals. A mobile telephone will also be necessary for communication, not least in the event of problems arising when the claimant is out with his carers. I have therefore allowed the cost of a computer and printer in the sum of **£500**, with replacement every 5 years, together with an annual sum of **£260** to cover stationery, postage and additional telephone calls.

Additional costs associated with feeding and incontinence

488. The past costs of additional clothing and bed linen, together with the costs of additional electricity and washing powder for larger amounts of laundry and the costs associated with more frequent replacement of washing machines and tumble driers, are agreed in the sum of **£1,200**.
489. The claim for future additional costs of clothing is agreed at £180 per annum, as are the claims for future additional bed linen (£150 every 2 years), the additional costs of laundry (£138 per annum) and the annual cost of more frequent replacement of appliances (£31 per annum). The total annual sum is therefore **£424**.

Costs of cleaning service

490. Since April 2008, the claimant's parents have employed the services of a cleaner through an agency. The cost of these services to the date of trial is claimed in the sum of £5,310.
491. In oral evidence, Ms Nowell was asked whether it was likely that she and Mr Whiten would have employed a cleaner in any event. She acknowledged that they would probably have done so. However, she pointed out that, as a result of the claimant's disabilities, there is a considerable amount of extra cleaning to be done over and above that which is necessary in an ordinary household. The house has four bath/shower rooms, two of

which are exclusively used by the claimant and his carers. The claimant has a lift, a hoist and other equipment which has to be thoroughly cleaned and disinfected on a regular basis. The carers are responsible for some of the claimant's cleaning but their caring duties do not permit them to do it all. The additional cost of cleaning in the future is claimed at £1,460 per annum for four hours a week.

492. The defendant suggests that, since it is likely that a cleaner would have been employed in any event, I should award only half the amounts claimed, i.e. £2,655 for the past and £730 per annum for the future.
493. I accept that there is a good deal of additional cleaning required as a consequence of the claimant's disabilities and that it is neither practical nor desirable for the carers to undertake all that additional work. However, since it is probable that the claimant's parents would have employed a cleaner in any event, I accept the defendant's contention that only half of the costs should be allowed. Accordingly, I award the sum of **£2,655** in respect of past costs and **£730** per annum for the future.

Future costs of paying for decorating, do-it-yourself and gardening work

494. The Schedule of Loss contains a claim for the costs of decorating, do-it-yourself and gardening work which, but for his disabilities, the claimant is likely to have carried out himself but will now have to pay others to do for him. The total amount claimed is £2,160 per annum from the age of 22 years. The defendant contends that this claim is highly speculative and should be rejected. It points out that many men, particularly those with full-time jobs, do not undertake any home maintenance work at all and that there is no reason to believe that the claimant would have done so.
495. I find that the probability is that, during much of his twenties, the claimant would have been living in rented accommodation in a city and with no garden. That being the case, it is unlikely that he would have done any significant amount of maintenance work inside or outside his property. However, I have found that, from the age of 28 years, he would have had his own home and would probably have carried out some maintenance work to the value of, say, **£1,000** per annum from that time on. He will now have to employ others to do that work.

Petty cash

496. There is a claim for undocumented expenditure of "petty cash" in the sum of £40 per week from September 2006 to the date of trial, a total of £8,880. In oral evidence, Ms Nowell said that the petty cash was used to buy small pieces of equipment for the claimant, such as specialist bibs, spoons, cups and feeding supplements. This evidence contrasted with the information contained in the Schedule of Loss in which the claim is put on the basis of

incidental expenses incurred as a result of the employment of carers. The defendant relies on the absence of evidence to support this claim and contends that there is no reason to suppose that the monies were spent on items which would not have been required even had the claimant not suffered from his disabilities.

497. The claimant bears the burden of proving his loss. There is a conflict between the basis on which the head of damage was presented in the Schedule of Loss and the evidence about it given by Ms Nowell. In the circumstances, it is not possible to say whether or not the expenditure was occasioned by the claimant's disabilities and additional to expense which would in any event have been incurred. Nor is it possible to ascertain the extent, if any, to which there has been duplication between this head of loss and other heads in the Schedule of Loss. For these reasons, I make no award under this head.

HOLIDAYS

Past costs

498. Past additional costs of holidays occasioned by the claimant's disabilities are agreed in the sum of **£5,607**.

Future costs

499. There is a very substantial claim (£541,845) for future additional holiday costs. The claim comprises three distinct elements. The first element relates to the additional costs associated with an annual visit to Barbados, comprising the cost of travelling there and back and the costs of carrying out adaptations to the claimant's grandparents' home to make it suitable for the claimant. The second element concerns the costs of adapting, equipping and running a farmhouse in Northern France so as to be suitable to accommodate the claimant and his family. The third element comprises carers' subsistence costs during holidays.

The claim for holidays in Barbados

The cost of the journeys

500. Ms Nowell's father is Barbadian and she has dual nationality. Although she and her family left Barbados when she was a small child, members of her father's family still live there. Her parents now live in the North East of England but retain a house and land in Barbados where they spend part of each year. Before the claimant's birth, Ms Nowell regularly spent holidays in Barbados. In 2007, she told Ms Jenkins that, had it not been for the claimant's disabilities, she would have anticipated taking him to Barbados every

few years. In the intervening years, the family would have taken a holiday in Europe. In 2009, Mr Whiten and Ms Nowell took the claimant and Dexter to Barbados for the first time. They travelled by air. Because of the claimant's disabilities, it was necessary for him (and therefore his parents and Dexter also) to travel business, rather than economy, class. This worked well and both the claimant and his equipment were accommodated satisfactorily on the aircraft. The family did not visit Barbados in 2010.

501. The evidence of the claimant's parents was that they now intend that the family should visit Barbados annually, taking at least one carer to assist with the claimant. The claim is based on the assumption that the claimant will continue to make annual visits to Barbados throughout his life. However, in order to reflect the fact that the claimant would have had holidays in any event and also that, for various reasons, the family might not travel to Barbados every year, the Schedule of Loss concedes that the claim for the costs of travelling to and from Barbados should be discounted by 30%.
502. The claim comprises the cost of business class air fares for the claimant and two carers (estimated at £5,878 per annum to age 11 years and £6,330 per annum from 12 years for life). The defendant accepts that, in principle, the claimant is entitled to the increased cost of visits to Barbados up to the age of 11 years. However, it is contended that there should be a deduction of £500 from the annual sum claimed to reflect the cost of the single fare which would have been incurred in any event. In addition, the defendant suggests that, having regard in particular to Mr Whiten's oral evidence that the claimant dislikes the heat and the evidence of both parents that he tends to be ill when on holiday, it is doubtful whether, even in the short term, a holiday in Barbados is really a sensible option for the claimant. The defendant contends that I should discount this part of the claim by 50% to reflect the fact that the claimant is unlikely to make the journey to Barbados every year.
503. The defendant's case, based on the evidence of its OT expert, Ms Page, and its care expert, Ms Douglas, is that the process of transferring the claimant into an aircraft seat, even in business class, is already hazardous and, by the time he reaches the age of 12, will give rise to an unacceptable risk of injury both to the claimant and his parents or carers. Ms Page pointed out that the transfer has to be carried out in a confined space using a lifting sling to bear the claimant's whole weight. The manoeuvre carries a risk of injury to those lifting the claimant, as well as a risk that they might drop the claimant and cause him injury. Ms Page pointed out that the claimant will have to be transferred into and out of his aircraft seat using a wheelchair provided by the airline, rather than his own wheelchair with its special seating system. That would make him more difficult to manoeuvre, particularly if he were to go into spasm whilst being transferred. A further difficulty is that the claimant's incontinence pads will have to be changed during the flight. This has to be done in the aircraft cabin and, when the claimant is older, will, Ms Page suggested, involve an unacceptable loss of the claimant's personal dignity. Her view was that these difficulties will make it impracticable and undesirable for the claimant to fly once he attains the age of 12 years.

504. Ms Douglas shared this view. She doubted whether the claimant could be transferred safely into a business class seat. She referred to the difficulties presented by the claimant's spasms and involuntary movements and the potential unpleasantness for other passengers that might be caused by changing the claimant's incontinence pads in the aircraft cabin. She also referred to the risk of the claimant choking or aspirating if he could not be seated upright whilst eating or drinking.
505. Ms Jenkins said that she had experience of non-weight bearing clients with cerebral palsy aged between 15 and 24 years who fly on a regular basis. Their parents transfer them into their aircraft seat and their incontinence pads are changed during the flight without difficulty. Mrs Sargent said that, as a case manager, she had been responsible for arranging holidays for people with similar disabilities to those of the claimant. She did not consider that travelling to Barbados by air would present any particular problems. She accepted that paid carers could not be asked to take the risks which would inevitably be associated with manoeuvring the claimant within the confines of an aircraft cabin. The task would have to be undertaken by the claimant's parents, using a suitable lifting sling. If the claimant's parents were unable or unwilling to carry out this task, the claimant would have to travel by other means.
506. On behalf of the claimant, it is suggested that, if I were to find that there will come a time when he cannot travel by air, I should award the costs of him, one or two carers and a family member travelling to and from Barbados by cruise ship, whilst the other parent and the claimant's brothers travel by air. The annual cost of the journey, which would take between 10 and 14 days each way, is claimed in the sum of £18,700. Mrs Sargent said that she has clients who go on cruises and it works well. The claimant's parents are confident that they would be able to find carers willing to accompany them on extended holidays to Barbados and that prolonged absences from home would be feasible for the claimant and whichever parent accompanied him by sea.
507. The defendant's case is that travel by cruise liner would be wholly impracticable. It would involve the claimant, at least one member of his family and his carers being away from home for as long as 4-6 weeks on an annual basis. Mrs Douglas's evidence was that it would be difficult to find paid carers who are willing to be away for that length of time. During the journeys, the claimant would be living in a confined space without specialised equipment. He may well become frustrated and distressed by the noise and movement of the ship.
508. The defendant contends that, from the age of 12 years, I should award an annual sum of £3,000 to meet the additional costs which will inevitably be incurred by the claimant wherever he chooses to travel.
509. It is accepted by the experts (with the possible exception of Ms Jenkins) that, even now, the risk of manoeuvring the claimant on board an aircraft is such that paid carers cannot be

asked to undertake the task. I am sure that is correct. As the claimant gets bigger and heavier, the risk must inevitably increase. His uncontrolled movements will make the task of transferring him in an enclosed space even more hazardous, both for him and for his parents who will have to lift him. Even if they were prepared to take the risk of injuring themselves, there is still the risk to the claimant himself to be considered. There is also the effect on him and other passengers of changing his incontinence pads in the cabin during the flight and the fact that, as Ms Nowell pointed out, air travel places severe restrictions on the amount of equipment that can accompany the claimant. I find that it is probable that, in about five years' time (i.e. when he attains the age of 12), the problems associated with air travel will be such that an alternative means of transport will have to be found. It is not a question, as his parents suggest, of the claimant not being "entitled" to travel by air from that time. The fact is that it will probably not be safe or practicable for him to do so in the long term. Fortunately, that will not prevent him from seeing his grandparents on a regular basis since they spend much of the year in the UK.

510. I do not consider that travelling by sea to Barbados constitutes a practicable or reasonable alternative to flying. It would be extremely expensive, both in terms of time and money. It would involve the claimant missing school and his various therapies and being parted from much of his specialised equipment for protracted periods. The difficulties of managing the claimant for 3-4 weeks in a confined space without much of the specialised equipment necessary for his care would be considerable. He would have no access to suitable medical care if needed. Moreover, the evidence of Ms Nowell in her witness statement of 19 April 2010 that the claimant "doesn't tolerate" ferry travel even to France does not suggest that he would react well to a sea voyage lasting 10-14 days. I am satisfied that, once travel to Barbados becomes impossible, the claimant's parents or carers will select some other holiday destination for him which is accessible by car and/or train.
511. I regard it as unlikely that the claimant and his family will travel to Barbados every year until he is aged 12 years. I note that the family did not go to Barbados last year and that the original intention seems to have been to visit Barbados every few years, rather than annually. However, I consider it reasonable, until the claimant attains the age of 12 years, to allow 70% of the annual cost of travelling to Barbados. The full annual cost is £5,378, taking into account the cost which would have been incurred even had the claimant been uninjured. Reduced by 30%, the figure is **£3,765** per annum.

The cost of adaptations to the claimant's grandparents' house

512. Because of the lack of suitable facilities for the claimant at his grandparents' home in Barbados, on their visit in 2009, the family stayed in accommodation nearby. In the future, they would prefer to be able to stay with Mr and Mrs Nowell. In order to facilitate this, some limited adaptations to the property will be necessary, the cost of which is estimated at £3,500. In addition, certain equipment, namely ramps, a portable hoist, a shower and changing table, a specialised bed, mattress covers and bumper covers will be required at an initial cost of £7,699. The total capital cost of the adaptations and equipment

is claimed in the sum of £11,199. In addition, the replacement costs for the equipment are also claimed over the claimant's lifetime, together with the cost of two-yearly servicing of the hoist.

513. The defendant accepts the costs of the adaptations and of the purchase of specialised equipment in the total sum of £7,384 (to include servicing of the portable hoist). It allows no replacement of equipment, given its contention that the claimant will not go to Barbados after he is 11 years old. Furthermore, the defendant contends that a less expensive shower/changing table, bed, mattress and bumper covers/cot sides will be adequate for the infrequent use to which the items will be put.
514. I have allowed **£9,500** under this head on the basis that the more expensive bed, but not the more expensive changing table, will be required. That figure includes the servicing of the hoist. No replacement of equipment is included because of the small amount of use the equipment will have and the short period for which it will be used.

The claim for holidays in France

515. The claimant's parents wish to buy a property in Northern France and to adapt and equip it to meet the claimant's needs so that the family can use it for holidays. The Schedule of Loss contains a claim in the sum of £212,407 for the cost of adaptations, together with the purchase, maintenance and replacement of specialised equipment to be kept there and the additional running costs of the property made necessary by the claimant's disabilities. In addition, there is a claim of £600 per annum for the additional cost of travel to France. This claim is in addition to the claim for annual holidays in Barbados and the costs of adapting the claimant's grandparents' house there.
516. Apart from the holiday in Barbados in 2009, the claimant's parents have taken holidays with the claimant in Gran Canaria, France and Cornwall. It seems that these holidays have not been entirely successful. Although his parents booked accommodation which was said to be accessible to the disabled, it was not suitable for the claimant. His parents did not have access to specialised equipment for him. In Gran Canaria, he was ill and the local hospital declined to treat him because of his disabilities. In Cornwall, he again became ill and, since they could not obtain adequate medical care for him locally, his parents cut short the holiday and returned home.
517. The claimant's parents say that these problems would be solved if they could purchase a holiday house in Northern France and adapt and equip it for the claimant's needs. They would not have to transport large amounts of equipment every time they went on holiday. Regular visits to the same place would enable them to acquire a good knowledge of the local services (in particular, medical services) available for the claimant. The choice of a location in Northern France would make the property easily accessible for the family by

people carrier via the Channel Tunnel. It would enable carers to be rotated during the course of a holiday and would make it easy for the family to return home quickly in case of need. It would provide a holiday destination which the claimant could visit throughout his life.

518. In her witness statement of 19 April 2010, Ms Nowell described a property in which she and Mr Whiten were interested and which exemplified the type of house they would like to purchase. It was a six-bedroomed farmhouse in Normandy built on three storeys with an acre of land. It was on the market at an asking price of £148,971. Ms Nowell suggested that it would be possible to install a lift in the property and to create, *inter alia*, a suitable bedroom and specialised bathroom for the claimant, a bedroom and sitting room for a carer and storage space for the claimant's equipment.
519. The claimant's accommodation expert, Mr Wethers, was asked to provide costings for adaptation work to a holiday home. His first costings appear in his Report of 14 January 2010. Although he does not specifically say so in that Report, it seems that, at that time, he was contemplating the purchase of a single storey property. His costings did not include the internal lift envisaged by Ms Nowell. Instead, he provided for the building of an extension incorporating a bedroom and specialist bathroom for the claimant and accommodation for a carer, together with other work (external alterations, ramps to entrance doors and widening of doors) at a cost of £59,911. Items of specialised equipment (hoist, bath with whirlpool, macerator and body drier) were costed at £23,971. Professional fees were estimated at £15,129 and V.A.T. at £6,581. The total costs of adaptation were estimated at £105,592. In addition, Mr Wethers estimated additional running and maintenance costs of the property attributable to the claimant's disabilities at £697 per annum. The annual cost of maintaining the specialised equipment was estimated at £2,319 per annum. It was assumed that the adaptation work would add £15,000 to the value of the property and a *Roberts v Johnstone* claim was made for notional annual interest that would be payable on that sum.
520. The first Joint Statement of the accommodation experts records that Mr Wethers was at that time estimating the cost of adaptations at £110,260. The estimated cost of specialised equipment had risen to £27,000, with an additional allowance of £14,700 for furnishings. He estimated annual maintenance costs at £3,310 and annual running costs at £3,100. His estimate of the maintenance/replacement costs of equipment was £4,262 per annum. In addition, he estimated purchase costs at £9,500 per annum and additional insurance costs at £450 per annum.
521. Mr Cowan estimated the cost of adapting a holiday home at £61,072, the cost of specialised equipment at £13,989, professional and local authority fees at £11,657 and TVA (the French equivalent of V.A.T.) at £15,820. His total figure of £102,538 is very close to that estimated by Mr Wethers in his Report of 14 January 2010. He estimated additional running costs of the property attributable to the claimant's disabilities at £91 per

annum. He suggested that the adaptation work would add £40,000 to the value of the property.

522. The defendant's case is that the claim in respect of the holiday home in France is excessive and unreasonable, especially taking into account the amount of time the claimant would spend there. The evidence of the claimant's parents to the effect that the family would be able to spend weeks of the year in France is, the defendant says, wholly unrealistic, having regard to the parents' need to maintain their earnings and the claimant's requirement for therapy and access to his specialised physiotherapy and other equipment. It is argued that there is real doubt as to whether the claimant's parents would be able to afford to buy and run an additional property, in view of their other financial commitments and their limited earnings at present. The suggestion (made in oral evidence by Ms Nowell) that the claimant might lend his parents the funds to purchase the French house is, the defendant submits, entirely inappropriate. The defendant contends that it is doubtful whether the property would be purchased at all and, if it were, whether it would benefit the claimant to any great extent.
523. The sums involved in the adaptation and equipping of a holiday home to meet the claimant's needs would be very substantial indeed and would be disproportionate to the benefit which would be derived by the claimant since he would be staying there for no more than a few weeks a year. The costs of adaptation are likely to be significantly higher than that suggested in the estimates of the accommodation experts. For example, if the claimant's parents buy a property which requires the installation of a lift (and that seems to be their intention), that will be a significant item of additional expenditure. If a property were to be purchased and the adaptations were to prove significantly more expensive than the damages the claimant had received for that purpose, either his parents would have to meet the difference or (more likely) the excess would be paid from the claimant's capital fund, thus reducing the amount available to him for his other needs. That would not be in his best interests.
524. I am satisfied that the claimant does not have a reasonable need for a holiday home. His needs would be met satisfactorily if his parents, with the assistance of his case manager, were to identify, in France or elsewhere, a property or properties with appropriate accommodation for a person with his disabilities. I am satisfied that it should be possible to find a suitable property which has all or most of the specialist fittings he requires. Many of the benefits of local knowledge could be achieved by holidaying in the same property or area on a regular basis.
525. I consider that the right course is for me to award an annual sum to reflect the additional costs occasioned by the need for accommodation which is suitable for a person with disabilities and larger than it would otherwise have been in order to accommodate one or more carers as well as the family.

526. The addition of carers will also mean that the family will incur higher travelling expenses. Ms Jenkins has assessed the costs of travel to and from France at £1,200 per annum. The claim is for 50% of that sum on the basis that, because of the claimant's disabilities, it will be necessary to take a second vehicle to France. Ms Page puts the additional cost at £158 per annum. I regard it as reasonable to allow the additional cost of one vehicle and two persons (the claimant's carers) on Eurostar, together with associated travelling expenses.
527. In order to take account of these factors, I shall allow **£2,500** per annum (in addition to the Barbados travel costs) until the claimant attains the age of 12 years and **£5,000** per annum from the age of 12 years for life.

Carers' subsistence on holiday

528. There is a claim for subsistence allowances for carers when they accompany the claimant on holiday. Ms Jenkins has suggested an allowance of £20 per day per carer. This is in addition to the carers' expenses which form part of the care claim and which I have awarded in the sums of £170 per month from now to the age of 11 years, £270 from 11 years to 19 years and £390 from 19 years for life. The defendant's case is that those awards include carers' subsistence when on holiday. Ms Jenkins said that it was generally expected that the expenses on holiday would be greater than at home since the carers would accompany the claimant for more meals and expeditions.
529. I consider that it is reasonable to allow for a modest increase in carers' expenses over holiday periods. The carers will be eating all their meals with the family and will be included in any outings that the family or the claimant undertakes. Having regard to the expenses which have already been allowed, I consider it appropriate to allow £70 per week for five weeks a year, an annual sum of **£350**.
530. Details of my award for holiday costs are at Appendix O to this judgment.

CONCLUSIONS

531. Damages for pain, suffering and loss of amenity, together with interest, amount to **£257,889**. A summary of my award for past costs is at Appendix P to this judgment. Total past losses amount to **£690,266**. That sum will carry interest which the parties have agreed at **£11,925**. A summary of my lump sum award for future losses appears at Appendix Q to this judgment. Total future losses (including care, case management and loss of earnings which will be paid by way of periodical payments) amount to **£5,685,507.89**. The total lump sum award (before deduction of interim and Compensation Recovery Unit payments) is therefore **£2,709,860.87**.

APPENDIX A: MULTIPLIERS

Claimant's date of birth	24 June 2004
Claimant's current age	7 years
Predicted life expectancy	To 35 years
Full life multiplier	20.21
From now to	
8 years	0.99
11 years	3.81
1 January 2016	4.26
12 years	4.70
19 years	10.39
30 years	17.55
From 8 years for life	19.22
From 11 years to 19 years	6.58
From 1 January 2016 to 25 years	10.27
28 years	12.13
for life	15.95
From 12 years for life	15.51
From 19 years to 30 years	7.16
for life	9.82
From 25 years for life	5.68
From 28 years for life	3.82
From 30 years for life	2.66

APPENDIX B: LOSS OF EARNINGS

From the age of 22½ years for life	£31,000 per annum
Multiplier	7.33
Capitalised Value	£227,230.00

APPENDIX C: PAST GRATUITOUS CARE

Period	No of weeks	No. of hours per week	Hourly rate (£)	Total cost (£)
1 October 2004 - 31 December 2004	13	42	7.94	4,335.24
1 January 2005 - 31 March 2005	13	49	7.94	5,057.78
1 April 2005 - 24 June 2005	12	49	8.18	4,809.84
25 June 2005 - 31 August 2005	10	56	8.18	4,580.80
1 September 2005 - 31 March 2006	30	51	8.18	12,515.40
1 April 2006 - 31 August 2006	22	51	8.43	9,458.46
1 September 2006 - 31 March 2007	30	56	8.43	14,162.40
1 April 2007 - 24 June 2007	12	56	8.68	5,832.96
25 June 2007 - 1 August 2007	10	46	8.68	3,992.80
1 September 2007 - 31 March 2008	23 7	26 (term time) 42 (school holidays)	8.68 8.68	5,190.64 2,551.92
1 April 2008 - 31 March 2009	52	26	8.85	11,965.20
1 April 2009 - 31 January 2010	32 12	14 (term time) 29 (school holidays)	8.98 8.98	4,023.04 3,125.04
1 February 2010 - 31 March 2010	5 3	14 (term time) 29 (school holidays)	8.98 8.98	628.60 781.26
1 April 2010 - 31 March 2011	39 13	14 (term time) 29 (school holidays)	9.24 9.24	5,045.04 3,483.48
31 March 2011 - 24 June 2011	9 3	14 (term time) 29 (school holidays)	9.24 9.24	1,164.24 803.88
			TOTAL	103,508.02

Discounted by 25% :

£103,508.02 x 75% = £77,631

APPENDIX D: PAST PAID CARE

Agreed figure for the costs incurred in respect of past care £ 189,893

Less

(a) Nursery fees:

£11,500 p.a from

1 October 2004 to 31 August 2008 (3¹¹/₁₂ years) £ 45,042

(b) Child care:

£7,500 p.a from

1 September 2008 to 30 June 2011 (2¹⁰/₁₂ years) £ 21,250

Total amount to be offset: £ 66,292

Net past paid care **£ 123,601**

APPENDIX E: FUTURE CARE

(i) **From now until the claimant attains the age of 11 years**

Cost of care

Term time:

30	hours per week	@	£13 per hour (weekdays)	:	£ 390
20	hours per week	@	£15 per hour (weekends)	:	£ 300
30	hours per week	@	£ 3 per hour	:	£ 90
			(enhanced rate for team leader)		
5	weekday nights	@	£65 per night	:	£ 325
2	weekend nights	@	£75 per night	:	£ 150
2	hours per week	@	£13 per hour (second carer)	:	£ 26
			TOTAL		<u>£ 1,281</u>

School holidays:

60 hours per week	@	£13 per hour (weekdays)	:	£	780
20 hours per week	@	£15 per hour (weekends)	:	£	300
30 hours per week	@	£ 3 per hour	:	£	90
		(enhanced rate for team leader)			
5 weekday nights	@	£65 per night	:	£	325
2 weekend nights	@	£75 per night	:	£	150
4 hours per week	@	£13 per hour	:	£	52
		TOTAL		£	1,697

£1,281 x 43 weeks' term time	:	£55,083
£1,697 x 17 weeks' school holidays	:	<u>£83,932</u>

Annual additional costs:

ERNIC @ 12.8% on £55,357	£	7,086
Food and other expenses	£	2,080
Recruitment advertising	£	1,000
Insurance	£	134
Training	£	750
Total annual additional costs		<u>£11,050</u>

Total annual care costs and associated expenses: £ 94,982

Capitalised sum : £361,881.42

(ii) From the age of 11 years until the claimant attains the age of 19 years

Cost of care

Term time:

50 hours per week	@	£13 per hour (weekdays)	:	£	650
40 hours per week	@	£15 per hour (weekends)	:	£	600
30 hours per week	@	£ 3 per hour	:	£	90
		(enhanced rate for team leader)			
5 weekday nights	@	£65 per night	:	£	325
2 weekend nights	@	£75 per night	:	£	150
		TOTAL	:	£	<u>1,815</u>

School holidays:

100 hours per week	@	£13 per hour (weekdays)	:	£	1,300
40 hours per week	@	£15 per hour (weekends)	:	£	600
30 hours per week	@	£ 3 per hour	:	£	90
		(enhanced rate for team leader)			
5 weekday nights	@	£65 per night	:	£	325
2 weekend nights	@	£75 per night	:	£	150
		TOTAL	:	£	<u>2,465</u>

£1,841 x 43 weeks' term time	£ 78,045
£2,465 x 17 weeks' school holidays	£ 41,905
<u>Annual cost of care</u>	<u>£119,950</u>

Annual additional costs:

ERNIC @ 12.8% on £81,063	£ 10,376
Food and other expenses	£ 3,280
Recruitment advertising	£ 1,000
Insurance	£ 1,000
<u>Total annual additional costs</u>	<u>£ 15,790</u>

Annual employers' pension contributions

3% on £81,063 = £ 2,432

Reduced to £ 1,500

Total annual care costs and associated expenses: £119,950 + £15,790 + £1,500 = £ 137,240

Capitalised sum: £903,039.20

(iii) From the age of 19 years onwards

Cost of care

140 hours per week	@	£13 per hour (weekdays)	£ 1,820
56 hours per week	@	£15 per hour (weekends)	£ 840
30 hours per week	@	£ 3 per hour	£ 90
		(enhanced rate for team leader)	
5 weekday nights	@	£65 per night	£ 325
2 weekend nights	@	£75 per night	£ 150
		TOTAL	£ 3,225

Annual cost of care: £3,225 x 60 weeks £193,500

Annual additional costs:

ERNIC @ 12.8% on £142,065	£18,184
Food and other expenses	£ 4,680
Recruitment advertising	£ 1,500
Insurance	£ 134
Training	£ 1,000
<u>Total Annual Costs</u>	<u>£ 25,498</u>

Annual employers' pension contributions

3% on £142,065 £ 4,262

Reduced to £ 3,000

Total annual care costs and associated expenses: £193,500 + £25,498 + £3,000 =
£221,998

Capitalised sum: £2,180,020.30

APPENDIX F: FUTURE CASE MANAGEMENT

(i) From now until the claimant attains the age of 11 years

120 hours @ £90	£10,800 per annum
Travelling expenses	£ 800 per annum
<u>TOTAL</u>	<u>£11,600 per annum</u>

Agreed Capitalised sum: £44,196

(ii) From the age of 11 years until the claimant attains the age of 19 years

130 hours @ £90	£11,700 per annum
Travelling expenses	£ 900 per annum

<u>TOTAL</u>	<u>£12,600 per annum</u>
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Agreed Capitalised sum: £82,908

(iii) From the age of 19 years onwards

First year: one-off costs	
40 hours @ £90	£ 3,600
Travelling expenses	£ 300
<u>TOTAL</u>	<u>£ 3,900</u>

Agreed Discounted Value: £2,900

Annual costs:	
140 hours @ £90	£12,600 per annum
Travelling expenses	£ 1,000 per annum
<u>TOTAL</u>	<u>£13,600 per annum</u>

Capitalised sum: £133,552.00

APPENDIX G: FUTURE DEPUTYSHIP

First year following trial : £17,898

Thereafter annual cost : £ 9,211 per annum

Capitalised sum: £177,035.42

Cost of statutory wills, assumed to be prepared
in 2022 and 2029 : £ 5,380

Discounted Value: £7,549.66

Cost of replacing deputy, assumed to be incurred
in 2017, 2027 and 2037 : £ 1,700

Discounted Value: £ 3,505.57

Cost of winding up deceased's estate, assumed to be incurred in 2039 : £ 1,200

Discounted Value: £ 601.20

APPENDIX H: FUTURE THERAPIES AND EDUCATIONAL COSTS

Physiotherapy and related therapies and activities

Capitalised Sum

Physiotherapy:

From now until claimant attains the age of 19 years	:	£ 6,690 per annum	£ 69,509.10
From age 19 years to 30 years	:	£ 2,160 per annum	£ 15,465.60
From age 30 years	:	£ 2,700 per annum	£ 7,182.00
One off course of physiotherapy	:	£ 1,500	£ 1,500.00

Additional Cost of accessing leisure facilities

From now until claimant attains the age of 19 years	£ 1,000 per annum))	£ 25,120.00
From 19 years	:	£ 1,500 per annum)	

Hippotherapy

From now until claimant attains the age of 30 years	£ 180 per annum	£ 3,159.00
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Speech and language therapy

From now until claimant attains the age of 11 years	£ 2,970 per annum	£ 11,315.70	
From age 11 to 19 years	:	£ 2,700 per annum	£ 17,766.00
From age 19 years	:		
12 hours' annual carer training	£ 1,620 per annum	£ 15,908.40	
12 hours' SLT when the claimant's voice output system is updated or changed: £1,620 to be incurred every 3 years	Agreed as	£ 5,458.29	
One off costs of SLT assumed to be incurred in 2034	£ 2,650	£ 1,502.55	

Psychological therapy

5 sessions in the next two years	:	£ 750)	
)	£ 4,319.25
25 sessions thereafter	:	£ 3,750)	

Educational costs

Cost of legal assistance for Tribunal,
assumed to be incurred in 2016 : £20,000 £ 17,898.00

Valuation of risk that one to one assistant might have to be
employed as from January 2016 : £ 7,500 (Already Discounted) £ 7,500.00

Occupational therapy

From now until claimant attains the age of 19 years £ 3,030 per annum £ 31,481.70

From age 19 years : £ 1,890 per annum £18,559.80

APPENDIX I: EQUIPMENT RECOMMENDED BY PHYSIOTHERAPISTS

ITEM & TIME OF PURCHASE	Capital Cost (£)	Period Required	Replacement Period	Annual Maintenance Cost (£)
Neuro plinth (immediate need)	895	Life	15 years	70
Walker (already purchased)	N/A	To 16 years	N/A	400
Bracing for walker (immediate need)	250	To 11½ years	N/A	N/A
Replacement walker	(1,600)	From 16 years	N/A	N/A
Prone wedge (immediate need)	200	Life	10 years	N/A
Physiotherapy ball (immediate need)	50	Life	7 years	N/A
Lycra hand splint (immediate need)	400	To 18 years From 19 for life	2 years 5 years	N/A N/A
Lycra body suit (immediate need)	2,000	To 18 years From 19 for life	2 years 5 years	N/A N/A
Standing frames (2) (immediate need)	2,000	To 16 years	N/A	N/A
Replacement frame	(3,800)	From 17 for life	N/A	N/A
Sleep system (contour shorts) (already purchased)	(560)	Life	2-3 years	N/A
Trike (already purchased)	(3,403)	To 18 years	One at 14 years	N/A
DAFOs, AFOs & Pedro boots (already purchased)	(1,246)	To 18 years From 19 for life	Annual 3 years	N/A N/A

TOTAL

£54,415.50

APPENDIX J: OCCUPATIONAL THERAPY EQUIPMENT

ITEM	Capital Cost (£)	Period Required	Replacement Period	Annual Maintenance Cost (£)
Manual wheelchairs and buggies				
R82 Combi manual wheelchair base and RS x:panda seating system (immediate need)	4,000 (3,200)	To age 19 years From age 19 years for life	3 years 5 years	125 125
Chunc 45 manual wheelchair (future need)	(1,100)	To about age 18 years	One at age 12 years	N/A
All terrain buggy (already purchased)				
Electric wheelchairs				
SMART chair (future need)	(15,000)	From 11½ to 25 years	One at age 18 years	100
RS x:panda seating system (future need)	(2,200) (9,020)	From 11½ to 25 years	3 years	N/A
Groove wheelchair (future need)	(11,500)	From 11½ to 25 years	5 years	500 for tyres & batteries
Spectra wheelchair with SMART controls (future need)	N/A (2,200)	From 25 years for life	5 years N/A	500 for tyres & batteries
Servicing and insurance (future need)	(340)	From 11½ years for life	4 years	£270
RS x:panda seating system (future need)		From 11½ years for life	5 years	N/A
Warranty (future need)		From 11½ years for life		
Portable ramps (immediate need)	230	Life	15 years	N/A
Servicing for overhead hoist (immediate need)	N/A	Life	N/A	210
Slings for overhead hoist (immediate need)	800	Life	3 years	N/A
Portable hoist (immediate need)	2,230	Life	10 years	160
Specialist bath (incl. installation) (already purchased)	(7,475) N/A	From 11½ years for life Life	10 years N/A	N/A 522
Service contract (already purchased)				

Bath seat Medium size (future need)	(310)	Required at age 10 years	N/A	N/A
Large size (future need)	(350)	Required at age 18 years	N/A	N/A
Changing/shower table (already purchased)	(3,120)	Life	15 years	120
Seating Therapeutic: RS x:panda (already purchased)	(1,489)	To age 18 years	4 years	N/A
Zita Classic (future need)	(1,800)	From age 18 years for life	5 years	N/A
For relaxation: Symmetrikit (future need)	(£2,920)	From age 18 years for life	10 years	£350 every 3 years
Volker bed (already purchased in 2007)	(£2,300)	At age 28 years	15 years	N/A
Replacement mattress (already purchased in 2007)	(£399)	At age 8 years	5 years	N/A
Bumper cover (immediate need)	£190	Life	2 years	N/A
Leisure and IT: Computer worktop with electric riser (immediate need)	£1,640	Life	10 years	N/A
Sensory play equipment (immediate need)	£4,000	one-off purchase	N/A	£150

TOTAL £191,285.06

APPENDIX K: ASSISTIVE TECHNOLOGY EQUIPMENT

ITEM	Capital Cost (£)	Period Required	Replaceme nt Period	Annual Maintenance Cost
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Professional fees: 192 Crowborough Road		£ 57,339
Roberts v Johnstone claim for 192 Crowborough Road		
£ 80,000 x 2.5% x 2.66 years	:	£ 5,320
Additional running costs of 192 Crowborough Road		
£ 809 x 5.33 years	:	£ 4,312
		<u>Total past costs :£306,297</u>
<u>Future Costs:</u>		
Roberts v Johnstone claim for 192 Crowborough Road		
£ 2,000 p.a. from now to 1 January 2016		£ 8,520.00
Additional running costs for 192 Crowborough Road		
£ 809 p.a. from now to 1 January 2016		£ 3,446.34
Cost of adaptations to new property, assumed to be incurred on 1 January 2016	:	£236,385.34
Removal of disability-related items from 192 Crowborough Road, assumed to be done on 1 January 2016	:	£ 17,800.00
Cost of flooring, assumed to be incurred on 1 January 2016:		£ 5,785.00
Additional running costs of new property		
£2,592 p.a. from 1 January 2016 for life		£ 41,342.40
Maintenance of equipment		
£1,027 p.a. from 1 January 2016 for life		£ 16,380.65
Replacement of equipment		
£24,002 every 10 years from 1 January 2016 for life)		
£1,258 every 12 years from 1 January 2016 for life)		£ 30,592.76
Roberts v Johnstone claim for the new property		
From 1 January 2016 to age 28 years:		
£695,000 x 2.5%: £17,375 p.a.		£210,758.00
From age 28 years for life:		
£570,000 x 2.5%: £14,250 p.a.		£ 54,435.00
	TOTAL	£625,445.49

ADAPTATION AWARD					
	* items denotes VAT charged at standard rate				
		D Cowan		T Wethers	AWARD
1.00	Garaging & External facilities				

	Widen garage	0.00	*	7,970.41	NIL
	Automatic garage door - fix only	0.00	*	794.56	NIL
	External works-including patios, driveways and flower beds	20,000.00	*	30,000.00	20,000.00
2.00	Approaches to the entrance door				
	Straight ramp to entrance doors	1,103.88		1,103.88	1,103.88
3.00	Doors & Windows				
	Create doorway in 275mm wall to extension	1,422.97	*	1,422.97	1,422.97
	Widen existing doors - 6No	7,241.76		7,241.76	7,241.76
	Sliding patio door	3,373.25	*	3,373.25	3,373.25
	Widen front external door	1,394.18		1,394.18	1,394.18
	Widen rear external door	1,398.09		1,398.09	1,398.09
4.00	Services				
	Overhaul central heating system	1,234.15	*	1,234.15	1,234.15
	Central heating-new boiler 29.32 Kw (bal flue)	3,101.29	*	3,101.29	3,101.29
	Central heating-flue liner	262.28	*	262.28	262.28
	Alarm & detection system - 2No points mains operated	628.04	*	628.04	628.04
	Increase insulation	1,563.00	*	1,563.00	1,563.00
	Additional telephone point	0.00	*	51.46	51.46
	Wiring for possum controls- 15 no	2,581.35	*	2,581.35	NIL
	Electrical installation	1,971.40	*	1,971.40	1,971.40
	Heating installation	1,101.80	*	1,101.80	1,101.80
	Plumbing installation	1,087.50	*	1,087.50	1,087.50
5.00	Lifting Aids				
	Reinforce ceiling for hoist- 2 no	1,520.64		1,520.64	1,520.64
	Power supply for hoist- 4 no	705.34		705.34	705.34
	Hoist- fox only- 2 no	1,395.64		1,395.64	1,395.64
6.00	Kitchen				
	Alter fittings	10,000.00	*	1,500.24	10,000.00
	Mini kitchen- fix only	721.56	*	721.56	721.56
7.00	Bathroom				
	Thermostatic shower- fix only	479.52		479.52	479.52
	Aquanova Gemini bath with whirlpool- fix only	2,444.89		2,444.89	2,444.89
	Nappigone macerator- fix only	1,575.80		1,575.80	1,575.80
	Body drier	363.22		363.22	363.22
	Extract fan	614.90		614.90	614.90
	Neatdek shower tray- fix only	382.16		382.16	382.16
	Neaco shower screen - fix only	108.61		108.61	108.61
	Slip resistant floor finish	914.30		914.30	914.30
8.00	Storage				
	Wheelchair store and battery charging facility	1,196.31	*	1,196.31	1,196.31
9.00	Structural				
	Internal structural alterations	5,000.00	*	2,489.80	2,489.80
	Consequential redecoration	1,500.00	*	996.60	996.60
	Sub total Adaptations	78,387.83		85,690.90	72,845.00
10.00	Extension				
	Extension	67,329.69		107,793.51	98,538.00
	Sub total	145,717.52		193,484.41	171,383.00
	Regional Variation factor - Croydon	1.17		1.20	
	Sub Total	170,489.50		232,181.29	205,660.00
11.00	Contingencies @ 10%	17,048.95		23,218.13	20,566.00
	Sub total	187,538.45		255,399.42	226,226.00

12.00	Equipment				
	Hoist- 2 no	9,800.00		16,660.00	16,660.00
	Aquanova Gemini bath with whirlpool	9,981.30	**	9,981.30	NIL
	Nappigone macerator	5,206.25		5,206.25	5,206.25
	Neatdek shower screen	880.00		1,683.15	1,683.15
	Phlexicare body drier	453.24		453.24	453.24
	Up and over garage door complete with automatic control	0.00	*	2,023.70	NIL
	Mini carers kitchen	1,070.34	**	1,070.34	1,070.34
	Sub total equipment	27,391.13		37,077.98	25,073.00
	Sub total	214,929.58		292,477.40	251,299.00
	Architects/surveyors fees (incl.equipment) @ 17.5%	37,612.68		51,183.55	43,977.00
	VAT @ 17.5% on fees	6,582.22		8,957.12	8,795.00
	VAT @ 17.5% on extension work	11,782.70		17,882.94	19,708.00 ⁹
	VAT @ 17.5% on building work marked*	11,618.52		13,450.07	10,240.00 ⁹
	VAT @ 17.5% on equipment marked**	187.31		541.46	214.00 ⁹
	Local Authority fees	450.00		450.00	450.00
	These are partially waived under the Town & Country Planning (prescribed fees) Act				
	TOTAL	283,163.00		384,942.54	334,683.00

APPENDIX M: FUTURE TRANSPORT AND TRAVEL

Purchase of VW Caravelle

From now to age 25 years

Lump sum deposit of £17,708 every five years, the first payment being made immediately

From age of 25 years for life

Lump sum deposit of £12,708 every five years

TOTAL: £ 107,458

Additional cost of insurance

From now for life : £1,500 per annum

Travelling costs

From now for life : £ 628 per annum

TOTAL: £ 12,691.88

TOTAL: £120,149.88

APPENDIX N: MISCELLANEOUS ITEMS

Furnishings and equipment for carers' accommodation)

Furnishing items required immediately)	
)	£ 5,198.03
Furnishing and equipment required in January 2016)		
for new property with replacement every 10 years)	
thereafter)	

Computer and printer required immediately with		
replacement every 5 years		£ 2,655.00

Annual costs of stationery, postage and telephone		
From now for life	: £ 260 per annum	£ 5,254.60

Additional costs associated with feeding and incontinence

From now for life	: £ 424 per annum	£ 8,569.40
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Cleaning service

From now for life	: £ 730 per annum	£14,753.30
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Decorating, DIY and gardening

From age 28 years for life	: £1,000 per annum	£ 3,820.00
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TOTAL £40,249.97

APPENDIX O: HOLIDAYS

Travel to Barbados

From now until claimant attains the age of 12 years £3,765 per annum £17,695.50

Adaptations to and equipment for grandparents' house

(immediate need) £ 9,500.00

Other holiday costs

From now until claimant attains the age of 12 years £2,500 per annum £11,750.00

From age of 12 years for life : £5,000 per annum £77,550.00

Carers' subsistence

From now for life : £ 350 per annum £ 7,073.50

TOTAL £123,569.00

APPENDIX P: PAST LOSSES

Gratuitous care : £ 77,631

Paid care : £ 123,601

Case management : £ 46,358

Deputyship : £ 57,580

Therapies:

Physiotherapy, etc : £ 11,779

Speech and language therapy : £ 3,000

Occupational therapy : £ 4,000

HANDLE training : £ 2,586

Aids and equipment : £ 33,564

Accommodation:

Rent : £ 27,488

Adaptations 192 Crowborough Road : £211,838

Professional fees 192 Crowborough Road £ 57,339

Roberts v Johnstone award : £ 5,320

Running costs	:	£ 4,312
Transport	:	£ 10,625
Travelling costs	:	£ 3,783

Miscellaneous items:

Costs associated with feeding and incontinence	£ 1,200
Cleaning service	: £ 2,655
Holidays	: £ 5,607

TOTAL : £690,266

Agreed Interest : £ 11,925.00
Total Past : £702,191.00

APPENDIX Q: FUTURE LOSSES

Loss of earnings	:	£ 227,230.00
Care	:	£3,444,940.92
Case management	:	£ 263,556.00
Deputyship	:	£ 206,589.85

Therapies:

Physiotherapy, etc	:	£ 121,935.70
Speech and language therapy	:	£ 51,950.94
Psychological input		£ 4,319.25
Educational costs		£ 25,398.00
Occupational therapy	:	£ 50,041.50

Aids and equipment		
Physiotherapy	:	£ 54,415.50

Occupational therapy		£ 191,285.06
Assistive technology		£ 134,430.73
Accommodation		£ 625,445.49
Transport	:	£ 107,458.00
Travelling costs	:	£ 12,691.88
Miscellaneous items:		
Carers' equipment		£ 13,107.63
Costs associated with feeding and incontinence		£ 8,569.04
Cleaning service	:	£ 14,753.80
Decorating, DIY, etc.		£ 3,820.00
Holidays	:	£ 123,569.00
TOTAL	:	<u>£5,685,507.79</u>