

ENGLAND AND WALES / JUDGMENT

C v Dixon

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THE HONOURABLE MR JUSTICE KING Approved Judgment Neutral Citation Number: [2009] EWHC 708 (QB) IN THE SUPREME COURT OF JUDICATURE QUEEN'S BENCH DIVISION (CIVIL) SHEFFIELD DISTRICT REGISTRY C v Dixon Case No: SE130021 Royal Courts of Justice Strand, London, WC2A 2LL Date: 25 th June 2009 Before: THE HONOURABLE MR JUSTICE KING

- ----- Between: C (A Protected Party by the Official Solicitor as Litigation Friend)
- and - John Andrew Dixon Claimant Defendant
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- ----- Mr James Badenoch QC & Ms Patricia Hitchcock (instructed by Irwin Mitchell) for the Claimant Mr Geoffrey Tattersall QC & Mr Darryl Allen (instructed by John Stallard & Co) for the Defendant Hearing dates: 9th - 20th, 25th June & 8th July 2008
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Judgment

Mr Justice King:

1. This claim arises out of the serious head injury sustained by the Claimant in a road traffic accident on the 14th of May 2000 when he was a front seat passenger in a taxi involved in a high speed collision with a lamppost. He was then some 17 years of age, his date of birth being the 17th of November 1982. He was found in a coma with a Glasgow coma score of 4/5 with large left frontal and small occipital lacerations. It is not in dispute that he suffered a severe injury to the substance of the brain in particular to the frontal structures. This has given rise to permanent: (i) neurological disability affecting movement, co-ordination and bulbar function (speech/cough reflex) with abnormalities of visual spatial awareness and supranuclear eye movements; (ii) cognitive disability with executive problems; (iii) an organic personality change, that is to say a personality change due to closed head injury manifesting itself in episodic aggression, poor impulse control, and poor social judgment sometimes involving sexual disinhibition in public places. In addition he suffered multiple THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon bone injuries to the head, face, right hip, right sacroiliac joint, and the left arm together with intra-peritoneal haemorrhage and laceration of the left leg.

2. In July 2000 the Claimant was discharged from hospital to Keresforth Rehabilitation Centre in Barnsley following which he was discharged in April 2001 to his mother's home and care where he remained until April 2002. At that stage on the 28th of April, and in particular by reason of his continuing cognitive and behavioural problems, he was admitted to the Transitional Rehabilitation Unit ("TRU") at Haydock under the director Howard Jackson. He was at TRU for just over 2 years. In July 2003 he privately purchased a bungalow in Doveside Drive Barnsley ('Doveside') in which he has since been residing since June 2004 when he discharged himself from TRU.
3. In September 2006 the Claimant met up in night club with a young lady R. She was 20 and initially mistook (as others have done) the manifestations of his disabilities affecting his mobility and speech for inebriation. They formed a sexual relationship, indeed she slept with him the first night they met. At the end of December 2006 she moved in with him at Doveside where they still cohabit. She became pregnant by him and on the 29th of December 2007 gave birth to their daughter Ch.
4. There is no dispute that the Claimant is a protected party and a protected beneficiary. Liability in this case is admitted. The issue is quantum of damages. In fact the majority of the heads of claim for damages have been agreed between the parties subject to the approval of the court. The one outstanding and major issue is the provision for future care and case management. Since July 2000 and continuing to date, the Claimant has had the benefit of care and case management services from J S Parker and Associates ("JSP"). Since moving into Doveside he had had the benefit of a care package designed and adjusted over time by JSP to meet JSP's assessment of his changing circumstances. There is no issue as to whether it is reasonable to care for the Claimant at home. The issue is rather the assessment of the reasonable need for and quantification of certain specifics of the home care and case management regime which is being proposed for the future.
5. Inevitably the court has had to take as its starting point the existing care regime, with its changes over the years being noted, since it is this existing regime which has been the starting point for the expert assessment of need provided by the rival care experts each of whom gave evidence before me (Mrs Rosemary Statham for the Claimant and Mrs Maureen Bingham for the Defendant). However I accept as a matter of principle the question for the court is its assessment on all the evidence of what is reasonably necessary to meet the Claimant's likely future care needs rather than asking whether the existing regime is within the range of reasonable options. However in making this assessment the Court cannot ignore entirely aspects of the existing regime for example the existence of an already established committed and loyal team of support workers. I note en passim that Mrs Bingham herself when criticising as excessive the proposed case management costs, refers in the joint statement with Mrs Statham to the Claimant having a "good and loyal team of support workers". The evidence shows that the turnover in support workers has not been frequent. For example still in post are Myles Quirke whose involvement goes back to May 2001 at the time when the Claimant had just moved back to his mother's albeit there was a

break in his continuity during the time the Claimant was at TRU; David Callaghan (since July 2005); Dieter Graham (since November 2004); Edith Graham (since March 2005); Other support workers who have now departed had a long period of service with the Claimant (James Bishop between October 2001 and October 2004; Katherine Rotherham/Harman, February 2004 to February 2008). A THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon similar picture emerges in respect of Case Manager ('CM'). Claire Wright became Case Manager in December 2003. In August 2006 she was joined as joint Case Manager by Claire Edgar, an arrangement which continued until the end of January 2008 when Claire Wright ceased her joint role and Claire Edgar became and continues to be the sole CM.

6. The existing support package provided through JSP has undoubtedly over the years been complex and costly. In an updated case management report of January 2007, Claire Wright described the "levels of intervention" as continuing to be high: the Claimant was then being supported by a team of 5 support workers for 24 hours a day consisting of a team leader and four support workers plus additional support from the DNA Nursing Agency to cover periods of annual leave, sickness and team meetings. Professional intervention was coming from a neuropsychologist (Nick Morton) and from an occupational therapist (then Verna Morris). It was said in that report that "at the centre" of the Claimant's support package were the team of support workers who were expected to function "at a high level" to assist him within the home and the community but that even with such high level of support the Claimant remained "extremely challenging". These challenges were summarised as "impaired memory; little concept of the passing of time; tiredness and periods of fatigue; impaired insight/lack of awareness/denial of some of his capabilities/otherwise saying he has capabilities when he has not; impaired anger management; verbal and physical aggression; impaired decision making abilities; impulsivity with little insight into the implications of some of his actions; sexual disinhibition; speech difficulties; unsteady gait".
7. One of the issues which arose in the course of this trial was whether the case managers who have been looking after the Claimant have in fact been exaggerating the extent of the challenges the Claimant has been posing his support workers and whether in truth they have been required to function at a "high level", Dr Britto, the consultant general psychiatrist called by the defendant, opined that it was "self evident" that the Claimant was far better in his abilities to undertake frontal lobe functioning ("the Claimant is capable of quite a bit of cognitive and intellectual tasks") than that made to believe by the Claimant's care support team and that the claimant's disabilities are "far less than that believed by the professionals" ("who with all good intention are being overprotective of an individual who in turn is demanding his freedom").
8. Indeed it is the level of the Claimant's continuing disabilities consequent upon his brain injury, the improvement he has been able to achieve in his physical, cognitive and behavioural functioning to date, and the scope for further functional improvement, which has been at the heart of questioning directed at the witnesses called at trial. In this regard I

have had evidence from consultant experts in neurology (Mr Price for the Claimant; Dr Schady for the defendant); neuropsychology (Mr Johnson /Dr Coughlan) and neuropsychiatry (Dr Scheepers for the Claimant), and psychiatry (Dr Britto, already referred to). I also heard from a number of lay witnesses who have had close contact with the Claimant over the years since his accident, namely his mother, his now partner (RB) and those who have been and continue to be involved in his care and support (the support workers Miles Quirke; David Callaghan; case manager Claire Edgar; partner case manager Jacqueline Parker).

9. I should say at once however that it is quite clear to me on the overall expert medical opinion that the underlying brain damage at the root of the Claimant's problems is severe and permanent, and its continuing cognitive and behavioural effects will be permanent (aswell as the residual physical neurological disabilities referred to below) even if there has been in the past and will be in the future scope for the better management and control of those effects THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon than is currently the case. Indeed the essential issue which has been so exhaustively litigated over 11 days of evidence and submission as to the appropriate level of the care and case management provision which the Claimant will reasonably require in the future, has been characterised as being concerned with the management of the risk posed to the Claimant by these continuing effects and problems, and how best in the interests of the Claimant to balance against his need for protection, his need for and indeed "right" to independence. The physical recovery
10. There is no doubt that the physical recovery of the Claimant has been beyond expectations, although it will never be complete. Dr Scheepers referred to it as tremendous. In particular the Claimant can now walk unaided albeit with a marked ataxic gait whereas once he was confined to a wheel chair and then a zimmer frame. In the joint neurological statement Mr Price is reported as having examined the Claimant in March 2007 and although he then found no improvement in the dysarthria, (weakness of the speech musculature preventing clear pronunciation of words) there was significant improvement in the quadriparesis: there was some mild incoordination of fine movements of the fingers of the right hand; although there was no residual weakness or spasticity of the legs, the gait was wide based with some trunk ataxia. By then Claimant was reporting he could walk the mile to his mother's house and back.
11. This physical recovery in the ability to walk is still subject to the limitations imposed by the Claimant's continuing visual abnormalities relating to spatial awareness and supranuclear eye movements, all consequent upon the diffuse axonal brain injury. His eyes do not move smoothly from side to side and there is a left divergent squint. These abnormalities are spoken of in the report of the ophthalmic surgeon John Burke - not the subject of any dispute

- following an examination of the 19th May 2008, as being permanent although stable. The Claimant is said to lack normal 3D vision and the ability accurately to judge distances and moving objects owing to the loss of useful fusion (both eyes no longer work simultaneously as a unit). He is described in the report as still having a tendency to bump into objects or people to one side or another and being unable to “multi-task” he can “still trip on unfamiliar, uneven surfaces” (report p.3: “He has to concentrate to walk . He finds he has to fixate his vision on an object or place that he is moving towards and may ignore what is going on to either side or what is happening to the ground beneath his feet”). These findings of the ophthalmic expert found a resonance in the eye witness evidence of the lay witnesses. For example David Callaghan spoke of the dangers posed to the Claimant in crossing the road on his own in that he could not accurately judge car speeds or distances and had difficulties in negotiating uneven ground and could on occasion misjudge a kerb when stepping down. He referred to the Claimant walking into things when walking around and how he could be unsteady on his feet, with a tendency to topple over. Mr Callaghan considered the Claimant’s difficulty in judging distances when bending down raised a problem for his handling the baby Ch, in particular if he had to lift her out of for example a baby bouncer. He referred to a recent incident when the Claimant went to pick up the car seat in which the baby was not properly strapped in and the baby fell out on the ground. RB spoke of the Claimant’s significant problems with mobility when tired, describing him falling down when standing up and walking into walls, and how she did not have trust in the Claimant’s ability to safely to carry their child.
- 12. I should record at once that I accept that the recorded history of the Claimant’s going out on his own to for example his mother’s or the local shops ,with the need to cross roads, does THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon not disclose any incident when the postulated dangers referred to by the support worker in fact materialised but I have no doubt that the ophthalmic evidence supports the accuracy of that which the witnesses say can happen and the potential for mobility difficulties especially if the Claimant is fatigued are very real. The permanence of the cognitive impairment/ the behavioural problems arising out of the personality disorder
- 13. The overall nature and extent of the continuing cognitive impairment from which the Claimant suffers and likewise of the continuing personality disorder and the permanence of each was not in reality a matter of dispute between the medical experts – save for aspects of Dr Britto’s opinion. As already highlighted the dispute in this case has been about the management of these disabilities and the risks to the Claimant posed by them.
- 14. Thus in their joint statement of the 25th of March 2008 the neurologists under the heading “cognitive problems”, report that “there has been over the years no improvement in his lassitude, short term memory and ability to concentrate, and his socially unacceptable behaviour and disinhibition “continue”. Under “Future” both experts “presume that despite (the) neurological improvement, he will continue to lack self control with outbursts of inappropriate behaviour, disinhibition and poor insight which are consequences of his

frontal lobe damage. We do not anticipate cognitive improvements”.

15. The joint statement of the neuropsychologists of November 2007 speaks of a severe head injury resulting in cognitive impairment and behavioural problems to which alcohol abuse significantly contributed giving rise to an agreed need for “a high degree of structured care and support”. They jointly describe the Claimant’s behaviour as remaining “antisocial and maladaptive in spite of his continuing relationship with his girlfriend and impending arrival of their baby”. They both agreed there was a potential for the Claimant’s condition to deteriorate as a result of drug abuse, alcohol abuse, or a breakdown in his relationship with R.
16. As for the personality disorder and the consequential behavioural problems (all again stemming from the frontal lobe injury) both Dr Scheepers and Dr Britto on paper at least agreed that the Claimant was not suffering from any mental illness but from an organic personality disorder that is to say a personality change due to a closed head injury which was permanent. One of the issues which subsequently arose when Dr Britto came to give oral evidence related to the origins and treatability of the Claimant’s tendency to obsessive jealousy in his relationship with his girlfriend and whether the Claimant might be suffering in fact from a form of treatable mental illness by way of a delusional disorder. On these issues I have no hesitation in preferring the evidence of Dr Scheepers. Dr Scheepers is a consultant neuropsychiatrist with considerable experience in brain injury rehabilitation and was for 7 years until 2006 consultant to the TRU rehabilitation unit in Haydock where the Claimant resided between 2002 and 2004. He was an impressive witness. His evidence which I accept was that the Claimant’s underlying brain damage, neuroradiologically demonstrated and confirmed by psychometric assessment, was irrecoverable, that this had given rise both to his cognitive and organic personality disorders and hence there could be no question of recovery from the personality disorder by pharmacological or psychological therapies which might otherwise be the case had the Claimant been suffering from a mental illness which he was not. Dr Scheepers’ opinion to the court, which I accept, written in a letter written after the oral evidence of Dr Britto had been given, was that the Claimant uses allegations of infidelity against his girlfriend on a regular basis and that his suspiciousness was a part of the organic THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon personality disorder. He referred me to one of the published ICD-10 criteria for such an organic disorder namely that the person frequently presents with “cognitive disturbances in the form of suspiciousness or paranoid ideation and/or excessive preoccupation with a single usually abstract theme”.
17. To the extent that Dr Britto in oral evidence was suggesting – contrary to the joint statement – that the claimant’s jealousy was the manifestation of a mental illness such as a delusional disorder known as “Othello Syndrome” or “Delusions of Jealousy” I reject it. It may be that all Dr Britto was suggesting when he said which he did, that this condition could be improved by a course of the drug risperidone, was that the symptoms of the condition could be better controlled by such a drug without however altering the underlying brain damage

which would still remain. The evidence on this aspect however I found inconclusive. It was not foreshadowed in the joint statement. Although in his written response to Dr Britto's oral evidence, Dr Scheepers acknowledged that pharmacological and psychological therapies might help with some of the symptoms with which a brain injured person presents and that he himself while at TRU had considered using pharmacological treatment for the Claimant's underlying suspiciousness, the potential highlighted in that response of adverse effects of such treatments on a person's already compromised cognitive functioning, remains.

18. Overall I did not find this aspect of Dr Britto's evidence of any real assistance in the resolution of the issues arising in this case as to the extent of the care package reasonably required to meet the ongoing needs of the Claimant. In so far as he was seeking in his overall evidence to opine that the Claimant's organic personality disorder was capable of improvement I reject that opinion in favour of the contrary opinion of Dr Scheepers.
19. I did however find Dr Scheepers' overall evidence of considerable assistance. His written evidence, confirmed orally, listed the characteristic cognitive and behavioural difficulties to which damage to the frontal structures of the brain can give rise as recognised in the literature and clinical practice. These coincided remarkably closely with the examples of the Claimant's problematical behaviour given by the various lay witnesses and the description of the challenges presented by the Claimant referred to in the report of Claire Wright. This has led me to conclude that these challenges were not exaggerated by her or by the lay witnesses. This list – which was not dissented from by any of the other experts to whom it was put during the trial – is as follows: Disinhibition;
 - lack of motivation;
 - altered motional processing;
 - altered self regulation;
 - personality change;
 - impulsive actions;
 - poor social judgment;
 - reduced empathy;
 - lack of goal directed behaviour;
 - environmental dependency;
 - disorganised thinking and behaviour;
 - cognitive rigidity;
 - poor planning;
 - inattention.

20. Dr Scheepers referred to the need in the case of the Claimant for a highly structured programme of support. In paragraph 5.4 of the Joint Statement he expressed the opinion that arising out of the severe frontal lobe injury the Claimant was impulsive and disinhibited and only able to function successfully in a structured environment with clear boundaries and achievable goals without which he was likely to rapidly deteriorate, abuse substances, and suffer a deterioration in his mental health. I accept this aspect of Dr Scheepers' evidence without hesitation and in so far as Dr Britto disputed this need for structure – which was not entirely clear – I reject Dr Britto. I say this not least because not only does Dr Scheepers' view as to the need for structure coincides with that of the neuropsychologists but it is reflected in a passage from the observations of, Howard Jackson, the director of TRU, much quoted in the course of the trial by counsel on behalf of the Claimant without provoking any dissent from any expert, namely: “without structure and organisation, (the Claimant's) mind and behaviour would become a vortex of confusion and chaos”.
21. Dr Scheepers' views as to the extent of the Claimant's cognitive and behavioural disabilities arising from the frontal lobe injury and the need for structure if they were to be kept under control, were moreover very much in keeping with the extracts from the published work by David Bell entitled “Medico – Legal Assessment of Head Injury” to which I was referred by Mr Johnson which were enlightening in explaining the function of the frontal lobe within the brain and in identifying characteristics of the typical cognitive, executive and behavioural problems to which frontal lobe injury can give rise. I append to this judgment in an Appendix those extracts I found particularly illuminating. Again no expert to whom these extracts were put in the course of the trial took issue with them.
22. The very obvious difference between the written and oral opinions of Dr Scheepers and Dr Britto in relation to the extent of the Claimant's frontal lobe disabilities was as to the impact of the Claimant's personality disorder and cognitive impairment on his day to day functioning. I have already referred to Dr Britto's opinion that his disabilities were far less than the professionals believed and that the Claimant had a capacity for cognitive and intellectual tasks beyond what had been previously asserted by those caring for him. I shall return to this issue of the extent and significance of the Claimant's capacity for functional improvement when describing the battle lines which were ultimately drawn between the parties on the issue of the extent of the care/case management packages reasonably required in this case, and when giving my detailed conclusions. I say at once however that I did find that several of the examples of the Claimant's functional achievements relied upon by Dr Britto for his stated views were not ultimately borne out by the lay evidence. I have in mind the reliance upon the Claimant's alleged ability successfully to paint and decorate a nursery and to cook meals for two without prompting or interference which was keenly contested both by the support workers, Myles Quirke and David Callaghan, and by RB. I have no reason not to accept this lay evidence which I do. In the round I found Dr Britto's assessment of the Claimants' existing capacities for independent functioning and his capacity for improvement in this regard, out of line with the other evidence, both expert and lay, and overstated. The Claimant's behavioural history pre accident

23. I should record that the Claimant had a history of childhood behavioural problems and of delinquency which pre-existed the accident of May 2000. He had been expelled from school. THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon It is not now however part of the defendant's case - it if ever was – that the Claimant's current disorders and disabilities are attributable other than to the accident for whose consequences the defendant is liable to compensate the Claimant. However there are parts of the evidence of both Dr Britto and Mrs Bingham in relation to her care/case management assessments that demonstrate a belief on their respective parts that a pre-existing conduct disorder does have a continuing role and/or would in any event have led to some of the behavioural problems now being manifested absent the accident. Dr Britto expressly discusses the significance of what he describes as a pre-existing conduct disorder in his joint statement with Dr Scheepers. Likewise in the joint report with Mrs Statham, Mrs Bingham refers to the contribution to the Claimant's needs played by the Claimant's "premorbid difficulties" both in relation to her assessment of past care by the Claimant's mother and of future case management requirements. This is a matter to which I shall return when giving my overall assessment of Mrs Bingham in the course of my conclusions. The rival packages for future care/case management: the battle lines
24. As I have already indicated, the issue of the future care/case management provision with which ultimately this trial has been concerned has been presented to me as being essentially about the management of risk and the need to balance against that need the claimant's need and right to independence .
25. There is no dispute that the Claimant lacks capacity to live independently but the defendant's case is that the care package which has been in place to date and which is proposed for the future is overprotective of the Claimant and does not properly take account of those activities which it is said the Claimant is quite capable of doing for himself unaided and allegedly without any attendant risk of significance. It is said that the Claimant's ability to learn and recall, albeit relatively simple, tasks of day to day living has been underestimated and under-recognised by those assessing the requirements of any necessary care regime (emphasis being placed on bathing, shaving, preparing breakfast, walking unsupervised to local destinations, operating an ATM and the like); and moreover that contrary to the received wisdom for this type of frontal lobe disability, the Claimant does have some insight into his problems. The defendant asserts in effect that not only does the proposed package go beyond what is reasonably necessary to meet the needs of the Claimant but is positively harmful to the Claimant in not promoting the independence to which he is entitled. It is said that the evidence shows (which I accept it does) that the Claimant on occasion can be resentful of the care support being offered to him. Reliance is placed by the defendant on observations of certain of the experts in this regard. Thus Dr Schady thought the continuous presence of a carer might well have the effect of promoting learned dependence and causing more frustration and aggressiveness. Dr Coughlan when discussing the justification for the Claimant being accompanied by 2 support workers when visiting a pub or nightclub, thought this could be so in relation to nightclubs but also

observed that that if the Claimant did not face the consequences of his actions “he would never learn”. In their joint statement the neuropsychologists, Mr Johnson and Dr Coughlan, referred to the present regime as being protective in nature rather than proactive, and expressed concerns about the appropriateness of providing a high level of support to the Claimant to protect him from risks arising from his alcohol and/or drug abuse as this failed to provide any incentive for him to modify the abuse and “may unwittingly reinforce it”. Dr Britto’s opinion in the joint statement with Dr Scheepers and developed orally, was that the Claimant had the ability to make choices and it was possible to provide a care regime where there was a contingency to THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon provide crisis intervention rather than 24 hour care which he thought would certainly have an impact upon the Claimant’s mental health .

26. The defendant further asserts that on the documentary evidence represented by the extracts from the voluminous case management files between 2002 and 2008 which the court has been asked to study in some detail, that risks posed by the Claimant’s disabilities and the limitations upon what the Claimant can do for himself have been exaggerated.
27. Furthermore much of the cross examination of the witnesses by the defendant has been designed to demonstrate that although it is as I have indicated, almost universally agreed that the Claimant benefits from a structured programme of support and activity with provision of a vocational placement, this has not been in place of recent months since R came to be at home on maternity leave (mid December 2007) and the Claimant ceased to be attending the placement at the Daisy Meadow gardening project which came to an end in March 2008. I accept that this picture of an absence of structure of late with no current vocational placement is a fair representation of the evidence. What the defendant asserts is that this has had the effect of painting a false picture for the purposes of assessing the likely needs of the Claimant in the future once R has returned to work, as is likely in August 2008, and structure is reintroduced. The contrast has sought to be drawn between life in the house when R was going out to work and the Claimant had the motivation of a structured programme of meaningful activities, when it is said the records show the Claimant and R were getting on reasonably well, and the more negative picture which has emerged more recently which is said to be a consequence of their being under each others feet and the inevitable tension in a relationship enduring the strains of a young baby.
28. I should in this context record that since the Claimant came to be living at Doveside in June 2004. there has been a reasonably consistent history of attendance by the Claimant at vocational placements, in particular he has had 3 placements at the Prince’s Trust between July 2005 and June 2006 when he was attending up to 5 days a week ,and then an ongoing placement at the Daisy Meadow gardening project from July 2006, initially 3 days per week reducing to 2 days from June 2007, which continued until the end of March 2008 when the project prematurely ended, and that since then he has been without a placement. One of the issues which arose in the hearing of this claim has been whether enough has been done by those currently caring for him to find a replacement scheme for the Claimant to attend.

29. The Claimant in contrast to these defence submissions not only takes issue with the factual assertions as to what emerges from any fair analysis of the records over the years, in particular the support worker intervention sheets and those relating to the work placements, concerning in particular violence and aggression on the part of the Claimant both before and since R gave up work, and when on placements, but emphasised the permanence of the Claimant's condition, the nature of his disabilities as described in particular by Dr Scheepers and the unpredictability of how and when these various manifestations of frontal lobe injury will emerge in the Claimant's behaviour and the risks posed by them to him. Those representing the Claimant rely in particular on the opinion of Dr Scheepers supported essentially by Mr Price and Mr Johnson that the Claimant remains a vulnerable adult because of his brain injury and will continue to present with high risk behaviours for the rest of his life requiring 24 hour support. Through the lay and expert evidence they have called, they take issue with the proposition that the Claimant has the capacity for any real functional improvement to enable him consistently to self regulate without prompts which removes the need for such support. THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon The rival stances of the care experts
30. The rival proposals of the competing care experts reflect essentially these two different stances. It is sufficient at this stage before moving to my detailed conclusions if I record that although both care/case management packages distinguish between the period when the Claimant is likely to be with a partner and that without, the differences between Mrs Statham and Mrs Bingham both in terms of the extent and costings of the required care and case management provision are substantial. For example, Mrs Bingham in the joint report refers to the Claimant's needs falling within "the moderate range" and foresees his situation improving further over time "in line with the medical evidence" such that when the child Ch is 2 and a half in June 2010 he will be in a "settled state" enabling the initial 10 hours of support worker provision initially allowed by her to be reduced after a six month transition period of 9 hours to 6 hours. It became clear to me that when referring to the medical evidence she very much had in mind the views of Dr Britto. Mrs Statham does not foresee any such improvement or settled state being reached by the Claimant on her understanding of his condition and provides for her current allowance of 12.25 hours of daily support to continue throughout the time when the Claimant is with R. In oral evidence in relation to the period when the Claimant is once more on his own, Mrs Bingham postulated a transitional period of 24 hour care before moving once again to a lesser regime once the Claimant had resettled. Mrs Statham for this alternative scenario never deviates from 24 hour care. Mrs Statham's annual global figures for care and case management are in the order of £150,000 and £200,000 for the two different periods. Mrs Bingham's in contrast are according to her written evidence in the range of £60,000 - £50,000 for the first period and £100,000 for the second.

31. In the round the issues raised for the court to resolve in the context of the rival future care and case management packages, concern the extent to which the Claimant can be reasonably safely left unattended for any part of the day or night; to what extent support can be provided at the end of a telephone; the likelihood of the relationship between the claimant and his current partner surviving or a replacement one being formed; the number of support workers required to support the claimant if he goes out socialising; Specific issues exist concerning childcare, rates of pay, case management provision, holiday cover and the like but these I will identify in the course of my detailed conclusions to which I now turn. Conclusions
32. I do not find it necessary to answer in precise terms each and every issue which the parties have set out in an agreed statement of issues as that to which this case gives rise. Rather in my judgment what is required of the court in the light of the evidence it has heard is to determine the particular differences which exist as between the parties on the reasonableness of their competing provision for future care and case management put forward through their respective care experts. Everyone is agreed that this case is one which in respect of such provision a periodical payments order is appropriate. Everyone is equally agreed that the annual costs for appropriate care and case management will vary according as to whether the Claimant has a partner or not. What I propose to do is to give the court's rulings on a) the likelihood of the Claimant being with R, his current partner, or another partner over his future lifetime and b) its rulings on the particular issues which will affect the calculation of the annual care/case management costings. The court will then invite the parties to translate these rulings into precise annual figures and to agree if they can the appropriate periodical THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon payments order for approval by the court for example by way of a composite periodical payment order creating an average cost over the claimant's lifetime or by some alternative order designed to reflect the division between the two scenarios over the claimant's lifetime (with / without a partner). In the event of disagreement the court will invite submissions upon which it can resolve the ultimate outcome. Equally if in the event the parties consider that there are outstanding unresolved issues crucial to the calculation of the annual costings, then again these can be referred to the court for resolution. In any event the court will be required to give approval to the settlement in this case which has already been reached by the parties in respect of heads of claim other than that for future care and case management. The Claimant's scope for functional improvement – impact on the need for support worker provision
33. I accept the thrust of that which the defendant says is revealed in the documented evidence that the Claimant has shown the ability not always acknowledged by those who have been caring for him or by the witnesses to his behaviour over the years to be taught new activities, such as using an ATM, cooking simple foods, making packed lunches for R; that with the assistance of his support workers he has been able to redecorate and paint. Further I accept that there is some evidence that the Claimant has shown some insight into his condition principally in his recorded reaction to the midwife, namely in biting his tongue when she

indicated he should not be left alone with the baby. Equally I accept that the lack of any real structured programme of late to regulate the Claimant's daily activities and the lack of a current vocational placement, which may in part be attributable to a lack of zeal in putting the requisite occupational therapy into place, or in seeking out a new project, on the part of those currently caring for the Claimant, has had an effect on the Claimant's behaviour for example to R (although I should acknowledge that a contributing factor to these absences of structure/placement lies also in the Claimant's own reluctance to co-operate while his partner and child have been at all times at home). However what I cannot accept given the overall effect of the medical opinion that the Claimant's cognitive disabilities will not improve, and the preference which I have given to the opinion of Dr Scheepers over that of Dr Britto, that the personality disorder will not improve, is that this scope for further acquisition of skills or the reintroduction of a structured environment /vocational placement will have anything other than a limited effect upon the needs of the Claimant for outside support. Dr Britto was very strongly of the view that although the Claimant would make no cognitive improvement he was capable of further self regulation and self discipline particularly in relation to alcohol. In one sense I accept this to be the case especially with the reintroduction following R's return to work of a more structured programme than has been in place of late, and the return to the token/reward economy developed at TRU to discourage the Claimant from inappropriate behaviour. I was however ultimately persuaded by the evidence of others of the medical experts – in particular Dr Scheepers and Mr Johnson – being grounded it seemed to me in the realities of the underlying nature of the Claimant's disabilities – that this potential for improvement does not derogate from the ongoing and permanent need for 24 hour support from some source (be it a partner, a support worker directly supervising, a support worker available on call), (although it is in my judgment a very relevant factor in relation to any assessment of the future need for two support workers on "nights out"). As Dr Scheepers put it, the Claimant will always struggle with the unexpected or the unfamiliar. As Mr Johnson said in a telling comment when asked for his opinion on the claimant's ability to self regulate, "not without prompts". I refer below to further considerations emerging from the evidence on this issue of the Claimant's capacity for future improvement when commenting on the rival approaches of the two care experts. THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon

34. Patently on the evidence there is always a potential for deterioration in the Claimant's behavioural/cognitive condition in the event of a destabilising occurrence such as, most obviously, the breakdown in his relationship with his current girl friend. I accept the Claimant's submission that the level of support the claimant receives will be a significant factor in preventing / limiting the extent of such deterioration.
35. In this context it is worth emphasizing that the evidence of the experts advocating the reduction in support – such as Mrs Bingham's proposal to reduce direct support ultimately to 6 hours, or Dr Schady's and Dr Coughlan's support for phasing out of night care (whether sleep in or on call) even if the Claimant were living alone, has always been qualified by the need to monitor the position, and the need in Mrs Bingham's case to see a marked

improvement in the Claimant's position. As to the position expressed by Dr Schady, he said that ultimately all would depend on whether the Claimant left his house or engaged in anti social behaviour. The difficulty with this approach however as a basis upon which to assess what is reasonable support provision is that identified by the Claimant in closing submission (and by Mr Johnson and Dr Scheepers in expert evidence) namely that the Claimant must be entitled to adequate protection from real risks, even if small, if the effects if they materialise would be potentially catastrophic for him. I have no doubt that such risks are very real in this case given the inherent unpredictability of the Claimant's behaviour arising out of his permanent cognitive impairments and personality disorders if suddenly confronted by the unfamiliar or that which makes him angry. As Dr Scheepers said in a telling piece of evidence in my judgment, it is not a question of numbers, and all the good days can be negated by one bad day. "One can't wrap (the Claimant) in cotton wool but the risks are very high".

36. The upshot of my consideration of the totality of the evidence – as will be seen in my conclusions on particular aspects of the care packages - is that the Claimant will always need 24 hours support from some source and of some kind. The survival of the Claimant's relationship with his current partner (R) - the likelihood of the Claimant forming a new relationship with a cohabiting partner
37. The Claimant first met R in September 2006. She moved in to live with him in December 2006. She became pregnant and from the middle of December 2007 took maternity leave from her employment. Their daughter Ch was born on the 29th of December 2007. It is common ground that R will in all likelihood return to work in August 2008 with the baby being at full time nursery with her Auntie during the day. On any view the relationship between R and the Claimant has been a volatile one with episodes of aggression and violence shown towards her often flowing from the obsessive jealousy which is a characteristic of the Claimant's personality disorder. The Claimant in final written submissions graphically summarised the picture as being one where R has been "regularly abused, assaulted, accused of infidelity and aggressively pursued by text and phone". Although the defendant is entitled to perhaps to take issue with the epithet "regularly" in this description I am quite prepared to accept that this is a description of behaviour on the part of the Claimant towards R which has THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon reoccurred on many occasions and is a reflection of the consequences of his frontal lobe injury. R herself gave evidence of the recent incident in Blackpool in 2008 when the Claimant tried to strangle her. She spoke of her often returning to her own mothers until the Claimant calms down and of his telephoning her with emotional blackmail if she does not return - threatening to kill himself or to smash up property. Both the Claimant and the defendant have placed before me their respective analyses of the recorded incidents of violence /aggression arising between them, and including incidents when because of the rows, the child Ch herself has been in potential danger – for example at the end of January 2008 when the support worker felt compelled to pick up the child from the floor when the

parents were physically fighting. A particularly notorious incident occurred on New Years Eve of 2006 when the support worker was called out to find the Claimant and R fighting outside R's house with the Claimant in drink ultimately lashing out at the support worker and kicking and punching the car. David Callaghan's evidence was that R frequently threatens to leave the Claimant when they are having a fight and he finds it surprising that she has stayed as long as she has. A theme running through the evidence of those who have had involvement with the couple on a regular basis is that R lacks insight into the Claimant's problems arising out of his disabilities. In her evidence to me R exhibited a conflict of contradictory feelings towards the Claimant and her relationship with him. On the one hand she said the ways things were going she saw no future with the Claimant, she was losing patience with him. She spoke of his habit of showing apparent remorse/apology at the end of an aggressive incident but half an hour later would demonstrate he is already oblivious of what has just passed between them. Those acting on behalf of the Claimant properly suggest that such behaviour is consistent with the Claimant's known limitations of memory. On the other hand she made it very clear that the Claimant loved his daughter although he had obvious limitations in being able to look after her and when asked why she kept returning despite the potential for violence, replied because "I love him to bits", and referring to the fact they now have a family, that the Claimant says he is going to change which "I believe".

38. It is in this context that the submission on behalf of the Claimant is that the reality is that this relationship is doomed to failure in a relatively short time. It is submitted that the tensions in the relationship can only increase as their daughter becomes older, more mobile and more demanding with the attendant risks of an increasing tendency of the child to trigger his temper, his impulsiveness and his unpredictable outbursts of aggression "with the danger that the baby will become for him the catalyst for further risky behaviours, rather than the agent of domiciliary calm". In support of these contentions statistics were produced from various research papers – produced primarily through the evidence of Mr Johnson – to demonstrate that the published data on marriage and similar relationships in the severely head injured population indicates a higher rate of separation – one paper (Wood and Yourdakul) concluded that overall 55% of their sample were divorced or separated at some five years after the injury, with other studies reporting rates from 60% - 88%. The Claimant relies further on the National Statistics for the broad proposition that the divorce rate is higher among young people, and young marriages are particularly vulnerable. These statistics show that the average marriage ending in divorce survives just over 11 years. In summary the submission on behalf of the Claimant is that because R's experience is that of "an endless loop of bad behaviour from her partner, followed by remorse followed by repetition" that the odds are strongly against the relationship surviving as much as three years. A probable maximum of three and a half future years, probably much less.

39. The defendant submits that these submissions of the Claimant underestimate the likely enduring quality of the relationship between the Claimant and his current partner. Effective THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon cross examination was made through reliance on the case management records to show that when – as will be the likely future position when R returns to work and potentially a new vocational work placement is found for the Claimant – the two of them were not always at home together under each others feet, the tensions between them were not as bad; and further that R has shown insight into the Claimant’s needs and has a potential for being useful in helping to structure his life as conceded by Dr Scheepers - as demonstrated by the recorded occasions when for example R gave the Claimant lists for shopping to be purchased, lists of jobs to be done (painting) and the times to do it; asking him to take money out of the bank. The defendant prays in aid the fact that on the records it has been R who has encouraged the Claimant to go to counselling (which he has) to better control his jealousy, and the material contents of referral letter for the purposes of Occupational therapy written by Claire Edgar in March 2008 herself which states “(R) does not fully understand all of (the Claimant’s) difficulties and as a result is not always aware that he may require assistance to do certain tasks. (R) is however aware of some of (the Claimant’s) difficulties such as his problem with physical and verbal aggression as he has on occasion been both physically and verbally abusive to her. (R) does not view this as a problem on a day to day basis and feels like (the Claimant) that this is a personal issue that she and (the Claimant) can resolve together”. R herself in evidence conceded that there could be good times between herself and the Claimant for example the holidays to Turkey and Skegness when little of adverse note occurred. They go shopping together usually by themselves albeit driven to the shops by a support worker. They have a family day on Sundays.
40. I also have considerable sympathy with the Defendant’s submissions that the statistics produced to the court do not really assist. Mr Johnson himself conceded the statistical limitations of the studies given that the numbers of participating patients were very small and that they in truth had little statistical value in evaluating whether R would leave the Claimant, since the majority of the studies (and on another analysis the entirety) related only to spouses/partners who were in a relationship at the time of the traumatic brain injury. The National Statistics on divorce do not refer to how long people cohabit.
41. This issue was addressed by the medical experts. Mr Johnson’s written opinion was that “given the nature and severity of (the Claimant’s) behavioural disturbances and his associated cognitive difficulties in reasoning, empathy and so on, together with his partner (R’s) limited understanding and skills in coping” the relationship “was more likely to fail than not”. In oral evidence he declined to quantify that prospect, although I accept he conceded that at the moment R felt “suffocated” by the Claimant and the introduction of a structure would improve matters. Dr Coughlan agreed with Mr Johnson. Mr Price and Dr Schady were agreed on Mr Price’s assessment that there was a “50% chance “that (R) would stay with (the Claimant). Dr Britto thought there was a 1 in 2 chance of the relationship breaking up. Although Dr Scheepers did not address this issue in oral evidence, his written

opinion was that “because of his problems he is unlikely to sustain relationships in the longer term”.

42. I have also of course looked at the defendant’s commentaries on the recorded negative incidents between the Claimant and R which go some way to support the defence contentions. Moreover the decision of the case managers to discontinue night care taken in November 2007 and implemented from the beginning of February 2008 clearly did reflect an assessment on their part that the relationship between the couple was sufficiently stable. However, I equally have had to have regard to those recorded examples marked up by the THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon Claimant demonstrating that there have been behavioural problems when the Claimant was in a work placement and R was out of work. And I accept Claire Edgar’s evidence that historically there have been behavioural problems with or without a work placement, and this is evidenced in the work placement records.
43. The defendant’s submission on the totality of the evidence is that it is reasonable to assess the prospects of the relationship continuing indefinitely as 50/50. This case in final written submission was summarised thus: “although the relationship will have to endure problems deriving from C’s disability, it will be unconcerned with the finance related problems which beset most relationships. Moreover with an appropriate and structured regime, the relationship will benefit from the fact that SWs are in place, C has activities which fill his day, there is case management support and that because R is not required to be C’s constant carer. She will enjoy a degree of independence from C. both R and C enjoy the benefit of significant support from their families who live close by and who provide clearly identifiable practical and emotional support”.
44. The conclusion I have come to on the totality of the evidence including my own assessment of R is one somewhere in between the respective contentions of the parties . I do in the light of that assessment consider the Claimant’s evaluation of the prospects for the relationship to be over pessimistic . It appears to me that she has shown herself committed to the relationship notwithstanding the obvious challenges to which she has been subject and has shown some significant if not full insight into the Claimant’s continuing problems, and the very fact the relationship has lasted to date notwithstanding the matters to which David Callaghan averted, demonstrates the potential for this relationship to outlive what might otherwise have been expected. Equally I consider the defendant’s contentions over optimistic. The statistics produced may have been of little value in themselves. They do however at least conform to what in my judgment is the common sense of the basic proposition at the heart of the claimant’s case on this issue which I accept ,namely that the effect of traumatic brain injury on relationships has the obvious potential for being totally destructive whether or not the injury predated the commencement of the relationship, in particular if there is by reason of the frontal lobe injury, no real scope for cognitive or consistent (my emphasis) behavioural improvement thus dashing what may be the initially entertained hopes for change .

45. I also have to assess given my assessment of the evidence to which I have referred, the likelihood of the Claimant acquiring a new partner if the relationship with R were to breakdown and the prospects of survival of any such new cohabitation. Everyone agrees that the effect upon this particular claimant of such a breakdown will be particularly traumatic and will require particularly intense support for a given period which only Dr Schady sought to quantify at 6 months to two years. The defendant submits that there is no reason to conclude that the Claimant's prospects of establishing a cohabitating relationship with another partner are anything less than 50-50 "on the basis that another woman may well find (the Claimant) as charming as (R) did" and the Claimant has already shown his ability to establish and work at a relationship. The Claimant's counter submission is that prior to the arrival of R no expert ever suggested it was likely that the Claimant would find a life companion and if R were to leave the prospects are even less likely. It was more than 6 years post accident when the Claimant met R in September 2006, she was very young, slept with the Claimant the first night they met, moved in three months later, and became pregnant 3 months after that in March 2007. As the Claimant ages (he is now in his mid twenties) it is suggested that the prospect of such precipitous behaviour in his partners will diminish "as unlike (the Claimant) the women of his age are maturing". The submission accordingly is "that the probability must THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon be that whilst he may be able to attract a woman – perhaps one who like (R) did initially mistake his disabilities for inebriation – for a passing sexual fling, he will not find a new life partner to replace (R) once she leaves". The Claimant says that to predicate the future care package for the claimant protected party on assumptions as to the arrival and maintenance of a future relationship with an as yet unknowable individual would be irresponsibly speculative.
46. In my view if a coherent future care package is to be properly assessed to reflect the Claimant's reasonable needs, when it is agreed that the demands of those needs in terms of outside support will differ according to whether the claimant is or is not living with R or some other partner, the court should make an assessment in terms of years, rather than percentages of chance of the likely future duration of any such relationship. However I accept that the court should not enter into pure speculation which has no genuine foundation as far as probabilities or even possibilities are concerned.
47. Approaching the matter in this way I accept the Claimant's submission for the reasons given that it is in the circumstances of this case wholly speculative as to whether the Claimant would ever find another partner prepared to cohabit with him on any long term basis, given the depth of his permanent cognitive and personality disorders, and the age he is likely to be. I propose therefore to discount such a possibility as too remote to be properly reflected in any assessment of future care needs. My assessment however on the evidence in respect of the Claimant's relationship with R is that the probabilities are that it will survive into the future for a substantial period which I assess at 10 years. The agreed life expectancy of the claimant is some 56 or so years. In my judgment the corollary that for the majority of those years he will be living alone without a partner, is a fair reflection of the realities of his

permanent disabilities. Care/Case Management

48. I turn now to the contentious elements of the proposed future care/case management packages. However, before giving the detail of my rulings relevant to these assessments, I make some general observations on the court's assessment of the rival care experts. I did not find either Mrs Statham or Mrs Bingham to be other than bona fide witnesses, each having considerable experience in the field of assessment of care packages in cases of this nature. I did not in particular in the case of Mrs Bingham find it particularly helpful to have cited findings reflecting adversely upon her objectivity made by other courts in other litigation in the context of other facts. I have to say, however that there were aspects of the approach of each of these respective witnesses to the assessment of and costings of the care/case management needs of the claimant which did not reflect complete objectivity unaffected by extraneous considerations.
49. Thus in the case of Mrs Bingham I accept that one of the factors which has led her to produce such consistently substantially lower assessments of necessary provision and costings has been her conscious (at least at the time of preparation of her reports) or (by the time she came to give evidence) subconscious adoption of the Dr Britto opinion that the Claimant had a pre-existing ("premorbid") condition by way of a conduct disorder which has continued to contribute to his care needs. I have to say she could not in oral evidence give the court any satisfactory explanation which would undermine this conclusion, for the two passages in the joint report dealing both with her assessment of the past care of the THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon Claimant's mother and her overall approach to future case management provision; (thus in respect of the latter at joint report p.9 "MB considers the case management costs to be excessive. (The Claimant) is by no means the worst type of case, in some ways his needs can be seen to fall within the moderate range, given his physical abilities and it has to be taken into account that the premorbid situation contributes to this.) As I have already indicated this is a stance which has been expressly disavowed by counsel on behalf of the defendants.
50. Further in the case of Mrs Bingham there were aspects to her evidence which I also consider reflected an over optimistic assessment of the ability of the Claimant to improve to such a degree and to produce such a settled and permanent state of improvement, that for example the number of hours of direct support worker intervention could be reduced to that of six hours, compared with the extent of the current provision (7.45am to 8pm). Even she was compelled to concede that whether the Claimant could ever reach that settled state would be "conditional upon significant improvement" in his capabilities and behaviour which only time would tell if it were to come about and that this was a "big if". There was a large element of hopeful speculation in her approach at this stage in my judgment. She was undoubtedly affected by the views of Dr Britto in this regard – on the question of the scope for improvement in the Claimant's ability to look after himself independently of others – which in my judgment are out of line with the thrust of the other expert and lay evidence. The oft cited example appearing in the joint report of Dr Scheepers and Dr Britto, relied on

by Dr Britto relating to the ability of the Claimant to cook meals “without prompting or interference” apparently stemming from information provided by the Claimant’s partner i.e. R, was in fact contradicted by the evidence of that partner who referred to precooked frozen food being still raw in the centre after the Claimant’s attempts to heat it up, and of his use of the smoke alarm to determine whether food was cooked. This is not to say that Mrs Bingham was not entitled to take on board evidence to which I have already referred, that the Claimant has shown himself capable of being guided and prompted to performing ultimately unaided certain tasks of day to day living such as bathing, shaving, preparing breakfast, walking to local destinations, operating an ATM cash machine, shopping without supervision (albeit with lists) and even cooking pasta and preparing parsley sauce. This evidence however begged the question of whether it would be safe for the Claimant to be without any access to a prompter or a source of support in the event he were to be confronted with the unfamiliar or that which he had forgotten how to operate. I found Mr Johnson’s oral evidence to me that he disagreed with the proposition that the Claimant was capable of self regulating without prompts, compelling – although I accept that the evidence relating to the use of Free Time in the past as part of a structured reward programme shows that the source of that prompting /support need not be directly on hand. The evidence of Mr Johnson in his letter of the 26 th of May 2008 that “Whilst (the Claimant) undoubtedly has some residual ability in cognition and behaviour, it is his disabilities that set the limits to what he can do, when and how he does it. He may learn a particular skill or behaviour for example but the effects of his frontal lobe damage disrupts its efficient recall and implementation especially when he is agitated or angry”, and that his residual impairments are such that “one cannot assume that he can and will think or behave in a predictable or consistent manner” is entirely consistent with the literature on the effects of frontal lobe damage. Again in my judgment, this opinion which he maintained in oral evidence, despite all the understandable efforts of defence counsel though reference to the records that nothing untoward had occurred in the past – at least on any consistent basis – during free time, to persuade him that the Claimant could safely be left on his own without even telephone support, reflects that which are the realities of the effects of the Claimant’s disabilities. As Mr Price said in oral evidence to the question does (the Claimant) always need a prompter, this is a “complex question”. He pointed out that the THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon Claimant has 24 hour care at the moment although not all provided by support workers (a reference to the support of R) but there was a need to balance risks against the need for independence and the need to be continuing to monitor risks.

51. Mrs Bingham was also keen to emphasise that which again I accept the evidence demonstrates, namely the lack of late of any structured programme of support and activity with provision of a vocational placement, and the lack of any properly administered “token economy” to control behaviour (in particular the consumption of alcohol) but in my judgment the need for such structures to be re-introduced and more emphasised cannot be the basis for the court concluding that with such introduction the support provision can be

confidently reduced to the levels she suggests. Dr Scheepers in his report at paragraph 6.4.8 accurately in my judgment summarised the position thus “within a structured or familiar environment he will be able to function relatively well but will always struggle with the unexpected or unfamiliar” when qualified by his oral evidence that a balance had to be struck between managing the risk on the one hand, and choice, opportunity, dignity and respect on the other. In the round his evidence was that the Claimant required 24 hour support which I accept although I also accept that where there is room for debate, is what form that support should take when assessing the Claimant’s reasonable needs – (partner/ direct support worker support /indirect by being on telephone call).

52. As regards Mrs Statham the one defect in her approach I did detect was on occasion to be over influenced by the pre-existing care and case management arrangements. I do have sympathy with the defendant’s submission that she simply accepted the entirety of the Claimant’s past care and case management without qualification or criticism. It is a fact that the case management charges in the past have been of a very high order and the predicted future ones and proposed by her although lower are still at a level which gives rise to very high costings. It is worth always standing back to look at figures in the round as a jury might do. In this case as the defendant points out Mrs Statham proposes case management time based on 344/372 hours per year for the rest of the Claimant’s life giving rise to annual provision for case management alone of between £34,000 and £37,000 per annum which I do accept are extraordinarily high figures. Although I accept that the Claimant has disabilities which demand a considerable level of support I also accept the Defendant’s submission that the Claimant is not to be described as requiring the most expensive of case management needs and is not to be put in the category of the worst brain damage case. What might be described as an uncritical approach to the assessment and evaluation of the Claimant’s needs by reference simply to the existing order, was particularly noticeable in my judgment in her selection of rates of pay/ remuneration for the support workers, which I discuss more fully below. I turn then to the issues relevant to the determination of the appropriate care/ case management provision in this case. I deal first with those relating to care. Free Time – impact upon need for direct support worker supervision, /telephone support Free Time – the past
53. Free Time, that is to say time during the day when the Claimant is without any direct support worker supervision was introduced in October 2004 at the prescription of the neuropsychologist, Nick Morton, as part of the structured reward/token economy programme designed to discourage the Claimant from misbehaviour, so that the number of hours could be THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon increased or reduced according to outcome. It is common ground (save for the oral evidence of Mr Johnson which is out of line with the prevailing sentiment of the evidence elsewhere) that it worked well as part of such a structure. It involved a contract signed by the Claimant and clearly meant something to him providing him with a sense of achievement and providing him with necessary privacy and space. Over time the hours allotted to Free Time increased so that prior to the arrival into the Claimant’s life of R, it had become 5 hours.

These would routinely – although not always – be taken in the evenings between 6pm and 11pm. During this time the support workers would withdraw although would continue to provide indirect support being available on the telephone. I accept the defendant's analysis that the free time records kept by JSP show that the evidence of the Claimant's mother that the Claimant was always getting into bother during free time is not borne out at all by these records which show that there is no evidence that a support worker was ever required to return to the house before the end of Free Time. He would however make telephone contact on occasion usually to make sensible enquiries over minor matters, for example seeking the whereabouts of a screw driver or a tape measure for blinds or where to hang a washing line, or seeking assistance if feeling unwell. Equally I accept that the records show that at times when in 2007 and 2008 the Claimant has been left on his own without a support worker for example when the worker was ill and without cover, the Claimant, with telephone support only, came to no harm and made no contact. Further, the records show that the Claimant has gone out on his own, for example to his mothers, the local co-op, the dentist, and to meet R from work, without mishap.

54. This is not however to say that free time was not sometimes abused by the Claimant – the most frequently cited example being that of April 2006 when the Claimant went drinking and was ultimately found all sludged up on a muddy field.
55. Since R came to live with the Claimant, Free Time in this structured sense as part of a reward programme has ceased to operate although records have continued to be kept. The support workers have continued to withdraw in the evenings giving the Claimant and his partner a period of privacy but I accept this is not conceptually the same as that previously operated.
56. By September 2007 the position had been reached, given that the Claimant had reduced his socialising at weekends to spend more time with R during her pregnancy and had reduced his alcohol intake, that there was no support worker at the Claimant's home between 6pm and 11 pm but one support worker would be on sleep-in duty at the house between 11pm and 7 am; at weekends a second support worker who had used to come in was then on telephone call if needed which on the evidence he never was. Following a review of November 2007 it was decided to withdraw the second support worker and the sleep in duty as from the end of July 2008, and after a further review to withdraw all night support. This has been the current position to date that is to say there has been no support worker provision of any kind in the evenings or overnight. The support for the Claimant during this period is thus currently being provided by R. The Support workers do however now come in at 7.45 am and do not leave until 8pm, although they do provide the couple with ad hoc privacy by using the support worker room. Clare Edgar explained the reason for this extension of the evening hours as being that otherwise the Claimant would be without support for too long and there was a need to keep the support package in place. "Free Time" the future – THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon

57. I have no doubt on the evidence that the likelihood is that once R returns to work – which is likely to be the position from August 2008 – Free Time is likely to be reintroduced. The overwhelming thrust of the expert evidence is that Free Time should be gradually be built up again starting with two hours to a likely daily maximum of 5 hours, although as Dr Schady said “it might take some time to get there”. I have no doubt that allowance for this should be made in any future care package whether the Claimant is living with R or alone in the sense that during such Free Time the only support required will be that of telephone support as in the past. The difficulty under either scenario is inevitably in assessing how many hours to allow per day on an annual basis when as the Claimant submits there has to be allowance for flexibility so that the hours can be reduced or even on occasion removed if problems were to arise- this is especially so if the concept is – as is likely – reintroduced as part of a reward structure.
58. The conclusion I have come to is that of the support worker hours provided in the daily provision for either period (Claimant with R/living alone), 2 and a half hours should be allowed for and costed out as telephone support. This will reasonably reflect in my judgment the likelihoods of what is required overall, allowing in effect for days or weeks when there are 5 hours daily free time and days or weeks when there are none.
59. Despite the reliance put by the defendant upon for example Dr Coughlan’s evidence that it would be safe for the Claimant to be left on his own without telephone support for a few hours during the day although it would have to be phased in, and the understandable reliance upon the lack of any real problems reflected in the records of Free Time in the past, my judgment on the totality of the evidence remains, that there must always be provision for at least telephone support for those periods when a support worker is not immediately present. I have already referred to the material evidence of Mr Johnson which I found compelling. Again I revert to the evidence of Dr Scheepers where he said that “so long as it is not important that (the Claimant) completes any particular task” telephone support “is probably sufficient” which again in my judgment reflects the realities of the Claimant’s disabilities. It is not without significance that the records show the Claimant will on occasion seek out assistance on what may be relatively minor matters but which in the event of assistance not being available has the obvious potential for the Claimant becoming anxious and frustrated. In the event of such frustration I agree with the Claimant’s submission that there will always be the potential for escalation and an inappropriate way of dealing with the problem which carries unacceptable risks for the safety of the Claimant. I accept the example given of the Claimant instead of being able to ask where his lighter is, trying to light a cigarette off the cooker. The support worker hours of direct supervision while the Claimant is living with R.
60. Currently as already indicated, the support worker arrives at the Claimant’s home at 7.45 am and departs at 8 pm a total of 12.25 hours. On the evidence of R which I accept, when she, R returns to work she will leave the house at 8 am with the baby and return at 6 pm, a total absence of some 10 hours, Mrs Statham in her provision allows for a continuance of these

12.25 hours throughout the period that the Claimant is living with R. As already indicated, Mrs Bingham divides her provision into three periods, the initial period until the child Ch is 2 and a half, a 6 month transitional period, followed by a final position, with 10 hours, 9 hours and 6 hours respectively being allowed for direct support worker supervision. Mrs Bingham's position is that by the time Ch has reached 2 and a half the Claimant should be in a position given the appropriate reintroduction of a structured programme of THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon rehabilitation to reach, following the transition, a level of independence and a sufficiently settled state to allow for this reduction to 6 hours support. For the reasons I have already given I regard this as hopelessly optimistic and based on the Dr Britto prospects for permanent improvement in the Claimant which I reject in favour of what I might term the "Dr Scheepers" view that the Claimant will always need 24 hour support in some form. Thus in principle I prefer and accept the Mrs Statham approach that provides for such support. In the context of this period, i.e. while the Claimant is living with R, I do accept however the need to build into the direct support worker provision an element of flexibility. Mr Tattersall QC for the defendant was able to persuade the various experts such as Mr Price, Dr Schady, Dr Coughlan of the reasonableness and indeed logic of the support workers staying no longer than an hour after the return of R at 6pm, and their arrival being postponed to say up to an hour after the departure of R in the morning to allow the Claimant time to get up and get ready on his own. Mr Badenoch QC on behalf of the Claimant submits that it is impossible to set the hours of arrival and departure in stone but that the 12.25 hours allowed for by Mrs Statham allows for overlap with the presence of R at either end of the day which overlap may change as between the two ends as the changing needs of the family alter.

61. My conclusion is that there does have to be that built in flexibility and it is at this point that my assessment that Mrs Statham may have been looking too uncritically at the existing regime becomes pertinent. To the Claimant's advantage I have rejected the notion that it would be safe to premise and confine the bulk of the future care provision while he is still living with R to 6 hours a day. However I do consider it reasonable that the daily provision to be used throughout this period should reflect again the reality that the amount of overlap required is likely to vary. In my judgment a fair and reasonable assessment of the daily support worker need is that of 11 hours for the entirety of the period the Claimant is with R. As already indicated, part of that (to the extent of two and a half hours) should be costed out as indirect telephone support. Sleep in care – when the Claimant is living alone- level of support worker support when Claimant alone;
62. No one is suggesting that while the Claimant is living with R, he should be provided with any sleep in care or telephone support over night. In support of the contention that no night time provision should ultimately be made in future even if Claimant were alone – the defendant prays in aid evidence of the records for 2006 conceded by Miles Quirk that apart from when he went out at weekends the Claimant wasn't a night owl and generally went to bed by 12.00 and only infrequently stayed up until 0200, and that there is no example in the records of the Claimant calling for support worker assistance or intervention during

sleeping hours other than following nights out drinking. Moreover I accept that there is evidence that even before R was a permanent fixture those caring for the Claimant in or before December 2006 were contemplating a diminution or even cessation of a support worker being present in the house. Katherine Rotherham is reported as telling Dr Coughlin that “he would perhaps now be able to manage on his own overnight” and that a meeting to discuss reducing his overnight care “gradually” was to be held with his case manager in the next week or so. I should add that the evidence of R was that the Claimant will go to bed half an hour after her but does like to sleep in late afternoon. The evidence of David Callaghan however was that before R was on the scene the Claimant would often be up until 3 or 4 in the morning at weekends and that his then response to a problem was to go out and get drunk. Although the records do not show this to be a continuous occurrence I accept that the potential for this THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon happening if the Claimant were living on his own still exists. The defendant’s submission is that when the Claimant is alone there should be a phased reduction from support worker sleep in care to telephone support to ultimately no telephone support. The defendant in this regard relies upon the evidence of its experts and indeed the ultimate position of Mr Price under cross examination but again I emphasise the extent to which this opinion was based on the qualification of the need to monitor and “see what happens”. Even Dr Coughlan conceded to the court that it would not be unreasonable to allow telephone support at all times when a support worker was not present.

63. In contrast the Claimant relies on the evidence of Dr Scheepers and Mr Johnson very much in favour of sleep in care if the Claimant were on his own, again because of the inherent risk that something serious might happen to the Claimant in the event of his being faced by an emergency produced by the unfamiliar with which the Claimant given his cognitive impairments and personality disorder – leaving aside his continuing physical disability – would not be able to cope – be it fire or a burglary. In addition there is the risk that the Claimant on his own, with his capacity for becoming bored, will revert to alcohol as has happened in the past.
64. Critically in my judgment the Claimant is also able to point to the striking fact that not only Mrs Statham but also Mrs Bingham in her final written report envisaged sleep in care every night if the Claimant were not with a partner.
65. I have been persuaded by the Claimant’s arguments. My conclusion is that the care package for this period while the Claimant is on his own should provide for 24 hour support with sleep in care. However to reflect the evidence that in the past few difficulties have arisen when the Claimant has been on his own with such care, and the possibility which I cannot totally discount that there may come a time when those in charge of the Claimant’s care may contemplate altering the nature of the night support to a lesser form of support (such as on call) I consider that for the purposes of evaluating the sleep in night care, Mrs Bingham’s approach to what amounts to a night duty should be adopted that is to say to say 10 hours. Need of 2 support workers on nights out

66. As regards the provision of 2 support workers to allow for occasions when the Claimant frequents a night club or a public house, the defendant strongly submits that this is an unnecessary provision and indeed on the evidence of for example Dr Schady and Dr Coughlan counterproductive to facilitating the Claimant's greater independence by taking responsibility for his own actions and sense of worth. Even Mr Johnson conceded that with an appropriate programme of structured activities there was no long term need for 2 support workers on the Claimant's nights out. This emphasis on the "long term" had a resonance in the oral evidence of Dr Coughlan that 2 support workers could be justified but only when the Claimant was visiting night clubs as opposed to pubs. The defendant asserts (as is the case on the documented evidence) that there are few examples when two support workers have been needed. The Claimant however relies upon the evidence of for example Miles Quirk of the difficulties which can materialise if the Claimant does in drink "explode" even in a pub, by reference to an example which I have no reason to doubt when the Claimant went to glass a man in a pub and it took one support worker to calm the Claimant and another to calm the victim. THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon
67. My conclusions reflect at this stage more sympathy with the defendant's submissions based on the need to manage risk and the need to balance the need to develop the Claimant's sense of independence. I take into account the evidence that a reintroduced programme of greater structure than has been in position of late will in all likelihood include control measures within the reward programme to encourage the Claimant to restrict his alcohol intake on nights out.
68. I have no doubt on the evidence that the likelihood is both when the Claimant is living with R and when living on his own that he will on occasion go out to socialise in pubs /clubs . The regularity is very difficult to forecast. It is certainly likely to be on a more regular basis when he is on his own than when he is with R and while with R less frequently than previously.
69. Moreover I accept the thrust of the evidence relied upon under this head by the defendant that it should be possible and there is a need in the claimant's own interests to reach a point where only one support worker is required for these nights out. On the other hand I have to bear in mind the potential emphasised by the claimant for things to go wrong.
70. My conclusion is that in effect over the two periods, that is to say while the Claimant is with R and while he is alone, the reasonable weekly provision for "2 support workers" should be that provided for by Mrs Statham in her provision but on the basis of 1 ½ support worker cover. That is to say I accept the need to make some provision for a second support worker but not to the extent allowed for by her. My allowing for 1 ½ support worker hours during the periods recommended by her, in my judgment reflects the likely realities overall. This can be given effect to by halving her allowances for a second support worker.

71. I turn now to other heads of dispute within the proposed care provision in so far as they have not already been dealt with in my above observations. While the Claimant is living with R R- gratuitous care
72. The Defendant submits that there is no evidence that R is providing care and assistance to the Claimant over and above that ordinarily provided by a partner, suggesting that the evidence suggests that what she does do, i.e. providing him with job/shopping lists, reminders/prompts when together, texting/phoning the Claimant to ask him to buy things for her or the family, “supervising” the Claimant when they are home together or out socially him, is no more than routine short lived tasks which many partners ordinarily undertake to assist their partner. Mrs Bingham moreover suggests that such “extra” as R may do is cancelled out by the reciprocal nature of the arrangement between them in which he supports her by way of an increased contribution to shopping, cleaning, domestic tasks. Mrs Statham in contrast makes an allowance for gratuitous care provided by R to reflect childcare, domestic and transport services which the Claimant would otherwise, had he not been injured, have provided for himself and his family outside the hours provided by support staff. She says she has taken into account the indirect benefit that R derives from the support workers and the fact that the Claimant would if uninjured have been working and would have had more limited time and availability for his family than is the current position. She also has had regard to attendance at meetings and staff liaison work, arriving at an overall allowance of 15 hours per week at £8.64 per hour, an annual cost of £6,739.20. THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon
73. My assessment is that the nature of the Claimant’s disabilities are such that it can never be said that that R has to provide nothing over above that which an ordinary partner would to an uninjured one, or that anything extra which she must inevitably have to do by way of child care, transport and domestic services is totally cancelled out by the reciprocal assistance of the Claimant who is far more present in the house than might otherwise have been the case. The fact is his ability to assist by way of worthwhile practical help about the house is limited by his permanent cognitive impairments and personality disorders and he cannot be guaranteed to give her consistent support and stability.
74. On the other hand I see some force in the defendant’s submission that the suggested allowance for R’s gratuitous care does not adequately reflect what the Claimant does himself provide by being more available, limited though it may be, and may overstate to a degree the nature of the care she has to provide directly to him because of his injuries. Moreover, any calculation by reference to an hourly rate has to reflect the conventional 25% discount for gratuitous care.
75. If I allowed the Mrs Statham allowance in full the annual figure for R would be some £5,000 taking into account the discount. In my judgment a fair and reasonable allowance under this head which should be allowed for R on an annual basis is £3,500 per annum. Support worker allowance for time R may spend away from the claimant and the house during the evening

76. Having heard R's evidence and her announced intention to spend time out on her own, and mindful of the Claimant's tendency to obsessive jealousy arising out of his personality disorder, I consider the allowance made by Mrs Statham for one support worker for 4 hours evenings per week at weekday rates to cover this such time away by R, a reasonable one which I adopt. Annual support worker allowance for risk of R leaving the house and spending night/nights away
77. I am quite satisfied some allowance must be made under this head since there must on the evidence be a risk that R will spend nights away as she has in the past in times of crisis even allowing for the implementation of a more structured rehabilitation and support package than of late, and for the reasons already given the Claimant will if that risk materialises need additional support worker support. I would allow Mrs Statham's allowance but limited to two weeks per annum. Holiday cover
78. R's evidence which I accept was that she would want to take a normal holiday of one or two weeks with some weekend breaks. I consider it reasonable in these circumstances to allow, as Mrs Statham does, for a total of three weeks holiday per annum. It is common ground that if the Claimant goes away abroad with R two support workers would be required. In the case of holidaying in the United Kingdom experience has shown (Skegness with members of R's family and friends; Blackpool in 2008) that sometimes the Claimant has required only telephone support especially if there are other uninjured adults in the party (Skegness) whereas on other occasions 2 support workers have been properly provided for and needed (the Blackpool fracas with doormen). I am mindful that the evidence is that the THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon Claimant's personal social circle has now reduced to one or two friends, and in reality one. A proper assessment under this head in my judgment for annual support worker cover is to allow Mrs Statham's provision but divided into two weeks with two support worker cover and one week with one support worker cover. While the Claimant is living alone
79. I have already given my reasons for finding that during this period there should be 24 hour support including sleep in care but qualifying this to the extent of including within the daytime cover two and a half hours of telephone support to reflect the likely free time provision, and allowing the night duty as one of 10 hours. I have also already allowed for extra support worker cover (the second support worker) the cover to Claimant's likely socialising but only to the extent of one half of that allowed for by Mrs Statham. Holiday cover
80. The outstanding areas of dispute appear to be in relation to holiday cover. I would allow the same provision as I have allowed as when the Claimant is living with R, that is three weeks but with the difference that an allowance should be made for 2 support workers throughout. This level of support worker support has not been disputed by the defendant. Case Management provision

81. I turn to the considerable areas of dispute in respect of case management. I say at once that in relation to this head as I have already indicated I do consider that the provision contended for by the Claimant to be excessive when looked at globally and having regard to the overall level of the Claimant's disability. Under this head I do find Mrs Bingham's basic approach convincing although as will be seen I do not reduce the level of Case management completely to that advocated by her. Contact time – that is to say the hours of contact time reasonably required by the Claimant from his Case Manager each month
82. Here I do allow the 6 hours allowed throughout by Mrs Statham. Monthly team meetings
83. I accept that to a limited degree these can be justified over the year although I see the force of the defendant's submission that direct communication with individual support workers is an effective alternative. I allow one hour per month as a reasonable average. Supervision and appraisal of staff by case manager beyond that included within visiting the claimant at home
84. I accept the defendant's submission that this is not reasonably required and appropriate supervision should be achievable during the visits to the Claimant's house, although I observe that this submission is properly predicated on there being an established team of experienced support workers with all future support workers being suitably trained and job competent. Telephone support reasonably required by the Claimant each month. THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon
85. Mrs Statham allows 8 hours per month, Mrs Bingham 3. I allow 5. The number of visits the Case Manager is likely to make to the house each month
86. Clare Edgar's evidence was that she visited the house approximately every two weeks. This in my judgment reflects the likely realities. I allow 2 visits each month. Additional hours of case manager time by way of "contingency"
87. Mrs Statham allows for 48 hours per annum. Again I see the force of the defendants' submission that the ups and downs which the Claimant is likely to face in any given year should be reflected in the annual allowances made for ongoing case management. On the other hand I am mindful of Dr Scheepers' concern expressed at the absence of any such explicit provision. I will allow 20 hours per annum. Additional allowance for overseeing the Claimant's target based programme
88. I accept that the overseeing of the Claimant's target based programme is part of the case manager's overall responsibility which is provided for in the contact time and home visits already provided for, and that in principle what is envisaged is the re-introduction of strategies which have already been developed and that once a vocational placement course has been secured there is little scope for ongoing involvement by the case manager in a programme whose implementation is primarily that of the support workers. I do not consider that any additional allowance is in these circumstances reasonably required. Ongoing training for the support workers in relation to the Claimant's care.

89. Although as already indicated there has been a low turnover in support workers who have already been trained to the requisite level, I accept of course the need to provide some ongoing training as needs and circumstances change. However I accept the defendant's submission that "training for experienced and job competent support workers should be directed to the Claimant's specific needs which can only be addressed on "the shop floor" rather than on generic training courses in the classroom. Under this head I prefer Mrs Bingham's approach to that of Mrs Statham. That is to say it is reasonable and sufficient to provide for this ongoing training by allowing for support worker costings to be by reference to a 59 week year. Rates and costings. The Hourly rates for support Workers
90. This is not a case where the Claimant requires the most experienced of support workers. The current hourly rates are that of £11.80 for weekday and £13.85 at weekends. They were introduced in April 2006. Prior to that they had been that of £11.50 and £13.50 respectively introduced in May 2005, which was a 28% increase over the rates fixed in February 2004 (£9.00/£10.00). This increase in 2004 had been from the previous rates of £7.00/£7.50. It is these current rates of £11.80/£13.85 which Mrs Statham now proposes together with a supplement for team leader of £1.54. I have no doubt that what has influenced Mrs Statham in this selection is that which she stated in the joint report where she said very starkly "RS applies the rates of pay understood to be paid to current workers and to have been paid to the THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon previous team leader" Although in the joint report, Mrs Statham also refers both to her own experience in the area, and to the considerable experience of the current case managers (JSP) in staff arrangements and costs "being possibly the largest manager of directly employed staff working in the field of acquired brain injury in the area in which (the Claimant) lives", and that the rates can be explained by the need to retain staff prepared to work in a job "that is both challenging and as far as (the Claimant) is concerned, often thankless", I accept the defendant's submissions that there has been no evidence justifying the increases in February 2004 or May 2005 or the present rates by reference to any market testing / advertising or evidence of the support workers requiring such rates on threat of leaving and no evidence explaining how any of the hourly rates have been arrived at by JSP. In her oral evidence Mrs Statham appeared to me quite uncomfortable when pressed to give any precise examples from her past experiences justifying her adoption of the current rates. I accept she did ultimately refer to a Sheffield case where she was case manager where the hourly rate was £11.00 /£12.50, although without producing any supporting documentation. I note also that in oral evidence none of the support workers who were called suggested that the increase in rates had been as a result of any pressure by themselves and Claire Edgar the current case manager told me she had no experience herself of negotiating support worker hourly rates.
91. In contrast I found Mrs Bingham's approach on this issue more compelling although not a complete outcome. Her figures are that of £9.00 and £9.50 respectively. In the joint report she referred to the lack of any market testing and asserted that from her own experience the Claimant could obtain highly experienced workers at the rates she contended for. In oral

evidence she supported these assertions by the results of enquiries made of agencies as to the charging rates and the underlying pay rates for the provision of experienced support workers for people with severe brain injuries, and in particular a brain damaged client in Barnsley. The underlying pay rates were on average below £9.00. She also referred to hourly rates below £9.00 paid at residential specialist brain injury centres. She volunteered the identity of various individuals on whom she had prepared expert reports which under cross examination she offered to produce if asked- which she was not. It is not in dispute that the DNA Forensic Nursing Agency which has been providing agency cover for the Claimant since September 2004 currently pay their carers £8.50 per hour.

92. The reason I do not however find Mrs Bingham's evidence completely decisive on this issue, is that I accept the point made on behalf of the Claimant that agency carers are not appropriate in this case in that the Claimant benefits from a continuity of identity in his support worker provision, and that in any case none of the agencies contacted by Mrs Bingham were in themselves brain injury specialists and none had been able to give a firm quotation absent any assessment of this particular Claimant. Moreover Mrs Bingham herself had gone above the rates otherwise justifiable by her particular if somewhat rough and ready "market testing" to take account of her assessment of this Claimant's particular demands, and I have to bear in mind my overall view that she has in her support provision been over optimistic in what those demands amount to. I accept the point made strongly on behalf of the Claimant that there are added difficulties in supporting a brain damaged person in the community compared with a residential unit which should be reflected in the hourly rates.
93. Balancing the competing factors material to this issue as revealed in the evidence my conclusion is that a reasonable hourly rate to be used for the purposes of costing the support worker provision is that of £10.00 weekday and £11.00 weekend. THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon
94. I should record that no- one has sought to identify any dispute between the care experts as to the approach to costing of any sleep in duty. It is agreed that this should be at the minimum wage. Telephone support costings
95. I found this one of the most difficult issues to resolve. On the one hand I see much force in the defendant's proposition that from the standpoint of seeking to evaluate the work required within a particular provision, a reasonable starting point is that telephone cover should be charged at a lower hourly rate than if the support worker were present. Both Jacqueline Parker of JSP and Mrs Statham accepted this as appropriate in principle but then raised the practical issues relating to the retention of staff to which I shall shortly refer. The defendant in cross examination produced the charging structure set out in "Agenda for Change" a Department of Health publication relating to employees under its remit which was accepted by both witnesses as one method of setting on call rates. In the present context this would mean enhancing the hourly rate of a support worker by say 9.5% for those "normal" hours in which he was on direct support duty to reflect his being on telephone call

during other hours, with his being paid for any time he in fact attended the Claimant's home during the on call period by reference to his basic hourly rate. It is strongly submitted on behalf of the defendant that such structure would fairly reflect the likely level of demand likely to be placed by the Claimant on his support workers' telephone support if one takes into account that which the records reveal has been in the past. This issue of the previous demand was, as I have already indicated, closely litigated before me by reference to the "Free Time" records. The Defendant prays in aid that they show that there is no evidence of the support worker having to return to the Claimant's house before the end of daytime free time, and when for example the Claimant was left on his own in 2007 when the support worker was ill and no cover available other than telephone support, there was no contact by the Claimant. Such contact as the Claimant has made, according to the records, has, as already indicated, usually been to ask sensible questions on relatively minor matters quite capable of being answered over the phone, such as where to put up a washing line or the whereabouts of a screw driver, although as the Claimant points out there has on occasion in the past been an abuse of the Free Time system requiring more involved support worker intervention – for example the by the end of the trial, notorious incident of April 2006 when the Claimant spent the time in the pub with his uncle and ultimately in drink called out his support worker who found him "sludged" on the floor (muddy field) and had to support him home.

96. On the other hand on this issue of telephone costings the Claimant through both Jacqueline Parker and Mrs Statham has raised the practical problem – although without any evidence of past experience to support such problems as a matter of fact – of it being operationally essential to keep a reasonable income level for each support worker over the week, in order to keep a loyal team. It is pointed out that during on call hours the support worker cannot accept any other work and must hold himself available in readiness for a call. In response to the counter submission of the defendant that there is no evidence that no staff were in fact lost following the removal of night time sleeper care in February 2008 with no telephone support at all, the Claimant says that daytime telephone support is not comparable to that of a sleep in which takes place at a time when the support worker would not normally be earning in any event. Hence the argument runs – put forward by Mrs Statham – that this means it will be necessary to pay full time rate for daytime on call hours. A further point was raised that any different method of charging has the potential of encouraging the support worker to abuse the Free Time system by reducing the Claimant's Free Time hours in order THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon to maximise the hours paid at the full rate. I have to say that this latter factor based on the proposition that support workers cannot be expected to behave bonafide in the interests of their client hardly seems to be a proper consideration when determining the appropriate costing of on call hours. However I accept the need for flexibility of hours support worker provision to make Free Time work.

97. Ultimately I have been persuaded that the defendant's approach is the proper one. I have in mind that in any event that in taking on board the need for flexibility in structuring free time within a reward based programme (so enabling hours to be withdrawn /increased according to behaviour) I have already determined that in any annual care package whether while R or some other partner is available or while the Claimant is on his own, the number of hours attributable to Free Time and hence telephone support should only be 2 ½ hours (as opposed to the 5 hours it has every prospect of becoming) and that when the Claimant is on his own the annual care package should provide for full sleep in duties. Hence in my judgment the overall effect of charging out telephone support for daytime at a less than full rate basis is a fair and reasonable one.
98. My conclusion is therefore that telephone support during Free Time should be charged on the basis suggested by the defendant based on Agenda For Change that is to say enhancing the hourly rate of a support worker by 9.5% for those "normal" hours in which he is on direct support duty to reflect his being on telephone call during other hours, with his being paid for any time he in fact has to attend the Claimant's home during the on call period. The appropriate annual cost for CRB and payroll
99. I allow £400 as a reasonable assessment. Appropriate annual cost of advertising and recruitment
100. The rival contentions are between £1,250 and £500. I allow £500. I have in mind there is no evidence that the Claimant has incurred any costs in the past, the support workers simply being on the books of JSP. Appropriate weekly allowance for staff expenses and refreshments
101. I allow £40, being midway between the rival contentions. Appropriate weekly allowance for staff holiday expenses
102. I accept the reasonableness of Mrs Statham's provision of £700 per week per support worker to include accommodation. I have already set out my assessment that a reasonable holiday provision while the Claimant is with R, would be 2 weeks with 2 support workers and one week with costings for 1 support worker; when the Claimant is living alone the assessment is 3 weeks with 2 support workers throughout. Team leader THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon
103. I accept the defendant's submission that a team leader is not reasonably required and there is no job to be done which cannot be realistically absorbed within the duties of the support workers, as evidenced from the fact that currently and for some time there has been no team leader. Occupational therapy and childcare
104. I have given anxious scrutiny to this particular issue. The Claimant through the evidence of Mrs Statham seeks a significant one off sum (£26,302) for a package of "start-up" occupational therapy for the Claimant so as to facilitate his being a father to his child and thereafter for there be provision for annual occupational therapy in relation to childcare. In

addition a claim is made for the training of the support workers themselves relating to child care. It is said that such provision is necessary if the Claimant is not to be cut off from his child in particular if the couple were to separate and the claimant to were to seek contact. Any state provision which is available has not in fact to date occurred.

105. In response, the defendant through Mrs Bingham asserts that none of this is reasonably required - that as regards the Claimant, none of the child protection professionals whose interventions have been well documented, have identified such a package as necessary but have identified the need for practical/parenting support for both the Claimant and R to be provided by the relevant state agencies, that no-one suggests it would be safe for the Claimant to be left on his own with the child and that there were in any event practical limitations on any role for the Claimant in looking after his child and that a sensible approach would simply be to encourage the Claimant to engage in play with the child and to spend time with her doing things they can safely and enjoyably do such as watching the television or playing games. Mrs Bingham made the point that it will be very difficult for the Claimant to learn specific child care tasks to perform independently and to keep pace with the child's development. As regards the support workers, the point is also made that it is difficult to see what they will be trained to do given the express instructions of the child care professionals and the guidelines issued by JSP were that the support workers were not to have any direct involvement in child care, their role being simply to supervise the Claimant when caring for the child. Mrs Bingham also highlighted that a minimum childcare qualification is NVQ level 2 which takes at least 12 months to complete by which time the child will have become older and new skills required. Moreover the evidence of Jacqueline Parker was that JSP did not consider it necessary for the support workers to have childcare training.
106. I have ultimately been persuaded that some occupational therapy, apart from reliance on state provision, should be provided for the Claimant to enable him the better to further his being father to his child notwithstanding his disabilities but not to the extent contended for by Mrs Statham. I would reduce her provision for the Claimant by one half, that is to say both in relation to start up therapy and ongoing therapy.
107. In relation to the support workers however I have ultimately found the arguments on behalf of the defendant supported by Mrs Bingham compelling. I do not allow the claim in relation to the childcare training of support workers. Final conclusion THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon
108. I trust the conclusions recorded in this judgment are sufficient to enable the parties to submit for approval a periodical payment order in relation to future care and case management provision. I repeat that if there are any outstanding issues to be resolved the court will invite further submissions. Appendix Extracts from "Medico- Legal Assessment of Head Injury" by David S. Bell (M. B.,B.. S., B. Sc.(Med.), F. R. A. N. Z. C. P,F. R. C. Psych.) (1992)(Charles C Thomas. Publisher Illinois, USA) p.216 - the understanding of the frontal lobe function is slowly unravelling at present ... (it) generates the elements which typify the

human mind, the expression of language in speech, empathy with others, the ability to put aside immediate gratification, the planning of complex activity, and the ability to anticipate the consequences of action. These are the executive functions of the frontal lobe as distinct from the cognitive functions subserved by the rest of the brain; p.217 - frontal lobe damage features prominently among those with the worst long term psychosocial outcome from severe head injury (Thomson, 1984); p.218 - damage in the orbitomedial region of the frontal lobe affects behaviour and personality, but in the dorsolateral region has a greater effect on intellectual THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon functions (Welsh 1978, p118); p.218 - the deficiency in problem-solving ability caused by frontal lobe damage proves resistant to retraining or learning from experience despite the preservation of cognition. The failure in error utilisation explains why. It produces a peculiar dissociation between knowing and doing. The person with frontal lobe syndrome lacks the capacity to put that knowledge into effective use to correct the action (Konow and Pribram, 1970) p.219 - the immutability of the syndrome and its resistance to chastening experience or learning makes it singularly intransigent;

- p. 219 - the pseudopsychopathic syndrome –elements of this syndrome accompany most cases of severe blunt head injury, probably because rotational shear strains particularly strike at the orbito frontal region. The pseudopsychopathic behaviour results from a lack of foresight and insight and a diminished control over impulsive and instinctive behaviour. The range of possible consequences includes foolish impulsive actions, insensitive responses, emotional swings and explosive outbursts of temper (Lishman 1968). The syndrome produces a ‘change of character’ (Hillbrom, 1960); p.220 - the earlier in life the injury to the frontal lobe the more severe the eventual disorder ...these mental changes may be misunderstood as functional or psychopathic deviant behaviour....the clinical features of the pseudopsychopathic personality may include egoism, facetiousness, puerility, irritability, promiscuity, impulse dyscontrol, decreased moral standards, and antisocial acts (Wienstein and Wells 1981.) The ability to defer gratification diminishes and the conversation becomes marked by blunt and tactless remarks, betraying an insensitivity to the feelings of others. ... understandably this consellation of symptoms can be severely disabling and the aggressive and irritable outbursts may make domestic life a misery for the rest of the family and social contact insupportable (Roberts 1979); p.221 – these mechanisms explain why the syndrome may in the extreme case lead in everyday life to outrageous behaviour which is unapparent in the office or the court, or in any other situation where the circumstances are structured.
- p. 221 – the environmental dependency syndrome ...injury to the lower half of the anterior part of one or both frontal lobes...can produce an excessive vulnerability to the influence of behavioural cues in the immediate environment.
- p. 223 - the environmental dependency syndrome points to one essential distinction between the antisocial behaviour of the person with the frontal syndrome and the normal person who shows similar behaviour . Both are easily led but the person with the frontal syndrome

can be led into the ways of righteousness as well as sin. The injured, who have close relatives prepared to take up the burden, respond to supervision and the structuring of their lives. In effect the relative takes up the THE HONOURABLE MR JUSTICE KING Approved Judgment C v Dixon directive function of the damaged frontal lobes. The condition greatly increases the burden on them.

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