

Judgment 4/2010

**Manuel Paul Helmot – Royal Court (Civil Action File 1263) –
14 January 2010**

Personal injuries claim – injuries to cyclist in road traffic accident – hearing on issues of loss and damage only (liability having been admitted by the defendant) – Jurats directed that they are to have regard to the Judicial Studies Board Guidelines 9th edition (2008) and comparable English cases – Jurats’ findings on the multiplier and discount rate to be applied to the award – findings on past and future care costs, accommodation costs and loss of employment etc – rates of interest to be payable on general damages and on past loss

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1263

14th day of January, 2010 before Richard John Collas, Esquire, Deputy Bailiff; present: The Reverend Peter Gerald Lane, Stephen Murray Jones, Esquire and Claire Helen Le Pelley, Jurats

Between

**MANUEL PAUL HELMOT
(By his next friends and guardians
Rosemary Helmot and Kenneth Raymond Jordan)**

Plaintiff

v.

DYLAN SIMON

Defendant

IN THE ABOVE ACTION, which was placed on the Pleading List on the 8th day of August, 2008, and on the Witness List on the 5th day of September, 2008, in the terms attached hereto;

WHEREAS on the 5th – 23rd days of October, 2009 and the 2nd – 20th days of November, 2009 THE COURT, having heard Advocate G.S.K. Dawes, Counsel for the Plaintiff and Advocates A.J. Ayres and S.J. Bailey, Counsel for the Defendant, and having heard the expert witnesses and lay witnesses for the parties and having read all the other evidence presented to the Court, on the 20th day of November, 2009 ADJOURNED the matter;

THE COURT this day handed down its JUDGMENT in the terms attached hereto and MADE AN AWARD in respect of damages totalling £9,337,852.27;

AND THE COURT considered the applications of Counsel, attached hereto, dated the 13th January, 2010 and ORDERED THAT:

1. In respect of interest:
 - a. interest on general damages shall run from the date on which proceedings were issued, namely 4th August, 2008 until the date of judgment, namely 14th January, 2010, at the rate of 2% per annum and shall accordingly be £6,815.00;
 - b. interest on special damages shall run from the day after the accident, namely 19th November, 1998 until the date of judgment, namely 14th January, 2010, at the rate of 3% per annum, provided that interest shall not be claimable on special damages to the extent that interim payments of £1,009,474.30 were made, and interest on special damages shall accordingly be £106,772.83;such interest totalling £113,587.83;
2. The total judgment sum, namely £9,451,440.10 shall be satisfied in three parts:
 - a. As to the first part, the sums paid into Court by the Defendant, namely £5,010,525.00 on 28th August, 2009 and £1,530,118.43 on 2nd November, 2009, totalling £6,540,643.43, shall be paid over to the Plaintiff's Advocates and all or any interest accrued thereon shall be paid to the Defendant's Advocates;
 - b. The second part shall be the interim payments already made by the Defendant (i) to the Plaintiff and (ii) on the Plaintiff's behalf to the Guernsey Social Security Authority and its successor, the Social Security Department, in the total sum of £1,009,474.30;
 - c. The third part being the balance of £1,901,322.37 to be paid to the Plaintiff's Advocates forthwith; and
3. The Defendant shall pay the Plaintiff's costs of and relating to this action on a recoverable basis, such costs to be taxed if not agreed.

M A TOSTEVIN
Her Majesty's Deputy Greffier


 IN THE ROYAL COURT OF GUERNSEY
 BEFORE DEPUTY / ~~DEPUTY~~ BAILIFF *R.J. COLLAS*
 PLACED ON THE PLEADING LIST
 Defendant's address for service: *7, Berthelot Street,
St. Peter Port.*
 this *8th* day of *August* 20 *08*
M. J. O'Steven
 Her Majesty's Deputy Greffier

OZANNES
GSKD
[08.08.08]

Civil Action File Number: _____

AT THE INSTANCE OF MANUEL PAUL HELMOT by his next friends and guardians ROSEMARY HELMOT and KENNETH RAYMOND JORDAN, all of Mon Abri, Rectory Hill, in the Parish of the Castel, Guernsey, whose address for service is 1 Le Marchant Street, St Peter Port, (hereafter "the Plaintiff"),

ACTIONS

DYLAN SIMON, whose address for service is Trinity Chambers, 7 Berthelot Street, St Peter Port, (hereafter "the Defendant"), TO SEE THE COURT order the Defendant to pay to the Plaintiff the sum of £22,648,372.06, together with additional damages to be assessed and/or damages in such sum as the Court assesses, together with interest and costs, all in the circumstances set out hereunder:

1. At or about 8.50 pm on 18th November 1998, the Defendant was driving a motor vehicle, number 42072, along La Route du Braye, St Sampson's.
2. The Plaintiff was riding a bicycle, wearing bright clothing with a bright halogen lamp in the opposite direction along the Route du Braye.
3. The Defendant attempted to overtake the vehicle ahead of him and collided with the Plaintiff's oncoming bicycle.
4. The said collision was caused by the negligence of the Plaintiff.

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A



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PARTICULARS OF NEGLIGENCE

- a. Failing to keep a proper look-out;
 - b. Failing to see the oncoming Plaintiff;
 - c. Overtaking or attempting to overtake when it was not safe to do so because of the proximity of the Plaintiff;
 - d. Failing to stop, steer or otherwise control his motor-car so as to avoid the said collision;
 - e. Furthermore, the Plaintiff will rely on the Plaintiff's conviction in the Magistrate's Court on 23rd March 1999 for the offence of dangerous driving contrary to Article V(1) of the Ordonnance relative au Trafic Vehiculaire en cette Ile, 1929. The Defendant was fined £1,500, disqualified from driving for two years and ordered to re-take his test;
 - f. The Plaintiff will also rely on the Defendant's insurer's admission of liability on the part of their insured as communicated by their letter addressed to Messrs Ozannes dated 21st May 1999, à quoi recours.
5. By reason of the matters aforesaid the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

The Plaintiff, who was born on 5th April 1970, and who was 28 years old at the date of the accident and who is now 38 years old, suffered injuries of the utmost gravity with permanently disabling consequences.

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His principal injuries comprised the following:

- a. A serious brain injury leaving a permanent memory and cognitive deficit;
- b. Serious bony injury to the facial skeleton leaving lasting cosmetic deficit;
- c. Serious and permanent damage to his eyesight;
- d. A serious right injury to the brachial plexus leaving a permanent flail arm;
- e. Serious and permanent sequelae including psychiatric illness and psychological disturbance.

Prior to the accident the Plaintiff was an exceptionally fit and athletic man leading a fulfilled and independent life. He had a good working history. He had represented the Island at the Commonwealth Games earlier that year. He had obtained his PSV license. He was a Judo black belt.

The Plaintiff has required 24 hour care since the accident and will require 24 hour care for the rest of his life. He is presently cared for in the home of his mother and stepfather. It is intended that a home be purchased for him, adapted to his needs and a care regime established in that house. There are no suitable alternatives on the Island.

The Plaintiff has a very substantial claim which is particularised in the schedule attached hereto.

6. Further, the Plaintiff claims interest pursuant to the Judgments (Interest) (Bailiwick of Guernsey) Law 1985 at such rates and for such periods as the Court thinks fit.

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AND the Plaintiff claims:

1. The sum of £22,648,372.06 together with additional damages to be assessed;
2. Alternatively, damages to be assessed;
3. Interest as aforesaid;
4. Costs.

GORDON DAWES
ADVOCATE FOR THE PLAINTIFF

Served this 1st day of August 2008 by Messrs Ozannes of 1 Le Marchant Street, St Peter Port, Advocate for the Plaintiff

NOTICE TO DEFENDANT

1. If you do not appear before the Royal Court at the date and time stated in this Summons the Court may give Judgment against you.
2. When you appear before the Court you have three options:
 - (i) you can consent to Judgment for all or part of the sum claimed;
 - (ii) you can apply for an adjournment on showing good cause, for example, that you need further time to consult an Advocate;
 - (iii) you can indicate that you will defend the action in whole or in part. The action may then be placed on the Pleading List.
3. You will be required to give an address for service (which must be in Guernsey) at which future Summonses and notices can be served on you by being delivered to that address by HM Sergeant.
4. You must then table your defences in writing by delivering them to the Greffe not later than 9.15 am on the 28th day after the action was placed on the Pleading List ("the relevant Friday sitting"). You must lodge three copies at the Greffe (each with a copy of the Plaintiff's cause attached) and at the same time you must serve a copy on the Plaintiff.
5. If you fail to table your defences (as required by Rule 16 of the Royal Court Civil Rules, 2007) the Plaintiff may, without further notice to you, apply to the Royal Court, at the relevant Friday sitting at 9.30 am (or at any later date) for judgment to be awarded against you.

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6. The period of time within which you must file your defences may be extended by up to three months, by agreement in writing between you and the Plaintiff.
7. If you cannot agree such an extension with the Plaintiff you may apply in writing to the Royal Court for an extension beyond the standard 28 day period. You must lodge that application with the Greffe, and copy it to the Plaintiff, not later than 4.00 pm one clear working day prior to the relevant Friday sitting. You must then attend before the Royal Court at 9.30 am at the relevant Friday sitting to make your application.
8. This is a matter on which you should take independent legal advice. You should also refer to the Royal Court Civil Rules 2007.

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IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between:

MANUEL PAUL HELMOT
by his next friends and guardians ROSEMARY HELMOT
and KENNETH RAYMOND JORDAN

Plaintiff

and

DYLAN SIMON

Defendant

LES DÉFENSES

Exceptions de Forme

The Plaintiff's Cause is insufficiently particularised and the Defendant requests that the Court pursuant to Rule 60 of the Royal Court Civil Rules, 2007 order the Plaintiff to provide the additional information requested herein to enable the Defendant to prepare more fully its defences. The Defendant reserves the right to plead more fully to the Plaintiff's Cause once the Exceptions de Forme have been resolved.

Of: "by his next friends and guardians Rose Helmot and Kenneth Raymond Jordan".

State with full particularity the date on which Mr Jordan was appointed as a guardian of the Plaintiff.

Under Paragraph 5

Of: "He had a good working history."

State with full particularity details of the Plaintiff's working history.

Of: "The Plaintiff has required 24 hour care since the accident and will require 24 hour care for the rest of his life."

In relation to care which the Plaintiff has allegedly required since the accident, state with full particularity:

- (a) the nature of the care provided to the Plaintiff; and
- (b) in relation to the Plaintiff's carers:
 - (i) the number of carers required by the Plaintiff in any 24 hour period;
 - (ii) the hours worked by the carers; and
 - (iii) the level of training/qualification held by those carers.

In relation to care which the Plaintiff will allegedly require for the rest of his life, state with full particularity:

- (a) the nature of the care which the Plaintiff will require;
- (b) in relation to the Plaintiff's carers:
 - (i) the number of carers the Plaintiff will require in any 24 hour period;
 - (ii) the hours which will be worked by those carers; and
 - (iii) the level of training/qualifications to be held by those carers.

Niances

1. Paragraph 1 of the Cause is admitted.
2. Save that it is not admitted that the Plaintiff was wearing bright clothing with a bright halogen lamp, paragraph 2 of the Cause is admitted.
3. Paragraphs 3 and 4 of the Cause are admitted.
4. No admission is made as to the alleged or any injuries sustained by the Plaintiff, his working history and the nature and extent of the care which he has required and will require and which are alleged at paragraph 5 of the Cause.
5. No admission is made as to the alleged or any pain, injury, loss or damage or as to the amount thereof and the Plaintiff is put to strict proof of each of the losses claimed in the Cause and the Preliminary Schedule of Loss annexed to the Cause.
6. Save as is expressly admitted in these Defences, each and every allegation in the Cause is hereby expressly denied as if the same were set out in full and traversed seriatim.

Prétensions

7. The Defendant has admitted liability for the accident in open correspondence.
8. The Defendant relies on the Preliminary Counter Schedule of Loss annexed hereto.
9. The Defendant reserves the right to amend these defences and the Preliminary Counter Schedule of Loss in the light of further medical or any other evidence, or in response to any amendment by the Plaintiff of his Cause and/or Schedule of Loss.

Settled by Advocate A J Ayres

4th September 2008

IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION

Between

MANUEL PAUL HELMOT
By his next friends and guardians
ROSEMARY HELMOT and KENNETH RAYMOND JORDAN)

Plaintiff

-V-

DYLAN SIMON

Defendant

Date of hearing: 5 – 23 October 2009
2 – 20 November 2009

Judgment handed down: 14 January 2010

Before: Richard John Collas Esq., Deputy-Bailiff
Jurats: Rev P G Lane, S M Jones and C H Le Pelley

Advocate for Plaintiff: G S K Dawes
Advocates for Defendant: A J Ayres & S J Bailey

Cases, texts & legislation referred to:

- 1) *Roberts v Johnstone* [1989] QB 878
- 2) *Wright v British Railways Board* [1983] 2 A.C. 773
- 3) Kemp & Kemp, the Quantum of Damages
- 4) JSB Guidelines for the Assessment of General Damages in Personal Injury Cases (9th Edition)
- 5) *Crofts v Murton* [2009] EWCH 3538 (OB)
- 6) *Hunt v Severs* [1994] 2 AC 350
- 7) *Evans v Pontypridd Roofing Limited* [2001] All ER (D) 131 (NOV)
- 8) *Tagg v Countess of Chester Hospital Foundation Trust* [2007] EWCH 509 (QB)
- 9) *Havenhand v Jeffrey* (24 February 1997 unreported)
- 10) *Mills v VR Engineering* [1992 VIQR Q130]
- 11) *Hodgson v Trapp* [1988] UKH69
- 12) *Livingstone v Rawyards Coal Co* (1880) 5 App. Cas. 25
- 13) *Wells v Wells* (H.L.(E.)(1999) 1 A.C. 345
- 14) *Tameside & Glossop Acute Services NHS Trust v Thompson* [2008] 2 All ER 553
- 15) *Douglas v Gallienne* 14 November 1990 (Guernsey Court of Appeal)
- 16) *Buckley v Ronez Ltd* 2 March 2009 (Royal Court)
- 17) *Morton v Paint* (1996) 21 GLJ 61

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Introduction

1. This is the judgment of the Royal Court, following a hearing during which the Court has heard evidence and legal arguments over a total of six weeks in the periods 5 October to 23 October and 2 November to 20 November 2009.
2. This judgment has been prepared in accordance with the provisions of Section 16 (5) of the Royal Court (Reform) (Guernsey) Law 2008:

“A reasoned judgment in civil proceedings in which the Jurats (and not the Bailiff alone) are sitting shall contain –

- (a) the Jurats’ findings and decisions,*
- (b) any dissenting findings or decisions made by different Jurats,*
- (c) the identity of the Jurats making dissenting findings or decisions,*
- (d) the Bailiff’s findings, decisions and directions of law and procedure, and*
- (e) the application of his findings, decisions and directions of law and procedure to the facts.*

In this section “the Bailiff” means the person presiding over the proceedings.”

3. The Deputy Bailiff did not sum up to the Jurats in open Court but instead retired with them, as he is permitted to do under Section 14 (2) of the 2008 Law.
4. The Deputy Bailiff reminded the Jurats of their respective roles. The Deputy Bailiff is the sole judge of questions of law and procedure and the Jurats are the sole judges of questions of fact. The Jurats must accept his directions on the law and follow them. He directed the Jurats to have regard to the whole of the evidence presented to the Court, and to form their own judgment about the witnesses, and which evidence is reliable, and which is not. The Deputy-Bailiff directed that the facts of the case are the Jurats’ responsibility. They may take account of the arguments in the speeches they heard, but are not bound to accept them. Equally, if at any time the Deputy-Bailiff appeared to express any views concerning the facts, or emphasise a particular aspect of the evidence, the Jurats were not to adopt those views unless they agreed with them. When it comes to the facts of this case, it is the Jurats’ judgment alone that counts.
5. In this judgment, the findings of fact are the unanimous findings of the Jurats unless the judgment says otherwise.

Interpretation

6. To assist the reader, we set out below a brief description of some of the principal witnesses and organisations mentioned in the judgment and the definition of a number of terms that we have used:

<u>Word</u>	<u>Definition</u>
“Accident”	- The accident that occurred at about 8.50 pm on 18 November 1998 at the Braye Road, St Sampson’s when a motor car, driven by the Defendant, collided with the Plaintiff who was riding a bicycle.
“Andra”	- Andra Le Bideau, one of the Latvian Carers.
“Anita Bourgaize”	- Anita Bourgaize, a day time carer employed from August 2002 until the end of April 2003.
“Mrs Brown”	- Miranda Brown, the sister of the Plaintiff, who is 4 years older than him and who gave evidence to the Court.
“Defendant”	- Dylan Simon, the Defendant named in the proceedings. The Defendant did not give evidence to the Court; he has not been involved in the presentation of the case which, we understand, has been conducted on his behalf by Insurers. References to the Defendant in this judgment include defence counsel and those instructing counsel.
“DREZ Operation”	- The operation performed by Professor David Thomas at the National Hospital for Neurology and Neurosurgery on 12 July 2006. “DREZ” stands for dorsal route entry zone lesion.
“DVD Footage”	- The footage shown at the request of the Defendant’s Advocate during his opening speech, which had been filmed in May 2009 at the request of Insurers by a surveillance team, without the knowledge of the Plaintiff or his family. The Plaintiff was seen at a number of locations in Guernsey and in England, including an English campsite. (The Court also saw film of the Plaintiff recorded before the Accident that included an interview recorded before the Commonwealth Games in 1988).
“GSSD”	- The Guernsey Social Security Department and its predecessor, the Guernsey Social Security Authority, whose Chief Officer, Malcolm Nutley, gave evidence of the financial assistance and support provided by GSSD to the Plaintiff and his family since the Accident.
“Head First”	- Head First (Assessment and Case Management) Limited, an English registered company providing services involving rehabilitation, care and support of patients, in particular to patients with acquired brain injuries. Head First has been providing care management for the Plaintiff since 2006. Jo Clark-Wilson, Brain Injury Case Manager at Head First, gave evidence during the course of the hearing.
“Mrs Helmot”	- Rosemary Helmot, the mother of the Plaintiff, born

- on 03 September 1947. The Royal Court appointed Mrs Helmot as sole guardian of the Plaintiff in 1999 and on 29 August 2006 as joint guardian of him, together with Mr Jordan.
- “Mr Help and Mr Willcocks” - Martyn John Help and Andrew Ross Willcocks, two Guernsey residents, who have been employed as carers, providing daytime care for the Plaintiff since 28 May 2009.
- “Honda CRV” - The motorcar used principally by Mrs Helmot, which is described in greater detail in the judgment.
- “Insurers” - The Defendant’s insurers.
- “Iveta” - Iveta Akmenkalne, one of the Latvian Carers whose employment ended in December 2008.
- “Mr Jordan” - Kenneth Raymond Jordan (known as Ken), date of birth 09 December 1942, the long-term partner of Mrs Helmot and, in effect, step-father of the Plaintiff. Since August 2006, he has been one of the joint guardians of the Plaintiff.
- “Latvian Carers” - Female nationals of Latvia who, since April 2003, have been employed to provide domestic assistance and to some extent as carers for the Plaintiff as more fully described in the judgment. The Court has adopted the term Latvian Carers which was used by Counsel during the hearing but it recognised their duties included domestic assistance such as cleaning and ironing.
- “Mon Abri” - The property known as Mon Abri, Rectory Hill, Castel, belonging to Mr Jordan, which has been Mrs Helmot’s home since she moved there when the Plaintiff was aged 10 or 11, and has been the principal family home of the Plaintiff since that age. It is where he was living immediately prior to the Accident and where he has lived since he returned from Southampton on 26 July 1999. Mon Abri was built by Mr Jordan on a plot of land formerly owned by his father who lived next door.
- “OTs” - The Occupational Therapy experts: Mrs Ho and Mrs O’Brien.
- “PHC” - Private Healthcare, a Guernsey-based nursing agency run by a Mrs George, engaged to provide care and assistance to the Plaintiff from July 1999 to June 2002.
- “Plaintiff” - Manuel Paul Helmot, date of birth 05 April 1970, the Plaintiff in the proceedings, aged 28 at the date of the Accident and 39 at the date of the hearing. By reason of his injuries the Plaintiff has not given evidence and has played no part in these proceedings. References in this judgment to the Plaintiff include his counsel and those instructing counsel.
- “Ramona” - Ramona Gulbe, now Ramona Collins, one of the Latvian Carers employed since April 2003 and who has been the principal night-time carer for the

- Plaintiff since December 2004.
- “Team Medical” - Universal Recruitment Solutions Limited trading as Team Medical Solutions, a UK based care agency, employed to provide care to the Plaintiff from about September 2006 until May/June 2009.
- “Rev. Ward” - Reverend Sandra Ward, an ordained minister within the Elim Church International, a former nurse and an adult literacy tutor, who presently provides tuition to the Plaintiff on four mornings per week from Monday to Thursday between 10.00 am and 1.00 pm, as more fully described in the judgment.

7. References in this judgment to “Volume” or “Vol.”, refer to volumes in the Trial Bundle (and, in some cases to divider numbers in the volume). References to pages, usually with a hyphen, refer to pages of the Trial Bundle where the first number, preceding the hyphen, normally refers to the Volume and the number following the hyphen normally refers to pages within such Volume, quoting the number printed at the bottom right hand corner of the page.

Burden and Standard of Proof

8. The Deputy Bailiff directed the Jurats that the burden of proof is on the Plaintiff throughout. The standard of proof is the civil standard of the balance of probabilities; to establish something on the balance of probabilities means to prove that something is more likely so than not so.

Evidence

9. The Jurats were directed to decide the case on the evidence which was placed before them. They are entitled to draw inferences, that is, to come to common sense conclusions based on the evidence which they accept, but not to speculate about what evidence there might have been or to allow themselves to be drawn into speculation.
10. The Court has heard oral evidence from a number of witnesses. There were three members of the family, Mrs Helmot, Mr Jordan and Mrs Brown. Other evidence of a factual nature was given by Jo Clark-Wilson of Head First and by Ramona Collins/Gulbe, the night-time carer. Also, Malcolm Nutley, the Chief Officer of GSSD was called by the Plaintiff to give evidence of the support and assistance given by the GSSD to the Plaintiff since the Accident.
11. A number of experts gave oral evidence. In planning the hearing, it was agreed well in advance that instead of following the conventional order of proceedings whereby the Plaintiff presents his case in its entirety before the Defendant opens his case, the general pattern of expert evidence was to be that the Plaintiff’s expert on a particular topic would give evidence followed immediately by the Defendant’s expert on the same topic.
12. On the issues of the calculation of discount rate and multipliers and future accommodation costs, the Plaintiff called Rowland Hogg, a Chartered Accountant and the Defendant called Hugh Gregory, also a Chartered Accountant. The Plaintiff also called Roger Bootle, an economist, and Christopher Daykin, CBE, an Actuary.

13. Trust evidence was given by George Bryan Dix on behalf of the Plaintiff and by Michael Stephen Heyworth on behalf of the Defendant.
14. In relation to care needs, Maggie Sargent RGN gave expert evidence on behalf of the Plaintiff and Tessa Gough RGN on behalf of the Defendant.
15. Physiotherapy evidence was given by Susan J Filson on behalf of the Plaintiff and by Mary P Clegg on behalf of the Defendant.
16. Dr Charles Gibb, a Chartered Educational Psychologist was called by the Defendant.
17. Expert employment evidence was given by Paul Jackson of Langman HRD Limited on behalf of the Plaintiff and by Trevor Gilbert of Trevor Gilbert and Associates Limited on behalf of the Defendant.
18. Housing evidence was received from Steven Docker, a Chartered Surveyor and Valuation Surveyor on behalf of the Plaintiff and from Thomas M Wethers of the Wyvern Partnership, and R J Paisley of Lovell Ozanne and Partners Surveying Limited, both Chartered Surveyors, on behalf of the Defendant.
19. Finally, expert evidence was given by two Occupational Therapists, Julia Ho on behalf of the Plaintiff and Alicia O'Brien on behalf of the Defendant.
20. The Court has read the witness statements of a number of lay witnesses, produced by the Plaintiff and agreed by the Defendant, in some cases after black lining parts of the witness statement. The statements are all to be found in Vol. 2A. They are from:
 - Mrs S A Le Roi, Director and Company Secretary of Bluebird Services Limited, a taxi firm;
 - Kenneth Roy Brouard, an adult literacy teacher;
 - David Richard Way, the Senior Passenger Transport Officer at the Environment Department;
 - Sheila Hayward of the States of Guernsey Educational Psychology Service at the Education Department;
 - Richard Hocart, the Administration Manager of the Education Department;
 - Allan Renyard, of the Guernsey Velo Club (1968);
 - Ian Brown, another member of the Guernsey Velo Club;
 - Julie Ann Madeley, a French teacher;
 - Michele Natelino Agnelli, a former President of the Guernsey Judo Club;
 - Brian Singleton, a self-employed carpenter and builder and former employer of the Plaintiff;
 - Tina Marjory Poxon, a former Director of Continuing and Community Care Services at the Health and Social Services Department, States of Guernsey and
 - John Mackey, Director of Services for Adults at the same Department.

During the course of the hearing letters were produced from the States Education Department and from St Pierre Park Hotel regarding swimming pool facilities that are to be found at page 11 – 36A to 11 – 36H.

21. The Court has also read statements from lay witnesses produced by the Defendant and agreed by the Plaintiff (at Vol. 4) from:
- Raymond Robert Flanagan, a surveillance specialist, concerning the DVD footage;
 - Robert Richard Gray, the Director of Income Tax;
 - David Richard Way, Senior Passenger Transport Officer at the Environment Department;
 - Victoria Amelia Evans, Deputy Director of Housing Control, States of Guernsey Housing Department (Vol. 4.4).

We also read correspondence from Zanette Bougourd of Rutland Properties Management, to be found at and around Vol. 13.1.30.

22. Joint statements have been provided by experts in a number of disciplines and are to be found at Volume 11. The disciplines concerned are: Occupational Therapy, Ophthalmology, Physiotherapy, Psychiatry, Trusts and Investments, Neuropsychology and Neurology.
23. We have also read the reports and correspondence from medical professionals at Volume 6.
24. The Court was asked to read, and has read, reports from Graham Parrott and Sadie Farrington of Ernst & Young in relation to Guernsey Tax (Vols. 9.1.7.1 and 9.1.7.2). The Court also read night recordings prepared by the night-time carers, Ramona and Andra, at Vol. 15.1.5 and further documentation received from Head First (Vol. 15A at 15.1, 15.2, 15.4 and 15.7) as well as daily record sheets by Martyn Help and Andrew Willcocks, late additions to Vol. 15.1.
25. A large number of documents have been produced to the Court, many (if not most) of which have not been formally proved by the author and have not been formally agreed. However, the parties have adopted a realistic and pragmatic approach and have not insisted upon a strict adherence to the hearsay rule even though the Evidence in Civil Proceedings (Guernsey and Alderney) Law 2009 is not in force as it is still awaiting approval from Her Majesty in Council. Where a document has not been formally proved or agreed, the Jurats were directed to have regard to that fact when deciding what weight, if any, to give to such evidence. The documents at Volume 15A were, however, to be taken at face value by agreement of Counsel, following the late disclosure of the documents.

Procedural History

26. Proceedings were first issued and served on the Defendant on 1st August 2008, nearly 10 years after the Accident. The reasons for the delay in issuing proceedings were to do with the nature and seriousness of the Plaintiff's injuries. The Defendant had agreed to extend the limitation period so there are no issues of prescription for the Court.
27. A Court Chronology is at Vol. 1.1 and the pleadings are to be found in Vol. 1. The schedule of loss and damage and counter schedule of loss and damage on which the Court has worked are at Vols. 1.6 and 1.7 respectively. The Schedule appended as Appendix 1(b) to this judgment was first produced by Advocate Ayres during his

closing speech. The Court has added, at the beginning of the Schedule, an explanation as to the origin and source of the contents of each column of the Schedule. After the court had adjourned to consider its decisions, counsel produced an amended Schedule incorporating matters agreed by them. The Court has compared the two versions and has taken account of any differences. Appendix 1(b) is based on the earlier version of the Schedule.

28. A post-Accident chronology prepared by the Deputy-Bailiff to assist the Jurats in their decision-making is appended at Appendix 2.

Liability

29. In paragraph 7 of the defences dated 4 September 2008, the Defendant’s Advocate declared: *“The Defendant has admitted liability for the accident in open correspondence”*. Consequently, the Court is concerned only with issues of loss and damage.

The Plaintiff before the Accident

30. There is no dispute, or no significant dispute, between the parties as to the history of the Plaintiff’s early life. The Plaintiff’s parents’ household was not a happy one and they experienced a number of problems due to the Plaintiff’s father’s alcohol problems. The Plaintiff’s father and mother separated a number of times and attempted several reconciliations before they finally separated when the Plaintiff was aged about 7 or 8.
31. The Plaintiff’s mother lived on her own with him and his sister (now Mrs Brown) for about 3 years until they went to live as a family with Mr Jordan, a friend Mrs Helmot had known for most of her life.
32. Mr Jordan had also experienced a failed marriage and his daughters had left home before Mrs Helmot and her two children went to live with him. Mr Jordan and the Plaintiff have enjoyed a good father-son relationship, although the Plaintiff has remained in contact with his natural father.
33. Before going to live with Mr Jordan, the Plaintiff was experiencing difficulties at school. He attended St Andrew’s Primary School, but did not have a good relationship with his teachers and his progress was undoubtedly hindered by the difficulties he was experiencing at home. Instead of progressing to junior school within the normal mainstream educational system, the Plaintiff was moved to Valnord School. The reasons for that were not fully explained to the Plaintiff or his mother at the time. Dr Gibb, in his report (paragraph 2.7) stated that the records show that the Plaintiff’s IQ was within the range of 90 – 110, which, at the time, was considered average, albeit at the lower end of the average range. So the reason for his placement at Valnord School was not determined solely on the grounds of the Plaintiff’s IQ.
34. In paragraph 2.11, Dr Gibb states:

“Once at Valnord [the Plaintiff’s] placement was reviewed annually. On each occasion it was decided that he should remain in special education. It is likely that [the Plaintiff’s] family difficulties had a significant effect on his learning. It is likely that his literacy and other educational needs, and his social and

emotional needs, were considerable and outside the wide range that could be coped with by a mainstream school. It is likely that the combination of these needs was the reason for his transfer to a special school, and for his continued placement there”.

35. He also states that the Plaintiff settled at Valnord School and made progress which “*was not sufficient to bring his needs within the range that could have been managed by a mainstream school”.*
36. The Plaintiff left school aged 14 or 15 and went straight into full time employment.
37. The Plaintiff worked mainly in the construction industry and for Aqua Star, boat builders, doing unskilled or semi skilled work until he obtained a category 6 (heavy goods vehicle) Licence and worked for Tricorn, builders merchants, as a lorry driver and fork lift truck driver. In March 2008, he obtained a Public Service Vehicle (PSV) Licence and began work as a taxi driver employed by Blue Bird taxis.
38. Mr Jackson, the Plaintiff’s employment expert, described the Plaintiff’s pre-accident employment as fairly solid and said that the movement between employers was unremarkable. He described it as full employment, subject to the Plaintiff’s cycling commitments.
39. Mr Gilbert identified some periods of unemployment early in the Plaintiff’s career, but agreed it was a reasonable working history.
40. Mrs Helmot and Mr Jordan stated that it was Mr Jordan who introduced the Plaintiff both to cycling and to Judo. He succeeded in both sports, representing Guernsey at cycling in a number of Island Games and at the Commonwealth Games in Kuala Lumpur only a few months before the Accident. In terms of judo, the Plaintiff achieved a black belt first dan before the Accident and has been awarded his second dan since the Accident, based upon his achievements prior to the Accident.
41. Socially, Mrs Helmot described the Plaintiff as being good in his teenage years, not smoking or drinking and never in trouble with the Police. He had lots of friends and had relationships with girlfriends, becoming engaged on two occasions. He had lived with girlfriends, away from Mon Abri, although immediately prior to the Accident he was living, as a single man, at Mon Abri.
42. Other witnesses, including Mr Renyard and Mr Brown described the Plaintiff before the Accident as being popular and enjoying life. Mr Singleton said he was an able and competent employee who could work independently with minimal supervision and was easy to get along with and had a trustworthy character.

The Accident

43. We have not been given any detail about how the Accident occurred. It is agreed that the Plaintiff collided with a car driven by the Defendant whilst the Defendant was overtaking another car in the Braye Road at about 8.50 pm on 18 November 1998. We were also told that the Plaintiff was found lying in a ditch by the side of the road. He was not wearing a cycle helmet, but the Defendant accepts full liability for the Accident.

44. The three family members who gave evidence, Mrs Helmot, Mrs Brown and Mr Jordan recalled where they were and what they were doing when they first learned of the Accident. It is unsurprising that they have a vivid recollection of such traumatic events that have so dramatically affected the Plaintiff's life, their own individual lives, and all of their relationships within the family.
45. Mrs Helmot had been working as a carer for a nursing agency run by a Mrs Duncan and had been very busy because there was always plenty of work to do. On the day of the Accident, she was in a very happy frame of mind, having been to town for a haircut and to purchase some earrings, and she thought to herself, what a very lucky person she was. The Plaintiff came home after finishing work. They spoke about what was concerning the Plaintiff in relation to the taxi plate that Mr Jordan was offering to sell to him. She said the Plaintiff wanted to be able to cycle and realised he could not do everything. She said their conversation helped to clear the air. Then, the Plaintiff said he wanted to 'turn his legs' on his bike and would come back for tea. He was late returning to the house, but that did not concern her because often he would go to the Mariners pub, run by his father.
46. Later in the evening, around 10.00 pm, Mrs Helmot was sitting in her lounge, having dozed off, when she heard banging on the door. Her neighbour and a Police Officer came into the house. They asked if a key with a red leather tag on it was the Plaintiff's key and she confirmed that it fitted the Plaintiff's bike shed. The Police Officer said they had found a cyclist's bottle with the Plaintiff's name on it at the scene of an accident. He told her that the Accident was very serious and she should go to the hospital. The Police Officer offered her a lift, but instead she drove, thinking that she would need the car to return home later. She did not know that she would not return to the house for another eight months.
47. Mrs Brown was at home around 11.00 pm when her mother phoned to say that the Plaintiff had had an Accident and that a Police Officer would come to take her to the Princess Elizabeth Hospital. Earlier, Mrs Brown had been playing in a darts match in the Rohais when they heard ambulances go out; only later did she realise that they were going out to attend to her brother.
48. Mr Jordan was in England, assisting one of his daughters with some alterations to her house in Croydon when he received a telephone call from Mrs Helmot. He caught the first available flight to Guernsey early the next morning.
49. The Plaintiff had been taken to the Intensive Care Unit at the Princess Elizabeth Hospital. Each of the three family members described their shock and horror at seeing him for the first time. His face and head were so disfigured and swollen, that none of them was able to recognise the Plaintiff. They were able to confirm his identity only by a distinguishing scar on his left shoulder. The Plaintiff was not expected to survive the first night and a Priest was called to administer the last rites.
50. A decision was taken the following day to transfer him to Southampton for specialist treatment. A special flight was arranged and Mrs Helmot and Mrs Brown travelled with him on the plane, helping to hold equipment. There was some delay at Southampton Airport before an ambulance transferred the Plaintiff to the Wessex Neurological Centre in Southampton General Hospital, where he arrived on the 19th November 1998.

51. The Plaintiff's hospital treatment in the months after the accident is described in a number of places. The following summary is taken from a medical report prepared by Professor D L McLellan of the Rehabilitation Research Unit at the University of Southampton, prepared on the 14th September 2000, Vol. 6.6.1, commencing at page 6-129:

“The medical case notes from Southampton General Hospital record that Mr. Helmot had been admitted as an emergency to a hospital in Guernsey on 18th November 1998. He was recorded as having been a cyclist involved in a head on collision with a motor car and having been found unconscious in a ditch at 10:56 hours (sic). He was not wearing a helmet.

After initial resuscitation in Hospital in Guernsey his Glasgow Coma Score was 4, the only response to painful stimuli being extension of the limbs. The pupils were fixed and dilated.

An emergency CT scan demonstrated a severe traumatic sub-arachnoid haemorrhage with multiple small cerebral contusions particularly in the left hemisphere. In addition there were complex cranio-facial fractures particularly around the right eye, and a complete right third nerve palsy. There was also a severe injury to the right knee and an area of skin loss on the dorsum of the right hand. There was a fracture of the styloid process of the ulnar on the right.

Initial treatment and medical stabilisation

After initial resuscitation, Mr. Helmot was transferred urgently to the Neurosciences High Care Unit at the Wessex Neurological Centre in Southampton General Hospital where he arrived on 19th November 1998. There his intracranial pressure was monitored.

Mr. Helmot had a CT scan of the neck and chest on 20th November 1998, which showed a left pneumothorax and bilateral pleural effusions, and a possible pericardial effusion. No fracture was seen in the cervical spine.

A CT brain scan on 23rd November showed generalised oedema with bilateral frontal lobe contusions and haemorrhage into the left thalamus, and blood in the subarachnoid space posteriorly. Two units of blood were transfused on 24th November. On 26th November 1998 cranio-facial surgical repair with reconstruction of the right orbit and maxillo-mandibular fractures was performed. There was some post-traumatic hydrocephalus and a ventriculo-peritoneal shunt was inserted. He required prolonged ventilation for which he required a tracheostomy performed on 26th November 1998 and because oral nutrition was impossible he was fed by a gastrostomy tube passed through the abdominal wall into the stomach.

A repeat CT scan on 27th November confirmed contusions of the frontal lobe and left thalamic region, with no dilatation of the ventricles.

Sedation was withdrawn on 30th November 1998. His recovery was complicated by a respiratory infections [sic] treated by antibiotics and a

gastric jejunostomy tube was inserted on 4th December 1998. His Glasgow Coma Score had risen to 9 by 5th December 1998.

As Mr. Helmot gradually emerged from coma, it became apparent that his right arm was paralysed and insensitive to pain. Electromyography showed complete denervation of most of the muscles of the right upper limb.

A CT brain scan performed on 15th December 1998 showed changes consistent with communicating hydrocephalus. There was not only dilation of the lateral 3rd and 4th ventricles and sub-ependymal oedema but also low-density areas consistent with focal damage in the left internal capsule and the left frontal cortex. A VP shunt was inserted on 17th December 1998. At the same time a cranio-facial repair was performed to the right orbit zygoma and maxilla and a fracture of the right mandible. By 19th December his Glasgow Coma Score had risen to 11 and by 24th December he was well enough to sit out of bed for short periods and was observed to obey simple commands.

An MRI scan under general anaesthetic on 7th January 1999 showed changes consistent with a brachial plexus injury. He was noted to have a complete right third cranial nerve palsy. The right leg showed reduced movements compared with the left as a direct consequence of the brain injury, implying an underlying right hemiparesis of the upper motor neurone type.

In-patient treatment at Southampton General Hospital Rehabilitation Unit

He was transferred to the Rehabilitation Unit, Victoria House, Southampton General Hospital under my care on 8th January 1999. At this time the tracheostomy was still in situ and his Glasgow Coma Score varied from 11 – 12. Initially he was unable to follow any verbal commands. Wiring that had been inserted to stabilise the jaw was removed on 13th January 1999 as a result of which he was able to start oral feeding. There was a granulating wound on the dorsum of the right hand measuring 4 cm. X 3 cm. which required protection and regular dressing.

Mr. Helmot received an integrated programme of physiotherapy, occupational therapy, speech and language therapy and rehabilitation nursing augmented by advice from a clinical psychologist.

By the end of January, Mr. Helmot was able to walk with the aid of an Argo walking frame but his trunk control was still very poor. At this stage his tracheostomy tube was removed and he gradually regained the ability to speak. It was clear that he had a significant receptive and expressive dysphasia. It was only towards the end of February that his dysphasia recovered to the point at which he became consistent with his use of 'Yes' and 'No' to signify his wishes. He was very enthusiastic about regaining his mobility and would become very frustrated when staffing shortages meant that he was unable to receive the programme of the intensity which would have enabled him to make faster progress.

During February he began to experience increasing discomfort in the right upper limb, a recognised complication of pre-ganglionic brachial plexus with nerve root injuries. By mid February he was able to walk with the assistance

of one person. As his awareness and understanding gradually improved, he expressed increasing frustration, agitation and anxiety. His developing personal relationships with staff helped alleviate this but additional treatment with small doses of Carbamazepine and Thioridizine was required.

A decision as to whether the gastrostomy tube should be removed was pre-empted by Manny himself pulling it out during the night of 23rd February. Fortunately he was able to manage without it thereafter. Nutritional supplements were stopped on 8th March.

By early March 1999 he was still not fully orientated and experienced episodes of agitation and aggression mainly associated with complaining of increased neurogenic pain radiating from the right shoulder to the hand. The advice from Dr. Stuart Taylor from the pain clinic was to try Tramadol and Amitriptyline in addition to conventional anaesthesia but these drugs caused increased agitation and provoked a transient episode of hypomania.

By mid March Mr. Helmot's behaviour had improved. It was noted that he could readily be over stimulated and that a quiet environment without excessive noise and relatively subdued lighting seemed to suit him best.

Early in his recovery and again at the point of discharge from the unit he was reviewed by Mr. David Warwick, Consultant Orthopaedic Surgeon at Southampton General Hospital who has a particular interest in hand and upper limb injuries. Mr. Warwick discussed Mr. Helmot's case with Mr. Rolf Birch, Consultant Orthopaedic Surgeon at the Royal National Orthopaedic Hospital at Stanmore, who is an expert in the treatment of injuries of this nature. He advised that since the lesion was pre-ganglionic (that is between the dorsal nerve root ganglia and the spinal cord), no surgical treatment was available that could potentiate a recovery, and that electrical stimulation treatment would not be helpful.

Mr Helmot was also reviewed by a consultant Ophthalmologist who confirmed the presence of a right homonymous hemianopia (that is absence of vision to the right of the mid line in each eye), a right 3rd nerve palsy and bilateral 4th nerve palsies. It was felt that because of the concurrent right facial weakness, any attempt to raise the right eyelid surgically would risk damage to the cornea and to the right eye.

Discussions took place as to whether Mr. Helmot should go to an intermediate rehabilitation centre on the mainland or return directly home with the help and support of local community services in Guernsey. The latter option was strongly supported by his mother and stepfather. The occupational therapist from the Victoria House Rehabilitation Unit undertook a home visit to Guernsey. It was established that ramps would be needed to provide access to the house. A combined shower and toilet unit and hand basin would need to be installed in his bedsitting room, a stair lift would be required in order to provide access to the lounge and rails should be provided to assist him in walking from one area of the house to another. Contact was made with community staff there.

Mr. Helmot was discharged home on 26th July 1999 on Carbamazepine retard 200 mgs morning and 300 mgs at night, Soluble Paracetamol 1 gram qds, Thioridizine (liquid) 10 mls tds and Codeine phosphate 30 mgs. prn in the morning.”

Further treatment and operations

52. In November 1999, the Plaintiff was referred to Mr Thomas Carlstedt (now Professor Carlstedt), for further investigation of the brachial plexus injury and possible alleviation of the pain resulting therefrom. In a report dated 08.04.02, at Vol. 6.11.1, page 6-427, Mr Carlstedt reports the following, based on notes held at the Royal National Orthopaedic Hospital:

“He was seen for opinion and advice about treatment in November 1999, about a year after his unfortunate accident. He presented with classical signs of a complete and most proximally situated brachial plexus injury. In order to try to obtain some stability in the shoulder as well as alleviation of pain he was advised to have his brachial plexus explored surgically and also to perform transfers of nerves into denervated arm. This surgery was performed in January 2000, about 14 months after his injury. The complete brachial plexus injury could be verified by surgery. Nerve transfers were done in order to obtain stability in the shoulder joint as well as alleviation of pain.

Manuel Helmot was then followed up as an Outpatient and was last seen in February 2001. There had at that time been no functional recovery into his right shoulder and arm although there had been some relief of pain. There was however still rather serious pain that Manuel Helmot experienced and therefore he was referred to a Pain Specialist at the Royal National Orthopaedic Hospital, Dr Jonathan Berman. He was seen by Dr Berman the last time in January 2002 when advice about further medication was given.”

53. The Plaintiff continued to suffer pain, which has been described by several witnesses as being excruciating at times. The pain is commented on by Professor J Vann Jones in a report dated 9 March 2006 at Vol. 6.3. At page 6-55, he states that:

“Mr Helmot has had a number of “blackouts” since his accident. The episodes are more of an altered level of consciousness than true loss of consciousness, but do seem to be associated with episodes of pain, which is extremely severe in Mr Helmot at times. These episodes last from a few seconds to a number of minutes and the general description of these episodes is strongly suggestive of vaso vagal episodes.”

54. At page 6-57, he also stated:

“In summary, Mr Helmot has had a number of near blackouts, almost certainly vagally mediated in response to his severe pain. The pain itself of course is a result of his accident and I understand unlikely to resolve.”

55. The pain is further described by Professor D G T Thomas in his report dated 26 November 2005 at Vol. 6.1.1. At page 6-5 he describes the Plaintiff’s then condition as follows:

“He told me that he has felt pain in the right upper limb from the time that he can first remember after the injury. It is like “banging head into wall – electric pain” – distributed initially all over the right shoulder and later in the arm and lower arm as well……. At present he is in pain all the time, but over a 24 hour period it varies from “achy” to “full scale”. He has been tried on many kinds of medication by the pain clinic at Stanmore without much benefit. However, he does continue to take dihydrocodeine tablets (2) from time to time with a little relief of his ache. He is also on nabilone, gabapentin and citalopram. He recalls that after the reconstruction operation in Stanmore in 2000 he was able to feel more sensation in the upper arm.”

56. On 12 July 2006, Professor Thomas performed the DREZ Operation. A summary of the procedure that he carried out is contained in a letter to the Plaintiff’s GP at page 6-11:

“Further to my previous correspondence about him he was admitted to The National Hospital on 11.7.2007 with a view to performing a DREZ lesion for his pain due to right sided brachial plexus avulsion.

On 12.7.06 I performed a cervical laminectomy exposing the cervical nerve roots from C5 – T1 and found as expected avulsion on the right side with a degree of atrophy in the spinal cord. I performed a series of DREZ lesions from C5 – T1.

I am pleased to say that he came through the operation well with no specific additional neurological deficit and with good pain relief. The operative wound has healed well and he was discharged on 22.7.06.

I have seen him for review as an outpatient on 25.7.06 and the wound is well healed and he will return home.”

57. The DREZ Operation has been largely successful, although the Plaintiff continues to suffer pain and discomfort that he describes as “vibes”, which appear to be totally unpredictable, can occur at any time and at any place, and continue for an unforeseeable length of time on each occasion.

Psychological and Emotional Injuries

58. There is some reference in the medical notes to the Plaintiff being depressed prior to the DREZ Operation, but the evidence is said to be inconclusive. Professor Trimble says, (instructed on behalf of the Plaintiff) at page 6-118:

“[The Plaintiff] may have undergone a period of depression, recorded in the GP records and treated with anti depressants. This is not uncommon in young people who have such cerebral injuries. If anything it lasted perhaps 18 months to 2 years. However, I do not find a depressive illness a problem at the present from the point of view of his mental state.”

59. Dr C V R Blacker (instructed by the Defendant), states at page 7-107:

“My conclusions are that depression was caused by the index accident (there is no previous history), it came on late as it often does after head injury, it was

resistant to treatment with anti-depressants (which it often is in such cases), it was evidently in response to severe levels of pain – and to problems in adjustment to his losses.”

60. The Plaintiff's mood appears to have improved after the successful DREZ Operation. However, he continues to suffer mood disturbances. The evidence of the family witnesses, and of the records maintained by the carers, is that he frequently refers to the fact that he does not have a wife or girlfriend. He is aware of how much his appearance has altered as a result of the Accident and believes that no-one will find him attractive. He is also conscious of the extent to which his abilities have altered as a result of the Accident. He was physically very active; he was a very successful cyclist and enjoyed judo at a high level. He laments the situation in which he now finds himself. He worries about the future and who will care for him.
61. He is also socially disinhibited. He objects to smoking and will confront strangers who are smoking in the street and tell them to stop. He will compliment a girl on her good looks or tell her partner how attractive she is. Such behaviour is easily misunderstood and can lead to confrontations. A recent incident at Le Friquet Garden Centre was described. A security guard asked him to stop looking at children in the play area when he was not in fact looking at them. He attracts undesirables and people demanding food or money especially when travelling. He is inclined to give money away generously, having no concept of value.
62. The main psychological concern is the paranoia from which he suffers which the medical experts agree is a psychosis, not a schizophrenic illness (question 1 on page 11-38 in their joint statement).
63. There appears to be no physical explanation for the “*vibes*” from which he suffers. At times he will refuse to eat food for fear that it has been poisoned and, for that reason, he may suddenly demand to leave a restaurant. He is fearful that he is being watched. He has not been told about the covert surveillance DVD footage filmed on the instructions of the Defendant, although Mr Jordan described an incident on a campsite in May 2009 when the Plaintiff pointed in the direction of the surveillance cameraman, saying that they were filming him. Mr Jordan cannot be certain whether he actually saw such a person, or whether it is merely a coincidence.
64. At times he will not sit near a window, or will close the curtains, even during the middle of the day, for fear of being observed. He believes that satellites are observing him at times and will wear a hat, or even two hats, when indoors. At home he prefers to sit on a plastic chair to avoid electric shocks. He has fears of being “*zapped*”. He has been reluctant to use a computer connected to the mains.
65. He believes that a former friend, Steve, now living in America, watches him, is out to harm him and is responsible for causing the vibes from which he suffers. He refers to Steve as “*the devil's disciple*”. Consequently, sometimes he attributes his problems, including the Accident, to Steve who he is also concerned is after his money.
66. At the start of the hearing, the parties were not in agreement as to whether the psychosis was caused as a direct consequence of the accident. Dr Blacker (on behalf of the Defendant), considered that it might have been caused by a drug called Nabilone which had been prescribed as a pain killer. However, the experts agreed that “*it would be wrong to state that the psychosis was caused exclusively by the*

Nabilone since we agreed that the head injury played a material part” (page 11-45 question 6). The Defendant has not argued that prescribing Nabilone broke the chain of causation. The Court therefore accepts that the Plaintiff’s psychosis was caused by the accident.

Craniofacial Injuries

67. The craniofacial injuries sustained by the Plaintiff in the accident are summarised by Mr B T Evans, Consultant Maxillofacial Surgeon in his report dated 12 April 2002 at Vol. 6.13.1, page 6-507:

“1. **Compound frontal bone fracture**

Manny sustained a displaced fracture of the superolateral orbital rim. This was compound via a full thickness laceration of the right forehead and eyebrow – this laceration had three limbs as will be evident on the clinical photograph provided. The orbital roof, i.e. roof of the eye socket which is part of the anterior skull base was also fractured with displacement of the fracture fragments of the orbital roof in a superior direction, i.e. towards the brain.

2. **Bilateral High Midfacial Fractures**

- *Le Fort III fracture on the right side.*
- *Le Fort II fracture on the left side.*

(A Le Fort III fracture is in essence a craniofacial disjunction, i.e. separation of the facial bones from the skull base. This separation occurs in the region of the junction of the zygoma, i.e. cheek bone and the frontal bone bilaterally and the nasal bones and the frontal bone centrally. A diagram of a Le Fort III fracture has been included with the clinical photographs. This diagram demonstrates a bilateral Le Fort III fracture.

A Le Fort II fracture is likewise a high midface fracture similar to the Le Fort III fracture however the zygoma, i.e. cheek bone is not included in the facial fracture. This fracture pattern is also known as a pyramidal or subzygomatic fracture. A diagram of a bilateral Le Fort II fracture is included with the clinical photographs.)

3. **Comminuted fracture of the right zygoma/lateral orbit.**

4. **Significant disruption of the internal orbital skeleton on the right side. This involved the floor of the orbit (eye socket), lateral wall of the orbit and orbital roof.**

5. **Bilateral fracture of the mandible (lower jaw)**

- *A low subcondylar fracture on the right side.*
- *A left parasymphiseal fracture, ie a fracture of the anterior mandible between the lower left canine (3 4) and lower left first premolar (4 4).*

6. *A dento-alveolar fracture of the right maxilla incorporating the upper right second premolar (1 5), upper right first molar (1 6) and upper right second molar (1 7)."*

68. The Plaintiff has been left with a disfigured and lopsided appearance (see photographs at Vol. 13.1.33). Surgical and other scarring is apparent, but not obvious. The damage to the facial skeleton, in particular to the right eye socket, has contributed to visual problems suffered by the Plaintiff.

Vision

69. The respective experts in Ophthalmology, Miss S E Dorey (for the Plaintiff) and Mr R J Cooling (for the Defendant), agree that the Plaintiff has suffered right homonymous hemianopia - loss of the right half of the vision in each eye; right third nerve palsy and bi-lateral fourth nerve palsies. Mr Cooling states:

"these cranial nerves are responsible for controlling ocular movement both vertical and horizontal as well as torsional. In addition, the ptosis of the right upper lid is due to the third cranial nerve paresis and he has made little in the way of recovery. However, but for the severe ptosis, the claimant would have persistent and disabling diplopia and would need to have the right eye occluded. The ptosis is really nature's way of preventing the claimant from experiencing disabling diplopia."

70. The peripheral visual field is restricted to 50% of normal width sparing of the macula or central retina to within 10° of the point of fixation (page 11 – 22, and the answer to question 1 in their Joint Statement).

71. The effect, therefore, is that the Plaintiff relies almost exclusively upon his left eye, but has some double vision. He can see nothing in the right half of the field of vision and holds his head at an angle as partial compensation. However, he is still prone to bumping into objects and obstacles on his right-hand side and, for example, when he is out and about, he will not see a person or vehicle approaching from the right-hand side.

72. The Plaintiff is also diagnosed as suffering from myopia, but the experts agree that was not caused by the Accident.

Cognitive Function and Memory

73. The effect of the brain injury upon the Plaintiff has been measured in tests administered by Dr Nicholas Leng on behalf of the Plaintiff and Professor J Beaumont on behalf of the Defendant, both are Consultant Neuropsychologists and their reports appear at Vol. 6.8 and Vol. 7.4 respectively.

74. They agree that, prior to the Accident, Mr Helmot's general cognitive abilities were in the Low Average range (IQ 80 - 89) as assessed by Mr Gaggs in his report.

75. Dr Leng states at page 6-312:

"On tests of attention and working memory where he had to manipulate information in his mind by rearranging letters and numbers, repeating digits

in forwards and reverse direction and carrying out mental arithmetic operations, performance ranged from the low average level down to the very low level and his scores produced a composite working memory index equivalent of an IQ of 63, significantly impaired.”

76. Professor Beaumont states, at page 7-186:

“The limited assessment possible with the WAIS III therefore suggests [the Plaintiff’s] cognitive functions are broadly unimpaired except that he has a severe deficit of working memory, reflecting aspects of attention and concentration.”

77. The Plaintiff’s memory functions are impaired. His auditory verbal memory and verbal working memory are significantly impaired. Dr Leng states that his visual recognition memory is at or below the borderline level, significantly impaired (page 6-313) and Professor Beaumont says: *“His visual memory functions are essentially preserved”*.

78. Lay witnesses gave many examples of his impaired memory. For example, he may forget that he has eaten a meal and ask when the meal is going to be served. He may fail to recall what he has been told or what he has said, leading to a tendency to repeat himself or perseverate. Mrs Helmot said that he may watch the same film many times over, forgetting that he has already seen it.

79. On the other hand, his pre-Accident memory is unimpaired. He therefore recalls what he was capable of doing, which tends to add to his frustrations at his present incapacities. He can even recall the times achieved by him in specific cycling events at which he participated.

80. Regarding his executive functions, Dr Leng states at paragraph 7.2 on page 6-315:

“There was evidence of rather poor fluency and slowness in the ability to process incoming information. He was also rather impaired in his ability to make judgments and estimations.”

Professor Beaumont states, at paragraph 4.13 on page 7-190:

“He may have a mild difficulty of frontal executive functions with the implications of planning and reasoning, although these problems are no more than mild.”

The Plaintiff suffers from executive dysfunction.

81. The Court heard much evidence of his lack of initiative and inability to move on from one task to another. For example when showering he needs to be prompted to complete each task and would remain in the shower, even after he has finished, if he was not prompted to leave.

82. The Defendant agreed with the Plaintiff that he will not be capable of undertaking any paid employment during the rest of his life, not even in a sheltered working environment.

Right Upper Limb

83. The Plaintiff suffered a brachial plexus injury, described in some detail in the report of Mr R J Watts, at page 6-288, Vol. 6.6.8. As a consequence, his right upper limb flails and is permanently functionless. The nerves are detached although the excruciating pain suffered by the Plaintiff as a result was largely resolved by the DREZ Operation.

Neurology

84. He has a swallowing disorder which may cause him to choke a little when eating.

85. His speech is slurred and at times he will make dysphasic errors where he is unable to produce the right word or produces a wrong word or name.

86. His right leg is weak, he has a lack of balance and an unsteady gait.

87. He has a ventriculoperitoneal shunt, the purpose of which is described by Professor Thomas in his report at Vol. 6.1.6. Basically, the purpose of the shunt is to drain the fluid from the brain into his stomach. The shunt causes some discomfort at times, but appears to be functioning and it is said there is no evidence of a need to remove it.

Obesity

88. The Plaintiff has suffered with fluctuations in weight, for which there appears to be a number of explanations, including diet, lack of exercise and changes in medication. A consequence of the fluctuations in weight has been the need to purchase additional clothing from time to time.

Body temperature

89. The Plaintiff sweats profusely, especially at night time. He has difficulty controlling his body temperature. He also has to be advised at times how many layers of clothing are appropriate.

Unable to manage his affairs

90. He is unable to manage his affairs and will be subject to guardianship for the remainder of his lifetime.

Life Expectancy

91. In the light of agreed medical evidence, the claim has been presented on the basis that his life expectancy has been reduced by five years as a result of the Accident.

Medication

92. The Plaintiff is not currently taking any medication, although he has been prescribed antipsychotic medication which he has refused to take. The psychiatrists agree that

his condition would improve if he were to resume taking antipsychotic medication. They state, in answer to question 9 at page 11-47 of their joint statement:

“We are in agreement that if the Plaintiff stopped taking antipsychotic medication he would in all probability quickly relapse into an active psychotic state and which would bring with it not only behavioural problems such as aggression and non co-operation with other aspects of his care and rehabilitation but a significant risk that the delusions would become fixed and eventually stop being amenable to medication. This could make his care and rehabilitation significantly more difficult in the long term.”

93. The Jurats wish to express their concern that the Plaintiff has stopped anti-psychotic medication prescribed for his benefit. The Jurats have noted that the psychiatrists fear his condition may deteriorate if he does not follow their advice. The Jurats strongly urge those who are responsible for his day-to-day care to encourage him to resume taking the medication.

General Damages – Directions on the Law

94. Advocate Dawes described this head of damage in general terms at para 15 of his closing speech:

“This head of damage concerns the award for the fact of the injuries themselves. It is the damages awarded for the injuries and their mental and physical consequences in terms of disability, symptoms, longevity and capacity for daily life, sports and activities in general.”

95. The first issue to consider, as a matter of law, is the extent to which, if at all, the Royal Court should be guided by the Judicial Studies Board Guidelines 9th Edition (2008) and/or by decisions of the English Courts. Advocate Dawes invites the Royal Court to exercise the independent jurisdiction that it undoubtedly enjoys so that the Jurats may be free to set whatever they consider is appropriate by way of general damages.
96. It is to be noted that in Guernsey the Plaintiff is required to plead the quantum of general damages claimed (unlike the position in England). In the present case, the Plaintiff has claimed the sum of £250,000.00 (page 1-309), a figure that appears to have been arrived at by reference to the JSB Guidelines and English decisions. So, it is debatable as to how much latitude the Court would have in the present case if it were minded to depart from English precedent.
97. It is readily apparent that no amount of financial compensation can fully compensate the Plaintiff for the serious injuries he has suffered and for the loss of the quality of his life that he will have to endure for the rest of his lifetime. The physical and mental consequences of such severe injuries cannot be measured in monetary terms. Lord Diplock said in Wright v British Railways Board [1983] 2 A.C. 773 at page 777C:

“Non-economic lossis not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that justice meted out to all litigants should be even-handed instead of depending on idiosyncrasies of the assessor, whether judge or jury,

the figure must be 'basically a conventional figure derived from experience and from awards in comparable cases'.

98. In the opinion of the Deputy-Bailiff, it is the need to ensure consistency in assessing the level of awards that is the most powerful argument in favour of the Royal Court looking to the JSB Guidelines and comparable English cases for guidance. There is an insufficient number of personal injury claims coming before the Royal Court for it to set its own guidelines across the whole of the wide range of different injuries and their consequences. Fortunately, most personal injury claims are settled outside the court room. Claims are able to be settled because parties refer to Kemp & Kemp and similar authoritative English publications for guidance.
99. Consequently, the Deputy-Bailiff directed the Jurats that they are to have regard to the JSB Guidelines and comparable English cases in assessing general damages.

General Damages – Submissions of the Parties

100. Counsel's submissions are summarised in their respective closing speeches, starting at page 3 of the Defendant's speech and page 4 of the Plaintiff's speech.
101. Advocate Ayres submits the traumatic brain injury suffered by the Plaintiff is within the "*Moderately Severe Brain Injury*" category in the JSB Guidelines, and towards the lower end of the bracket. He also refers to the "*Other arm injuries*" category (a) "*Severe injuries- £61,500 to £83,500*". He states the severity of the brachial plexus injury and the pain caused by it has been ameliorated by the DREZ Operation. He asks the Court to decide whether the Plaintiff's 'vibes' have a physical cause or are a result of the psychosis and remain uncontrolled by antipsychotic medication.
102. He refers to a decision of HHJ Collender QC in *Crofts v Murton* [2009] EWCH 3538 (OB) awarding general damages of £170,000 in September 2008 (consolidated Bundle of Authorities, Volume 2, page 993) and to *Re P* (Kemp and Kemp B2-003) (consolidated Bundle of Authorities, Volume 2, page 1036) awarding £200,000 in November 2000 (£249,157 in August 2009). Advocate Ayres proposes £190,000 as an appropriate award.
103. On the other hand, Advocate Dawes says £250,000 is entirely justifiable in view of the combination of injuries suffered by the Plaintiff. He refers to the JSB Guidelines in respect of a number of types of injury: "*Moderately Severe Brain Injury, up to £180,000*"; "*Psychiatric Injury, up to £74,000*"; "*Loss of Sight in one eye and reduced vision in the remaining eye, up to £115,000*"; "*Loss of one arm, up to £87,000*"; and "*Facial Fractures, up to £23,500*" which, he says, does not contemplate facial injuries of the severity the Plaintiff suffered. His facial disfigurement, he says, would also attract an award.
104. Advocate Dawes rightly acknowledges that it is not a question of adding up the award for each injury in isolation, as to do so would involve double-counting and double-recovery. He says the overall effect of all the injuries resulting from the Accident justifies an award of £250,000.00.

General Damages – The Award

105. The Jurats have taken the JSB Guidelines as to ‘Moderately Severe Brain Injury’ as their starting-point:

“(b) Moderately Severe Brain Injury

The injured person will be very seriously disabled. There will be substantial dependence on others and a need for constant professional and other care. Disabilities may be physical, for example, limb paralysis, or cognitive, with marked impairment of intellect and personality. Cases otherwise within (a) above may fall into this bracket if life expectancy has been greatly reduced.

The level of the award within the bracket will be affected by the following considerations:

- (i) the degree of insight;*
- (ii) life expectancy;*
- (iii) the extent of physical limitations;*
- (iv) the degree of dependence on others;*
- (v) ability to communicate;*
- (vi) behavioural abnormality;*
- (vii) epilepsy or a significant risk of epilepsy (unless a provisional damages order provides for this risk).”*

106. It is agreed that the Plaintiff is not at significant risk of epilepsy but all the other six considerations listed above are relevant to a greater or lesser extent. Consequently, in the view of the Jurats, the Plaintiff’s injuries place him well within the upper half of the range but not at the top of the range.

107. They then had to take account of his other injuries and regarded the most serious, for these purposes, as being the brachial plexus injury and the facial and skeletal injuries resulting in severe impairment of his eyesight.

108. Furthermore, the Jurats had regard to the very severe pain from which the Plaintiff suffered prior to the DREZ Operation in 2006, that is for more than seven years.

109. As for the ‘vibes’, the Jurats consider that whatever may be the cause of the ‘vibes’ (in respect of which the evidence is inconclusive), they are satisfied they are attributable to the Accident, albeit they may become worse if the Plaintiff continues to refuse to take anti-psychotic medication. The Jurats’ award therefore takes account of the ‘vibes’ although it is unlikely the award would have been very significantly lower if they were not a factor.

110. The Jurats have also taken into account the Plaintiff’s loss of a cycling career. They were not persuaded he would have become a professional cyclist, so no special damages are awarded. It is therefore appropriate to take the loss of his amateur career and the loss of his enjoyment of cycling into account in the general damages award.

111. Having regard to the JSB Guidelines, the Jurats assess general damages in the sum of £235,000 (item 1.1 of Appendix 1(b)).

112. Having reached that decision, the Jurats were comforted that such an award is consistent with the two cases cited by the Defendant.
113. The Plaintiff's injuries are more severe than those of the claimant in *Crofts v Murton* who did not, for example, have the defects of eyesight suffered by the Plaintiff nor had he experienced severe pain for more than seven years.
114. On the other hand, the Plaintiff's injuries are less severe than those of the claimant in *Re P* whose eyesight, for example, was so poor he could not read or watch TV.
115. Those two cases suggest £200,000 is too low and £250,000 is too high an award for the Plaintiff. A figure in the region of £235,000 appears consistent with both cases.

General Damages - Interest

116. The parties have agreed that following principles of English Law, interest is to be payable on general damages at the rate of 2% from the issue of the Summons which the Court understands to have been 1 August 2008.

Multipliers - Introduction

117. The Plaintiff, through Advocate Dawes, contends that the Royal Court should determine multipliers appropriate to Guernsey and having regard to the current rate of return on UK Index-Linked Government Securities. He also argued that there should be two multipliers; one for earnings related losses and the other for losses that are not earnings-related. The Defendant, through Advocate Ayres, argues that Guernsey Courts should follow and apply a single discount rate namely the discount rate set by the Lord Chancellor by means of the Damages (Personal Injury) Order 2001 pursuant to section 1(1) of the Damages Act 1996. The two Advocates also disagreed as to how the Ogden Tables are to be interpreted in giving effect to the agreed reduction in the Plaintiff's life expectancy of 5 years.
118. The effect of the different discount rates is very significant; the effect of the disagreement as to the interpretation of the Tables is comparatively minor. The Plaintiff submits that the appropriate discount rate for earnings related losses, including the cost of care is minus 1.5% and that the multiplier is 56.6, whilst for other losses, the discount rate is 0.5% and the multipliers are 37 for life-time losses and 32.37 for loss of earnings to pension age 70 (page 32 of the Plaintiff's closing speech). The Defendant submits the discount rate to be applied is 2.5% and the multipliers are 24.81 for whole life (page 69 of Defendant's closing speech), 16.06 to pension age 65 and 2.13 from age 65 to age 70 (page 1-382).
119. The hearing lasted a total of six weeks and part way through the Deputy-Bailiff indicated to Counsel how he was likely to direct the Jurats on the discount rate and multipliers issues at the end of the case, in the hope that it might assist the parties in resolving their differences and enable them to settle the claim without incurring further costs and Court time. In the event, the hearing continued and the Deputy-Bailiff directed the Jurats at the conclusion of the case in accordance with the terms of this judgment and for the reasons set out herein.
120. On these issues, the Court heard from a total of four eminent expert witnesses, three of them called by the Plaintiff namely Mr Rowland Hogg, a Chartered Accountant,

Mr Roger Bootle, an economist and Mr Christopher Daykin CBE, an actuary. The Defendant called Mr Hugh Gregory, a Chartered Accountant. They had each submitted one or more written reports (Volumes 5 and 5A of the Trial Bundle) and each of them confirmed and adopted their respective report(s). Before reviewing their evidence with the Jurats, the Deputy-Bailiff looked at the legal principles and the relevant case law.

121. It is common ground between the parties that the award for future loss in this case is to be by way of a lump sum as Guernsey Law does not enable the Court to award periodical payments.

Multipliers - the legal background

122. It is also common ground that the starting point is the fundamental principle, of Guernsey law and English law, that the Plaintiff is to be compensated as nearly as possible in full for all pecuniary losses arising from the accident. That includes compensation for the cost of his care, medical expenses, and loss of earnings both past and future. In respect of his future care, the Court must allow for the cost of a one-man care home, as Advocate Dawes described it, in which the Plaintiff can be looked after for the remainder of his life, although the description of a one-man care home was criticised by one of the Plaintiff's own witnesses.

123. The classic definition of the measure of damages was given by Lord Blackburn in *Livingstone v Rawyards Coal Co (1880) 5 App. Cas. 25 at 39*. It is:

“that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.”

124. In *Wells v Wells (H.L.(E.) (1999) 1 A.C. 345* Lord Hope of Craighead approved the same principle although he expressed it differently at page 390B:

“Nevertheless the object of an award of damages for future expenditure is to place the injured party as nearly as possible in the same financial position as he or she would have been but for the accident. The aim is to award such a sum of money as will amount to no more, and at the same time no less, than the net loss.”

125. Lord Lloyd of Berwick said, at page 364A:

“The purpose of the award is to put the plaintiff in the same position, financially, as if he had not been injured. The sum should be calculated as accurately as possible, making just allowance, where this is appropriate, for contingencies.... There is no room for a judicial scaling down.”

126. Similarly, at page 382 H, Lord Steyn said:

“The premise of the debate was that as a matter of law a victim of a tort is entitled to be compensated as nearly as possible in full for all pecuniary losses. For present purposes this mainly means compensation for loss of earnings and medical care, both past and future. Subject to the obvious qualification that perfection in the assessment of future compensation is unattainable, the 100 per cent principle is well established.”

127. Prior to the House of Lords decision in *Wells v Wells*, it had been usual to discount the present value of a lump sum award to allow for the income that a plaintiff can earn by investing the lump sum in a mixed portfolio of equities and gilts until the expenditure for which he is being compensated is incurred, or in the case of loss of earnings to the date when the loss would have been suffered but for the accident. The conventional assumption was that the rate of return that could be achieved was 4 to 5%. Lord Steyn observed in *Wells v Wells*, at page 382 B that:

“It has for many years been settled practice, endorsed by decisions of the House of Lords, that the lump sum to be awarded in a personal injury action for the present value of a plaintiff’s future losses of earnings, and the present cost of his future expenses, ought to be determined by using in the calculations a discount rate of 4 to 5 per cent. The rationale was that there was no other practicable basis of calculation that is capable of dealing with so conjectural a factor as inflation with greater precision.”

128. In the three cases under appeal in *Wells v Wells*, the first-instance judges broke with the past and assumed that the plaintiffs would purchase ILGS to provide for their future needs. Lord Lloyd said in his speech at page 365 C:

“How the plaintiffs will in fact invest their damages is, of course, irrelevant. That is a question for them. It cannot affect the calculation.”

129. Lord Steyn observed at page 384 H that the introduction by the UK Government of Index-Linked Securities (“ILGS”) which are tied to the retail price index and hence protected against inflation:

“has radically altered the investment scene. It is now practicable for a plaintiff to protect himself against inflation by investing in index-linked government securities. This form of investment guarantees that the sums invested will retain their real value. It is tailor-made for investors who want a safe investment: see Bootle, Index-Linked Gilts, 2nd ed., (1991), 94-104. It is in practical terms a virtually risk-free investment guaranteeing a return based on the market’s view of inflationary trends. In its reports published in 1984 and 1994 the Working Party chaired by Sir Michael Ogden Q.C. recommended that in future the discount rate should be based on availability of an investment in index-linked government stock. The Working Party observed that whereas in the past a plaintiff had to speculate by investing in equities, or in a basket of equities and gilts or a selection of unit trusts, he need speculate no longer if he buys index-linked government stock. After in depth research the Law Commission took a similar view: Law Com., No. 224, para. 2.28.”

130. Consequently, the House of Lords held that the guideline net current discount rate should be calculated by reference to the net current return available from investment in ILGS until such time as the Lord Chancellor specified a new rate under section 1 of the Damages Act 1996. They calculated that the current rate should be three per cent after taking into account income tax at standard rates.

131. Their Lordships added that the rate was to be adopted for general use until such time as the Lord Chancellor specified a new rate under section 1 of the Damages Act 1996 (per Lord Lloyd at page 376A, Lord Steyn at page 388D, Lord Hope at page 393F, Lord Clyde at page 397 F and Lord Hutton at page 404H).

132. *Wells v Wells* was decided in 1998 and in June 2001 the Lord Chancellor exercised the powers vested in him by section 1(1) of the Damages Act 1996, to set the rate at 2.5 %. He reviewed his decision the following month in the light of criticisms that he had relied upon inaccurate figures as to the yield from ILGS. On 27 July 2001 he issued a fresh decision, again setting the rate at 2.5% and explained his reasons for the decision in an accompanying statement that is at Volume 5.1.1, page 5-52 of the Court bundle, to which we refer as “the Lord Chancellor’s reasons”.

133. In summary, the Lord Chancellor’s reasons were:

- a) He applied the appropriate legal principle laid down by the courts and in particular by the House of Lords in *Wells v Wells*. He quoted Lord Hope’s formulation of the 100% compensation principle referred to above.
- b) He set a single rate to cover all cases in order to promote clarity.
- c) He set a rate which is easy to apply in practice and which reflects the fact that it was bound to be applied in a range of different circumstances over a period of time.
- d) He set a rate which he said should obtain for the foreseeable future and that he was ready to review whenever there was a “significant and established change in the relevant real rates of return to be expected.”
- e) He set the rate by reference to the simple average of the gross redemption yields of ILGS at an assumed rate of inflation of 3% which he concluded was 2.46% before discounting for tax payable on the income in the hands of a UK taxpayer, which reduced the rate of return to 2.09%
- f) He then rounded the figure to one of the values for which the multipliers are calculated in the Ogden Tables; they are intervals of 0.5%. He said that the choice of either 2% or 2.5 % was not “*a simple arithmetic matter...I must have regard to the basic principle to which I have referred above [of compensating the claimant so as to place him in the position he would have been financially but for the accident], and I have taken account of matters which I consider are relevant to the setting of a discount rate which is just as between claimants as a group and defendants as a group.*” He then said: “*In the light of all the information now available to me, and considering the matter completely afresh, I have decided that on 25 June 2001 I should have set the discount rate at 2.5 %*” There is no other explanation as to why he adjusted the net rate of return from 2.09% to 2.5%.

134. The Lord Chancellor has not revised, or reviewed, the discount rate since July 2001.

Multipliers - the Plaintiff’s expert evidence

135. Advocate Dawes submitted that the rate set by the Lord Chancellor was criticised at the time and has been repeatedly criticised ever since. Despite the significant reduction that has occurred in the rates of return, and despite the Lord Chancellor saying he would in such circumstances review the discount rate, he has not done so.

136. Advocate Dawes said that adoption of the Lord Chancellor’s discount rate by the Royal Court would result in the Plaintiff being under-compensated. In support of his case he called Mr Rowland Hogg, a Chartered Accountant, who had also given

evidence in two of the cases that were under appeal in Wells v Wells as well as in some of the subsequent cases to which we were referred. He also relied on the evidence of Mr Christopher Daykin, an actuary and the former Government Actuary who was consulted by the Lord Chancellor when he set the rate in 2001 and who was responsible for the sixth edition of the Ogden Tables. The Plaintiff's third expert was Mr Roger Bootle, an economist.

137. Mr Hogg gave evidence of the development of English law in this area, not as a legal expert as he is not legally qualified, but from a factual point of view having been an expert witness on behalf of claimants in many of the leading cases.

138. He spoke about the criticism that he said many commentators had made of the Lord Chancellor's decision; criticism with which he agreed and which he summarised at page 5-13 of the Trial bundle:

“i) the fact that the Lord Chancellor rounded the rate up from 2.09% to 2.5 % instead of to the nearer 2%,

ii) the different method used by the Lord Chancellor to arrive at the ILGS rate of 2.46% instead of only 2.14% under the approach used in Wells v Wells ,

iii) comments in his ‘Reasons’ ... which were considered to be (and have subsequently been shown to be) incorrect”

139. Those comments to which he was referring in the Lord Chancellor's Reasons concerned the yields on ILGS which the Lord Chancellor had been advised were artificially low at the time and consequently he considered that there was a reasonable prospect of a return to higher rates of return.

140. Mr Hogg was also of the opinion that a rate of 2.5% would under-compensate the Plaintiff in that a large part of his claim related to the future cost of providing care that will rise in line with the earnings of carers. ILGS are linked to RPI which measures price inflation, not earnings inflation. Mr Hogg said this issue was not raised in Wells v Wells but has now been appreciated as significant.

141. He said that since 2006 in England and Wales, it has been possible to allow for the increase in carers' earnings through awards of periodical payments. Periodical Payment Orders ('PPOs') remove any uncertainty as to the financial consequences of the length of life of the claimant. This leaves inflation as the only contentious issue which has been resolved by adopting in respect of the costs of providing care an indexed form of the Annual Survey of Hours and Earnings for the occupational group of care assistants and home carers (ASHE 6115). The effect is to provide a compensation regime that, as closely as is possible, establishes 100% compensation.

142. The leading decision on PPOs is that of the Court of Appeal in Tameside & Glossop Acute Services NHS Trust v Thompson [2008] 2 All ER 553. The Court was concerned with the interpretation of section 2, and specifically sub-sections 2(8) and 2(9), of the Damages Act 1996 relating to PPOs. Delivering the judgment of the Court, Waller LJ said at paragraph 58,

“The court is seeking to provide an answer which, on the information it has at the trial, will, through the use of a PPO, best provide the claimant with 100 per cent compensation. If, in the context of future care, of which the main

element is the wages of the carers, the RPI is not suitable for the purpose of tracking wage inflation, the question is whether a more suitable index or measure is available..... If an alternative is more suitable, it must be open to the court to accept that alternative even if some criticisms can be made of it. If the alternative is less suitable than RPI it obviously should not be chosen.”

143. Guernsey has no equivalent to section 2 of the Damages Act and the Court has no power to order damages to be paid by way of PPOs. (The parties may, of course, agree to settle a claim on the basis of a voluntary order for periodical payments but the Court can not make such an order of its own motion.)
144. Mr Hogg submitted that in Guernsey, therefore, in the calculation of lump sum damages, the starting point is to look at the rate of investment on ILGS, there being no Guernsey equivalent stock. As ILGS are index-linked to the UK RPI, the calculation must be adjusted for Guernsey RPI and then further adjusted for the difference between wage inflation and price inflation.
145. The appropriate figure to take as the ILGS rate of return, in the opinion of Mr Hogg, is the average of the last 12 months. The House of Lords in Wells v Wells and the Lord Chancellor took three year averages but such averages include stock that is no longer available and overstate the return where the general trend is downward.
146. Mr Hogg said the discount to apply for Guernsey tax is 11.41%. His calculations are based on the table he produced at page 5-43 of the Trial bundle. He said it mirrors the table he produced for the court in Wells v Wells which the House of Lords accepted in its assessment of the appropriate discount rate.
147. Over the period 1965 to 2008, on average, Guernsey RPI has increased faster than UK RPI by approximately 0.5% per annum.
148. Mr Hogg relied upon Mr Bootle’s conclusion that the rate of earnings inflation in Guernsey exceeds RPI by 2%.
149. In conclusion, Mr Hogg advised that in this case the Discount Rate should be calculated afresh. In a letter to Advocate Dawes dated 1 October 2009, he stated that the average gross yield from ILGS at the end of September 2009 was 0.68%, the average over the last 12 months was 1.18% and the three year average was 1.28%, all calculated by using a simple average of all stocks in issue, as the Lord Chancellor had done in 2001. From the three year average he deducted Guernsey income tax at 11.41% and then rounded downwards to give a net yield for a Guernsey investor of 1%. He then deducted 0.5% for the difference between Guernsey RPI and UK RPI to give a discount rate of +0.5% appropriate for damages not related to earnings. He advised that there should be a further reduction of 2% to allow for the difference between price inflation and earnings inflation to give a discount rate of minus 1.5% for earnings-related losses.
150. In cross-examination of Mr Hogg, Advocate Ayres sought to portray him as being biased towards plaintiffs (Mr Hogg said that 80 to 90% of his instructions are on behalf of claimants) and a long-term critic of the decision of the Lord Chancellor in setting the Discount Rate under the Damages Act. He also accused Mr Hogg of purporting to give expert evidence that goes beyond the limits of his expertise. In directing the Jurats, the Deputy-Bailiff reminded them that Mr Hogg qualified initially

as a Chartered Accountant and has the further qualifications and experience detailed in the Curriculum Vitae appended to his Report at page 5-40 of the Trial Bundle. The Deputy-Bailiff directed that they are not to accept Mr Hogg's opinions on matters outside his areas of expertise unless those opinions were expressed by other witnesses within their respective areas of expertise and accepted by the Jurats on the evidence of such other experts. For example, actuarial matters were to be established by an actuary and questions of economics by an economist. The Jurats were also reminded that the Table produced in Exhibit 5 to Mr Hogg's Report at page 5-74 of the Trial Bundle entitled "Ogden Tables 1,11and 28 (6th edition) Discount Rates from minus 2% to plus 3 %" is not a true reproduction of the Ogden Tables as the official tables do not include any columns showing discount rates lower than 0%.

151. Mr Roger Bootle was the specialist economist called to give evidence on behalf of the Plaintiff. He gave his opinion on two issues: the difference between the rate of price inflation in Guernsey and the rate in the UK; and the difference between the rates of price inflation and earnings inflation in Guernsey.
152. On the first issue he said a key assumption is that Guernsey will not lose its monetary link with the UK. If Guernsey lost its monetary link to the UK, there is no limit to the extent inflation might diverge from the UK. If the monetary link remains the gap will remain small. Based on general principles and on what has happened elsewhere, a divergence of 0.5% is an appropriate working assumption. That also happens to be what the historic figures show; the Guernsey RPI having exceeded UK RPI by an average of 0.5% per annum since Guernsey data started in 1964.
153. When looking at the disparity between Guernsey average earnings and inflation, he placed no reliance on the published figures for average earnings in Guernsey because there was only a short run of data (from 1990 to 2003) that was discontinued apparently on the ground that the methodology used to compile the series was flawed.
154. He therefore based his conclusion on experience in other countries which shows that whether earnings rise ahead of inflation depends on the country's circumstances especially the underlying rate of economic growth. Where the country has attained a high standard of development, the rate is above zero but small. In the UK it is about 2%. 2% would be his best guess in respect of Guernsey over a period of time. The limited series of historic data shows that it might have been a little higher in Guernsey but it would not be robust to use the historic figures in view of their unreliability.
155. In cross-examination, on the divergence of inflation rates, he was asked about the differences in the methodology used in compiling the two RPIs in the two different jurisdictions. He said he did not consider such differences to be of any significance because in his view the effect of any difference in method and of any mis-measurement is relatively tiny. He was aware that data on expenditure patterns in Guernsey is collected only five yearly as opposed to annually in the UK. The opinion he gave in his evidence was a broader question. Furthermore, any assessment of the accuracy of the data would be a mammoth exercise. In any event, he based his opinion on economic theory and upon data from elsewhere.
156. He was also asked about the effects of known risks to Guernsey's financial services industry. He said they do not alter his long term view: in the long term Guernsey's economic growth will be broadly similar to its surrounding countries. Over the next few years, Guernsey growth may be lower than the UK, but over 20-25 years it will be broadly similar. If one industry, such as financial services, were to fail, another

will replace it, as happened with the demise of Guernsey agriculture/horticulture and its replacement with financial services.

157. Mr Daykin gave actuarial evidence on behalf of the Plaintiff and said he was also competent to give an opinion on matters of economics as actuaries are also economists.

158. He was Government Actuary, head of the UK Government's Actuary Department from 1989 to 2007. In that capacity he was responsible for the publication of the 2nd, 3rd, 4th, 5th and 6th editions of the Ogden Tables, he was consulted by the Lord Chancellor in 2001 when he was considering setting the Discount Rate, and he gave advice to the States of Guernsey on a number of occasions in relation to matters of Social Security.

159. Mr Daykin holds the view that an actuarial approach to the evaluation of loss of income and future costs offers the best chance of meeting the fundamental principle of full compensation. The Ogden Tables introduced some actuarial rigour into the process of calculating multipliers. Actuarial principles would also require the assessment of the yield on ILGS which is used to discount future cash flows to be based on a portfolio of stock selected so as to provide income to match the cash-flows as closely as possible.

160. He said that when the Lord Chancellor was setting the Discount Rate under the Damages Act, he took advice from Mr Daykin as the Government Actuary as well as from the Treasury and others but he did not necessarily follow the advice. The rate set was controversial at the time; he thought it was too high then and there is an urgent need to re-assess it now. In cross-examination, he said that in setting the Discount Rate, the Lord Chancellor took account of the impact of claims on the NHS and the Ministry of Defence.

161. In his opinion, a one-year average for gilt yields is more reasonable than three years as the rate is declining and a three year average includes gilts that are no longer available. The present rate is influenced by the Government's quantitative easing policy that is flooding the market and driving yields down. He doesn't think rates will go much lower but they will not return to 2.5 or 3%. The current rate is 0.5%, which is lower than Mr Hogg said.

162. He has advised the States of Guernsey on future earnings growth and the States assumes 2% above RPI in various Social Security schemes.

163. The assessment of Guernsey inflation being 0.5% above the UK is consistent with analysis done when he was the Government Actuary.

164. In cross-examination, he added that the intention of the Damages Act was to have different discount rates for different purposes.

Multipliers - the Defendant's expert evidence

165. The only witness called by the Defendant on the multiplier issue was Mr Hugh Gregory, a Chartered Accountant.

166. He disagreed with a number of aspects of Mr Hogg's evidence but he agreed with Mr Hogg's factual statements and calculations concerning ILGS yields; that UK earnings

inflation is greater than price inflation; and that the restricted data available suggest that earnings inflation in Guernsey is greater than Guernsey price inflation.

167. He explained how the ASHE Index is compiled and said that there is no equivalent index in Guernsey.

168. He also said that it would not be appropriate to consider average earnings when assessing the future rate of increase in the earnings of carers because top earners' earnings rise at a faster rate than lower earners.

Multipliers - Counsels' submissions

169. Advocate Dawes submitted that the fundamental principle was to compensate the Plaintiff in full for the losses he had suffered. The experts, including Mr Gregory on behalf of the Defendant, were agreed that a multiplier based on a discount rate of 2.5% would lead to under-compensation.

170. In the absence of any Guernsey legislation establishing a discount rate for the Island and in the absence of any judicial decisions in this jurisdiction, he submitted that the correct approach for the Court was to set an appropriate rate having regard to the approach followed by the House of Lords in *Wells v Wells*. It was for the Jurats to decide upon a discount rate taking into account the evidence they had heard from the Plaintiff's experts, Mr Hogg, Mr Daykin and Mr Bootle. Then, they should set a multiplier having regard to the Ogden Tables, and the additional multipliers calculated by Mr Hogg and Mr Daykin based on a negative rate of 1.5%. Advocate Dawes submitted it was significant that in approving the Projet de Loi entitled The Civil Proceedings (Guernsey and Alderney) Law 2008 that is awaiting Privy Council approval, the States of Deliberation had provided for the admissibility of the Ogden Tables and their Explanatory Notes but they had not legislated for a discount rate to be set for the Island, leaving it for the Courts to do so.

171. Advocate Ayres submitted that as matter of custom and practice, Guernsey has adopted and applied the Discount Rate of 2.5% set by the Lord Chancellor. To adopt a different rate in the present case would create uncertainty in an area where certainty is important so that litigants and their advisors can, as far as possible, settle personal injury claims out of court without incurring the expense of instructing expert actuaries, economists and accountants. He disputed the submission by Advocate Dawes that the Royal Court could achieve certainty by laying down a formula for future use; the Royal Court's decisions are not binding on the Royal Court. Even a decision from the Court of Appeal would not deliver certainty as it could be reviewed by the same Court on a future occasion.

172. There is a precedent for adopting a rate set by an English Statutory Instrument. That is in relation to interest rates. Delivering the judgment of the Guernsey Court of Appeal in *Douglas v Gallienne* 14 November 1990, Le Quesne JA said the following about the calculation of interest on awards of damages, at page 15G:

“Some guidance should be given to [the Jurats] about the appropriate rate to be used for different periods and, if I may put the matter compendiously, attention should be paid to the various questions and to the various authorities which will be found set out in the White Book in the notes to Order 6, rule 2. I

refer in particular to what, in the 1988 edition, which is the latest edition available to me here, appears as note 16.”

173. In Buckley v Ronez Ltd 2 March 2009, the Deputy-Bailiff directed that interest was to be calculated on the award of damages on the same principles that would be applied in England and said he did so for two reasons. The first was that he was following the decision in Douglas v Gallienne and the second was that he believed he was following the well established practice of the Guernsey Bar in adopting English principles when advising on the quantum of interest when settling cases out of court.
174. The principles set out in the White Book appear to be based in part on decisions of the English courts but include calculations based on rates of interest allowed on money in Court placed on the Short Term Investment Account and those rates are prescribed from time to time by a direction made by the Lord Chancellor.
175. Advocate Ayres therefore submitted that there was an established practice in Guernsey of applying rates of interest set by the Lord Chancellor.
176. Regarding the expert evidence adduced by the Plaintiff, Advocate Ayres said that Mr Hogg was a biased witness who is leading the charge against the Lord Chancellor’s rate and similarly Mr Daykin has preconceived views critical of that rate and the manner in which it was set.
177. Advocate Ayres also commented that Mr Bootle had said, based on general principles and in the absence of specific Guernsey data, the differential between earnings inflation and prices inflation will be in the range 1% to 3%. There is no rationale for selecting 2% other than that it is the average of the other two figures.

Multipliers- the Court’s Conclusions

178. The Deputy-Bailiff started with the observation made by Southwell JA in Morton v Paint (1996) 21 GLJ 61, at page 51C, to which Advocate Ayres drew attention:

“in relation to the law of torts it has been customary for the Guernsey Courts to adopt English common law as it has been developed.”

179. Examination of the judgment shows that Mr Southwell was merely observing that it was common ground between the parties that in matters of tort, Guernsey adopts English common law. It is implicit in the Court’s judgment that the Court of Appeal accepted that was generally correct.
180. In the Deputy-Bailiff’s view, the generality of that statement must be subject to a number of comments and reservations, including:
- a) Whilst we adopt the common law, we do not adopt English law where it has been modified by legislation, unless Guernsey has enacted similar legislation.
 - b) We would not adopt a principle of English tort law if to do so would conflict with an established principle of Guernsey customary or statutory law.

- c) English common law is persuasive but decisions of the English courts are not, and cannot be, binding on this jurisdiction.

181. The Deputy-Bailiff believes the three comments above are all well understood and are uncontroversial. It seems to him that it follows from the above that if a decision of the English Courts, the English common law, is based upon an assumption that is not correct in Guernsey then the Guernsey courts are not bound, as a matter of law, to adopt the English decision without amendment. By way of example, if an English decision took account of English taxation and it was established that Guernsey taxation was significantly different, we would have little hesitation in modifying it to take account of the difference. An illustration of that example would be that, if the net return from the ILGS yield was significantly different in Guernsey than in the UK because of the tax treatment of the income from ILGS, we would adjust the discount rate to allow for the difference.
182. The Deputy Bailiff can think of no reason in law why we should not adjust a discount rate calculated in accordance with English common law principles in order to take account of differences in RPI between the two jurisdictions if, as a matter of fact, there is a proven difference.
183. Before developing this line of thinking any further, the Deputy-Bailiff considered Advocate Ayres's submission that the discount rate set by the Lord Chancellor by Statutory Instrument under provisions in the Damages Act has been adopted in Guernsey by custom and practice. It is accepted that Guernsey has not legislated along the lines of the Damages Act. It is also a fundamental feature of the customary law of the Bailiwick that the customary Law can and does evolve.
184. Advocate Ayres submitted in argument that it was his experience and understanding that when assessing damages claims for future losses the Guernsey Bar has, since 2001 adopted the Lord Chancellor's rate of 2.5%. On the other hand, Advocate Dawes argued that might have been the case in the immediate period after the rate was set and he accepted that, in some cases, counsel may have conceded a rate of 2.5% in order to achieve a negotiated settlement, especially in those cases where the quantum of the claim was such that it would not have justified the expense of calling expert evidence in court to support a different rate. For his own part, in the present case he had first put the Defendant's insurers on notice that he would argue for a rate other than 2.5% more than four years ago in a letter dated 10 June 2005.
185. The Court has not been referred to any decisions either in this jurisdiction or in any other similar jurisdiction (such as Jersey) in which the issue has been argued since 2001. In *Buckley v Ronez Ltd January 2009*, a personal injuries claim, the issue was raised but counsel agreed to accept 2.5% because the quantum of the claim did not justify arguing otherwise. (In the Court's judgment, it referred to the 'rate of return' but it clearly meant the 'discount rate'.) There is therefore no evidence before the Royal Court in the present case to prove that 2.5% has been adopted in this Island by custom and practice.
186. The conclusion of the Deputy-Bailiff in the present case is that the discount rate of 2.5% set by the Lord Chancellor has not, as a matter of law, been adopted by legislation or by custom and practice in Guernsey. It is therefore for the Court to set an appropriate rate taking into account the evidence and the submissions of the parties.

187. How should the Court approach the task? The starting point has to be the fundamental principle that the Plaintiff is to be compensated in full for his losses, as expressed in various ways by Lord Blackburn in *Livingstone v Rawyards Coal* and in their Lordships' speeches in *Wells v Wells*. There are then three different options to consider: to adopt the Lord Chancellor's rate without adjustment; to adopt that rate and adjust it for any specific Guernsey factors, for changes that have occurred since the rate was set or for any other relevant factors; or to disregard that rate and set a new rate from first principles.
188. The Jurats were directed to consider first whether, as a matter of fact, it is appropriate to adopt the rate of 2.5%. They took into consideration all the evidence they had heard and the submissions of counsel. They were directed to consider the reasons given by the Lord Chancellor when setting the rate and to accept those reasons at face value. They were to ignore any suggestion that the Lord Chancellor was biased by reason of being a member of the Cabinet and desirous of reducing the cost of claims against the NHS and Ministry of Defence for the reason that he is assumed to have acted in good faith; it is not for this Court to challenge or criticise his decision-making when there has been no such challenge in his own jurisdiction. Furthermore, the Jurats were not to speculate as to why he has not subsequently reviewed the rate and were to ignore Advocate Dawes's submission that his failure to do so was bordering upon the intellectually dishonest. They were also to ignore the threat from Advocate Dawes to appeal the decision if the Jurats upheld the rate of 2.5%.
189. In deciding whether to adopt the rate of 2.5% it was relevant to consider Advocate Ayres' submission that to do so would help to achieve certainty for the benefit of other claimants wanting to settle claims without incurring the costs that would be involved if in each case it was necessary to set a rate specific to that case. Also, that the aim of the courts was to have a simple means of assessing future losses that could be applied easily across a range of cases and therefore was, inevitably, 'rough and ready'.
190. The Jurats concur that it would be desirable to have certainty and consistency. They were not persuaded as a matter of fact that the Lord Chancellor's rate was so discredited that it was not safe to use even as a starting point. Indeed, they felt it was relevant that the discount rate set by the Lord Chancellor had not been challenged or set aside in England and Wales. In setting the rate, he had not merely conducted an arithmetic exercise similar to the exercise the Royal Court is being asked to perform and that the House of Lords had performed in *Wells v Wells*, he consulted widely and received opinions and views from many more fields of expertise than are available to the Court.
191. Advocate Dawes made much of the fact that the Lord Chancellor had 'rounded' the net return (after UK tax) on ILGS investments from 2.09% to 2.5% rather than 2%. In doing so, Advocate Dawes appeared to ignore the Lord Chancellor's statement (quoted above) that he was not merely carrying out an arithmetic exercise but, instead, he was taking account of all the information available to him.
192. The Jurats do not know what other information was available to the Lord Chancellor and they consider it would be wrong to ignore his statement that he had taken account of such further information. Consequently, the Jurats are satisfied that it would be appropriate to start with the discount rate of 2.5% set by the Lord Chancellor and then

to adjust it for specific Guernsey factors and for changes in the net return on ILGS that have occurred since he set the rate in 2001.

193. The Jurats accept the evidence that Guernsey RPI increases faster than UK RPI by, on average, one half of one per cent per annum. That was the evidence of both Mr Daykin and Mr Bootle on behalf of the Plaintiff and was not challenged by Mr Gregory on behalf of the Defendant. It is based upon the States of Guernsey Index of Retail Prices compiled from local data.
194. As for the changes in ILGS yields, the Jurats accepted the unchallenged evidence that yields have continued to decline since the rate was set. They considered on what basis the average yield should be calculated, having regard to the calculation of the average in *Wells v Wells* and the reasons given by the Lord Chancellor for accepting a simple three year average of all stock in issue. They decided that it was appropriate to follow the House of Lords and the Lord Chancellor in taking a three year average.
195. They accept the evidence of Mr Hogg in his letter at page 5-191B that the average over the last three years is 1.28%. After discounting for Guernsey tax at the rate proposed by Mr Hogg, the net return is 1.13%, which compares with 2.46% gross, or 2.18% net at Guernsey tax rates when the Lord Chancellor set the rate. In other words, the net return to a Guernsey investor has reduced by 1.05% per annum.
196. Next, the Court considered the question of whether to adjust for differences between earnings inflation and price inflation. This raises legal issues as well as factual issues. The English common law has always adopted a single discount rate for all types of loss when assessing the appropriate multiplier. Advocate Dawes submitted it had been obliged to do so because the Lord Chancellor adopted a single rate, but decisions such as *Thompstone* are authority for the proposition that if the Lord Chancellor had not set a statutory rate, the common law would have developed to allow the Courts to do so.
197. In the opinion of the Deputy-Bailiff, it was fundamental to the Court of Appeal's decision in *Thompstone* that there was a suitable alternative index available (see for example paragraph 58 in the judgment of Waller LJ quoted above). In Guernsey there is not even a current index of average earnings, let alone a specific index of the earnings of carers. As a matter of law, there can be no basis for adopting different discount rates for different types of loss in the absence of indices measuring the respective rates of inflation.
198. If that direction is wrong in law, the Jurats were asked whether they would have adjusted the rate to take account of any difference in earnings inflation if they were directed to do so. Their conclusion was that they would not do so in the absence of a suitable index. They consider that it would be wrong to conclude that inflation in wages paid to carers in Guernsey simply follows the general economic theory and general data analysed by the Plaintiff's experts on economics.
199. In conclusion, the Court sets the discount rate in the current case by starting with the Lord Chancellor's rate of 2.5%, deducting 0.5% for the difference between UK RPI and Guernsey RPI and deducting a further 1.05% to allow for the reduction in the return on ILGS. Then, rounding to the nearest 0.5%, the Jurats arrive at a figure of 1.0% as the discount rate to assume in the present case.

Multipliers- the Ogden Tables

200. The whole life multiplier is calculated in the following manner:

- (a) the parties agree that the ‘normal’ life expectancy of a male aged 39½ years is 45.9 years;
- (b) it is agreed that the Plaintiff’s life expectancy has been reduced by 5 years;
- (c) Table 1 of the Ogden Tables gives an ‘effective age’ of 42.5 years;
- (d) The whole life multiplier at a 1% discount rate is 33.00.

201. The multiplier to pension age 65 is derived from Table 9 and is 21.68 and to age 70 is 24.95. The Jurats have assumed the Plaintiff’s earnings will be halved between age 65 and 70; the multiplier for loss of earnings during that period is the difference between 21.68 and 24.95, namely 3.27.

Special Damages

202. The Court’s consideration of, and decisions on, the claims for special damages are to be found both in the judgment and in the “Schedule of Claim” in Appendix 1. This Schedule of Claim includes the reasons of the Jurats relating to certain items not referred to specifically in this judgment.

203. In the claim for past losses, the Plaintiff had allowed a general credit of £10,000 to allow, principally, for costs that would have been incurred in any event, even if there had been no Accident. The Jurats have discounted, or disallowed, claims where appropriate and have concluded that there is no need for any general credit of £10,000 or otherwise.

Gratuitous Care

204. The submissions of the parties as to the principles governing the recovery of an award of damages for gratuitous care are summarised in their respective written closing speeches, starting at page 9, paragraph 40 of the Plaintiff’s speech and page 14 of the Defendant’s speech.

205. The Plaintiff relies upon Kemp & Kemp Chapter 13 and quotes from paragraph 13-005 (authorities bundle 3, divider 8, page 1119):

“A claimant is entitled to recover damages in respect of the fair and reasonable value of the care and domestic assistance which has been provided gratuitously by a family member or friend, even though the claimant is under no liability to pay that care provider, assuming of course that the care and assistance was rendered necessary by the claimant’s injuries”.

206. The Defendant cites from *Hunt v Severs* [1994] 2 AC 350 quoting from the head note at page 350 of the Law Reports and page 874 of the bundle of authorities Volume 2:

“A plaintiff who had established a claim for damages for personal injury, was entitled to recover as part of those damages, the reasonable value of services rendered to him gratuitously by a member of his family, in the provision of nursing care or domestic assistance rendered necessary by the plaintiff’s injuries”.

207. The Defendant says it is important to remember the words of May LJ in Evans v Pontypridd Roofing Limited [2001] All ER (D) 131 (NOV), bundle of authorities Volume 2, page 893:

“It is obviously necessary for Judges to ensure that awards on this basis are properly justified on the facts, and not to be misled into findings that a gratuitous carer is undertaking full time care simply because they are for other reasons there all or most of the time”.

208. In relation to the gratuitous care provided by Mrs Helmot during the period while the Plaintiff was in a coma, the Defendant referred to Tagg v Countess of Chester Hospital Foundation Trust [2007] EWCH 509 (QB), (consolidated bundle of authorities Volume 3, page 1271). In that case McCombe J agreed with the Defendant’s submission that in respect of hospital visits by members of the claimant’s family, compensation was not to be payable for the provision of companionship. He also referred to comments to a similar effect by Beldam LJ in Havenhand v Jeffrey (24 February 1997 unreported) (consolidated bundle of authorities Volume 3, page 1251), agreeing that a family visiting their mother in hospital would be compensated for time spent providing services and not when they were merely providing family affection.

209. Regarding care provided to the Plaintiff by Mrs Helmot after he returned to the family home in Guernsey, the Defendant relied upon Crofts v Murton, (consolidated bundle of authorities Volume 2, page 988, at page 998, paragraph 41). After having referred to Evans and Havenhand, HHJ Collender QC said the following:

“Certainly, the Claimant is entitled to claim only for such care and assistance as was made reasonably necessary by the accident, and which goes “distinctly beyond that which is part of ordinary family life” – see Mills v BR Engineering [1992 PIQR Q130]. I accept the Defendant’s contention that the time that Mrs Crofts has spent, and will spend, at home, both supervising the Claimant and doing household chores, is to be ignored, limiting gratuitous care to time she would otherwise have been elsewhere.”

Gratuitous Care – Deputy Bailiff’s Directions to the Jurats

210. The Deputy Bailiff directed the Jurats that the principles governing the recovery of damages for gratuitous care are as quoted by counsel from Kemp & Kemp and Hunt cited above. The Plaintiff is entitled to recover *“the fair and reasonable value of the nursing care and domestic assistance which has been provided gratuitously by family members provided that such care or assistance was rendered necessary by the Plaintiff’s injuries”.*

211. The Deputy Bailiff drew attention to the head note in Evans at page 886 of authorities Volume 2:

“The basis on which the Court would assess awards of damages for care provided to claimants by gratuitous carers, typically a spouse or a parent, would depend on the facts of the individual case and first instance judges should not be made to follow too restrictive an approach. Circumstances might vary enormously and what was appropriate in one case might not be so in another. It would be appropriate to make an assessment on the basis of the caring services provided by the gratuitous carer. In many cases, that would amount to a small number of hours per day or per week and in other cases the services might amount to those provided by a full time professional carer or even, exceptionally, exceed the full time services of a full time carer. Whilst persons who needed physical assistance for everything they did, did not literally receive that assistance during every minute of the day, their condition might be so severe that the presence of a full time carer really was necessary to provide whatever assistance was necessary at whatever time unpredictably it was required.”

Past Gratuitous Care – The Claim in Respect of Mrs Helmot

212. Mrs Helmot has, to date, remunerated herself out of the Insurers’ interim payments at a rate which she claimed was based upon her earnings prior to the Accident. The Jurats considered it was reasonable that she has received remuneration. In the light of that, the Deputy Bailiff drew the attention of the Jurats to paragraph 13-008 in Kemp & Kemp (page 1122 of Volume 3 of the authorities):

“In assessing the proper valuation to be applied to services which have been provided on a gratuitous basis, the Court has applied a number of different approaches to achieve a “proper and reasonable” figure. One approach of the Court is to assess the net loss of earnings which may have been suffered by the carer – see Fish v Wilcox, although if this approach is adopted as a method of valuation of the gratuitous services then it should not be coupled with a discreet claim for care costed on an alternative basis, as this would constitute double recovery. Provided that it was reasonable for the carer to give up work in order to provide care, then there may be every reason to treat the loss of earnings as the measure of that value of care.....A different (and more common) approach is to use as a starting point the commercial valuation of the care provided and then discount it to take into account specific factors (for example, the nature of the care provided, the non incidence of tax and national insurance).”

213. The Plaintiff’s submissions are summarised in his closing speech, beginning at paragraph 42. The sum claimed of £324,809.99 is particularised in the Re Re-Amended Schedule of Loss at pages 1-315 and 1-316. The period of the claim is from the date of the Accident until the date of the trial at a rate of £10.00 per hour throughout the period, for 84 hours a week whilst the Plaintiff was in hospital, 42 hours per week while PHC were employed, 98 hours a week whilst no carer was employed, and, from the recruitment of Anita Bourgaize onwards, 63 hours a week.

214. The Defendant’s offer is based upon the expert evidence of Tessa Gough as detailed in Appendix A to her report at page 10-37. She proposes nothing in respect of the period to 31 December 1998 when the Plaintiff was in a coma, and nothing from November 2006 onwards when Head First took over responsibility for case management when a 23 or 24 hour per day care regime was established by other paid carers.

215. The rate of pay proposed by the Defendant is based upon the standard hourly rate paid at the National Joint Council Spine Point 8 rate, starting at £4.73 per hour in 1999 and rising to £6.41 per hour by the end of the period. The number of hours proposed is 8 hours per day until the Plaintiff's return to Guernsey and thereafter 6 hours per day, save for the period June 2002 to August 2002, when 12 hours per day is proposed whilst no other paid carer was employed.

Past Gratuitous Care – The Award re Mrs Helmot

216. The Court wishes to pay tribute to the considerable amount of care and assistance Mrs Helmot has provided to the Plaintiff since the Accident. It was suggested by a witness that she has done no more than a mother would do. That is an understatement of the contribution that she has made. Mrs Helmot has devoted herself, and dedicated her life to the Plaintiff, unselfishly since the Accident to an extent that goes beyond what many mothers would have done in a similar situation. She has cared for her son to the detriment of her own personal health, at times neglecting her long-term partner and other family members and to the detriment of her relationship with those others.

217. The evidence the Court has heard has done little more than given an impression of her contribution. It would have been impossible for her to describe in detail all that she has done over the past 11 years. Her recollection of what has been needed at different periods during that time is not perfect, and her memory of some events has inevitably faded as the years have passed. She has not maintained a diary so there is no contemporaneous record of her daily contribution and how that has changed over time.

218. To place a monetary value on such care is almost impossible; a mother's love and devotion to her tragically injured son cannot readily be quantified in 'pounds, shillings and pence'.

219. The assessment of the value of the care provided by Mrs Helmot has been one of the most difficult aspects of the Jurats' task in assessing damages in this case. They have carefully considered the evidence of the respective care experts and the submissions of Counsel thereon. They are not persuaded to follow either of the experts. Consequently, the Jurats have approached their task from the basic legal principles.

220. Beginning at a date in early 1999, Mrs Helmot has remunerated herself out of the interim payments received from the Insurers in the amounts detailed in Schedule A1, at Vol. 14.1.1. She has paid herself a four-weekly amount, commencing at £400.00 per week and increasing with inflation annually from 2001 onwards. The Jurats have accepted Mrs Helmot's evidence that £400.00 per week is what she was earning prior to the Accident. It is a coincidence that she was employed as a carer by a private nursing agency. Mrs Helmot said there was no shortage of paid work for her as a carer. Although she was not asked how many hours she worked per week before the Accident, the Jurats have inferred that she was doing more than 35 hours per week. In the absence of evidence to the contrary, they have accepted that her take-home pay was £400.00 per week.

221. The Insurers have been aware that Mrs Helmot was remunerating herself in this way. There is no evidence that the Insurers expressly approved or condoned the basis of remuneration. The Jurats have not assumed that the Insurers were in wholehearted agreement with these payments.

222. The Jurats have accepted that it was reasonable for Mrs Helmot to give up her former paid employment in order to devote her time to her injured son. Although Mrs Helmot did not provide services to her former employer after the Accident, the Court was not told when her employment ceased, or when she ceased to be paid by her employer. We were not told the terms of her employment, nor whether she was entitled to any period of paid absence after the date of the Accident.
223. The Jurats noted that when payments started to be made to Mrs Helmot out of the Insurers' interim payments, the first payment was backdated but only for a period of about 15 weeks from June 1999.
224. Evidence was given of the care provided by Mrs Helmot to the Plaintiff in Southampton both in the Intensive Care Unit and after he was admitted to the Rehabilitation Unit in January 1999. The Jurats accept that such care was over and above the services provided by the hospital, especially in the Rehabilitation Unit as there is evidence that the Unit was short-staffed at the time. Furthermore, the Jurats are satisfied that the Plaintiff's recovery was assisted by the care Mrs Helmot was able to devote to him, over and above what would have been available from the hospital staff if she was not present.
225. The Jurats have also taken account of the fact that the Plaintiff was in hospital in Southampton. Had he been in hospital in Guernsey, it might have been possible for Mrs Helmot to continue in paid employment, visiting the Plaintiff outside her normal working hours. It was impossible for her to do so whilst he was in hospital in Southampton.
226. The Jurats are therefore satisfied that it was reasonable for Mrs Helmot to give up her paid employment in order to provide care to the Plaintiff in the Rehabilitation Unit.
227. The Jurats also considered very carefully whether to award compensation for the earlier period (that is from the date of his admission in Southampton to the date of his transfer to rehabilitation) on the basis that it was reasonable for Mrs Helmot to give up her paid employment immediately upon the Plaintiff's admission to hospital in Southampton, the day after the Accident. There was no evidence that she was unpaid at that time and therefore, the Jurats are not persuaded to award compensation on that basis. They also noted that the diagnosis of the Plaintiff's total injuries was at that time incomplete and the prognosis was uncertain. Another consideration is that there is little evidence upon which the Jurats could value the care provided by her at that time.
228. Accordingly, the Jurats allow gratuitous care for Mrs Helmot from 1 January 1999 to the date of the Plaintiff's return to Guernsey on 26 July 1999 at the initial rate of £400.00 per week, being what she would have earned if she had not given up paid employment to look after the Plaintiff.
229. After the Plaintiff's return to Guernsey, would it have been reasonable for Mrs Helmot to return to her former employment, or any other employment, on either a full-time or part-time basis? The Jurats have taken into consideration the evidence, largely uncontested, that Mrs Helmot was engaged full-time in caring for the Plaintiff during the period following his return to Guernsey.

230. PHC were employed to provide 24 hour care, but Mrs Helmot was also required.
231. The Jurats have been assisted by the report of Dr Alison Burbidge, Locum Registrar to Professor D R McClellan, dated 8 June 1999 (Vol. 12.2) sent by her to Dr Erskine. Dr Burbidge noted that Mrs Helmot was keen to be involved in all aspects of the Plaintiff's continuing rehabilitation and stated that she was fully capable of caring for him, but that it would be necessary to arrange adequate support so she does not become exhausted and could continue to enjoy life with Mr Jordan and the rest of her family (page 12-6).
232. The schedule of daily care prepared by Dr Burbidge (at page 12-9) indicates when it was intended that Mrs Helmot would be available and when she would be allowed time off. As matters turned out, it appears that Mrs Helmot was not able to take the time off anticipated, possibly because the paid carers did not have the expertise in acquired brain injuries that Dr Burbidge might have assumed. Nevertheless, the schedule of care required clearly demonstrates that it would not have been possible for Mrs Helmot to return to any form of employment, even on a part-time basis.
233. There was doubling-up with the paid carers, but again, the schedule demonstrates the times when Dr Burbidge was recommending that two carers would be required.
234. In the view of the Jurats, the best evidence of what was reasonable at that time is what the relevant expert, i.e. Dr Burbidge, recommended. It is also relevant that, as discussed later in this Judgment, States of Guernsey Departments and agencies were closely involved in the establishment of the care regime and they were aware, and accepted, what was proposed.
235. By the end of 1999, the Plaintiff's condition had improved and less care was required. Mrs Helmot and Mr Jordan said they were fed up with having carers in the house 24 hours a day, so the level of care was reduced, not by reducing Mrs Helmot's involvement, but by reducing the level of paid care from 24 hours per day to 18 hours per day with effect from 1 January 2000.
236. In the view of the Jurats, it continued to be reasonable for Mrs Helmot not to seek any other paid employment. Once again, it is very difficult to value the care that Mrs Helmot was providing, but the Jurats consider it is reasonable to reward her on the basis of what she would have been paid had she been working as a paid carer for others. In other words, they award damages on the basis on which Mrs Helmot was remunerating herself at the time from the interim payments received from Insurers.
237. With effect from July 2001 and annually thereafter Mrs Helmot increased her payments in line with RPI. The Jurats accept it was reasonable to do so. She also paid herself an annual Christmas bonus which the Jurats do not consider reasonable.
238. The same pattern of care provision continued until the relationship with PHC broke down in June 2002. The evidence suggests that the basic assessment of damages should remain the same throughout that period.
239. There was then a short period until the recruitment of Anita Bourgaize in August 2002 during which all of the care was provided gratuitously by the family and principally by Mrs Helmot. The Jurats have considered whether the rate of compensation for gratuitous care should be increased during this period. It might seem unfair not to

award her more when she was doing more but, as we have already commented, there was no evidence of the details of exactly what care was provided on a daily basis at different times throughout the period of the claim. There must have been periods when Mrs Helmot was busier than at other times; for example, when by reason of pain or otherwise, the Plaintiff's sleeping pattern may have been worse than at other times. There is no evidence upon which the Court could reasonably assess how the compensation for any one period of time should differ from any other period. Having decided that the appropriate basis for remuneration should be Mrs Helmot's lost earnings, the Jurats are satisfied, with some reluctance, that the same should apply even when there was no paid care provided.

240. From August 2002 to April 2003, Anita Bourgaize was employed for 35 hours per week. Mrs Helmot was the principal carer for the remainder of the time and it would have been impossible for her to have returned to work. The Jurats are therefore persuaded that it is appropriate to continue to compensate Mrs Helmot at the same rate whilst Anita Bourgaize was employed.

241. In April 2003, the Latvian Carers were engaged, initially as domestic assistants, but later in a caring capacity in addition to their domestic duties. It is reasonable, in the view of the Jurats, that Mrs Helmot was required full-time as a carer and in a supervisory role and therefore unable to resume any paid employment. Accordingly, they propose the same basis of compensation for Mrs Helmot's gratuitous care throughout the period until the involvement of Head First and Team Medical.

242. After Team Medical became involved, at the end of September 2006, the Jurats have assessed the cost of the total care package and we comment further on this when assessing damages for the cost of paid care during this period.

243. It was in the Autumn of 2006 that Mrs Helmot's health deteriorated to the point where she was required to go into hospital for treatment. Assistance was available from Head First and Team Medical. Head First was the case manager and undoubtedly shared some of the burden for the organisation and planning of the Plaintiff's care that had previously rested heavily on Mrs Helmot's shoulders. Team Medical provided experienced professional carers from the UK for 9 hours per day. During the remaining hours, a paid carer was provided through a combination of the Latvian Carers and, to some extent, through Adult Literacy Classes.

244. There is overwhelming evidence that Mrs Helmot continued to be actively involved. She remained the team leader, she was the person who best understood the Plaintiff's needs and was able to provide instruction and tuition to the other carers. There is also substantial evidence to show that the other carers readily turned to her for assistance as and when they encountered difficulties or required further help.

245. In the view of the Jurats, it would be wholly unrealistic to make no allowance for Mrs Helmot's gratuitous care during this period, as proposed by Tessa Gough. However, it is reasonable to make some allowance for the fact that the burden on her was now being shared. In the view of the Jurats, the rate of remuneration during this period should be one half of what she was paying herself out of the Insurers' interim payments.

246. Since June 2009, when Team Medical ceased to be involved and local carers were directly employed, Mrs Helmot has been an employee of Head First. Schedule A1,

Vol. 14.1.1 page 2 records that she has been earning money as a “bank” worker. The Jurats consider that compensation for gratuitous care should cease at the end of May 2009 when, for the first time, she became employed and remunerated as part of the care package.

247. In summary therefore, the Jurats award past gratuitous care in respect of Mrs Helmot, from 1 January 1999 to end October 2006 at the weekly rates she was remunerating herself from the Insurers’ interim payments (see Vol. 14.1.1) and thereafter until the end of May 2009 at one half of that rate. The Schedule suggested that the payments increased in about July each year, commencing in 2001. The award of the Court is therefore:

Mrs Helmot Past Care:

01.01.99 to 30.06.01	130 wks x £400.00	£52,000.00
01.07.01 to 30.06.02	52 wks x £440.00	£22,880.00
01.07.02 to 30.06.03	52 wks x £462.00	£24,024.00
01.07.03 to 30.06.04	52 wks x £485.00	£25,220.00
01.07.04 to 30.06.05	52 wks x £512.50	£26,650.00
01.07.05 to 30.06.06	52 wks x £540.00	£28,080.00
01.07.06 to 31.10.06	17 wks x £567.50	£9,647.50
01.11.06 to 30.06.07	35 wks x £283.75	£9,931.25
01.07.07 to 30.06.08	52 wks x £303.75	£15,795.00
01.07.08 to 31.05.09	48 wks x £320.62	<u>£15,389.76</u>

Total **£229,617.51**

248. Credit is to be given for Invalid Care Allowance paid to Mrs Helmot in the sum of £28,965.85 (page 18 of Defendant’s closing speech). The Jurats have awarded compensation for gratuitous care based on the earnings she would have received had she been employed by a third party as a carer. If she had been so employed she would not have been entitled to receive Invalid Care Allowance so it follows that the total Allowance received by her should be deducted from the award.

249. The net award for Mrs Helmot’s gratuitous care is £200,651.66 (item 4.1 of Appendix 1(b)).

Past Gratuitous Care – Ken Jordan

250. The Plaintiff is claiming £100,000 in respect of gratuitous care provided by Mr Jordan since the Accident and the Defendant offers £5,000 for the reasons given at pages 18 – 20 of the Defendant’s closing speech.

251. The Jurats are satisfied, on the evidence, that Mr Jordan has provided care and domestic assistance gratuitously to the Plaintiff and that such care and assistance was rendered necessary by the Plaintiff’s injuries suffered in the Accident. Accordingly, a sum of money should be awarded as compensation.

252. Again, the basis of valuing such care is not easy and the Jurats did not find either of the Care Experts to be of any real assistance.

253. As with Mrs Helmot, Mr Jordan has not kept a daily diary of what he has done over the eleven years and, as with her, it is inevitable that his recollection of how his involvement has changed over the years will have blurred. Furthermore, it was impossible in his evidence to give a full description of all the detail of what he has done during that time.
254. The Jurats have considered his evidence carefully. They are satisfied that he has played an important and crucial role over the years, something for which Mrs Helmot showed her genuine appreciation when giving her evidence. It is impossible to summarise succinctly all that Mr Jordan has done, but the Jurats have had regard to what they consider to be the principal areas. Whilst Mrs Helmot has been the principal carer, Mr Jordan was described as the ‘lynch-pin’. He has had to step in to Mrs Helmot’s role at those times when she, by reason of exhaustion or otherwise, has been unable to cope. There have been occasions when, because of his injuries, the Plaintiff has displayed aggression or there has been genuine concern as to whether his frustrations may cause him to be violent towards others and Mr Jordan’s assistance has been needed.
255. The Plaintiff has been living in Mr Jordan’s house and the latter has been available or on call at almost all hours and on at least one occasion was not able to work as a taxi driver because he was required in the house. The Court did not make a separate award in respect of lost income (as claimed by the Plaintiff), but have taken it into consideration when considering the overall level of damages for gratuitous care.
256. Mr Jordan has made a tangible contribution in providing the book-keeping and other administration including, for most of the time, running the pay-roll. He described in some detail how long that has taken him as he was unfamiliar with the work. That evidence was closely challenged by Advocate Ayres who clearly suggested there was exaggeration. The Court considers that if it is the case that the administration was taking him all morning, or even all day, there is a duty to mitigate loss. There is evidence that the pay-roll could be provided by an external agency at £109 per annum per employee. Mr Jordan’s services in that regard cannot be valued at more than that figure. Some of the other administration will have been in connection with the litigation and not recoverable. Mr Jordan has also provided care on holidays and at other times when the Plaintiff has been, for example, out of the house and needed a male carer to accompany him in case he needed to go to a toilet whilst in a public place.
257. The Jurats do not have the detail as to how Mr Jordan’s work has varied from one year to the next so they have taken a single figure for each of the 11 years since the Accident. They consider that approximately £100.00 per week or £5,000 per year is appropriate and therefore award £55,000 in respect of Mr Jordan’s gratuitous care (item 4.2 of Appendix 1(b)).

Past Gratuitous Care – Mrs Brown

258. £2,000 is claimed in respect of the care provided by the Plaintiff’s sister, Mrs Brown and nothing is offered by the Defendant. The Jurats accept the submission that for much of the time Mrs Brown was providing care and support to her mother which would not be subject to compensation as it is not provided directly to the Plaintiff.

259. However, that is not the full picture. Mrs Brown gave evidence of the care and assistance she provided directly to the Plaintiff, especially after his return to Guernsey and before she had her own family responsibilities when she visited Mon Abri daily and especially in the evenings.

260. The Jurats are satisfied on the evidence that she provided some care and assistance to the Plaintiff rendered necessary by his injuries. Again, precise details are lacking and hence a precise valuation is very difficult. In the view of the Jurats, £2,000 is reasonable and they award compensation in that amount in respect of Mrs Brown's gratuitous care to date (item 4.3 of Appendix 1(b)).

Past Care – Other Expenses

261. The Plaintiff has claimed for a number of expenses paid by the GSSD which do not constitute care for the Plaintiff. They are agreed by the Defendant (page 22 of the Defendant's closing speech). The first three items claimed are awarded by the Jurats, totalling £17,883.00 (see paragraph 342 of this Judgment):

- “(a) *St John's Ambulance expenses, comprising, inter alia, hire of commode, mattress protectors and slings - £7,819.14;*
- (b) healthcare/medical treatment expenses, comprising, inter alia, doctors' appointments but excluding Specsavers' costs as the Defendant's myopia was not caused by the accident - £917.20;*
- (c) other expenses, including, inter alia, dental treatment but excluding Specsavers' costs - £9,146.66.”*

The fourth item is dealt with separately in this Judgment:

- “(d) *pro rata Social Insurance contributions, based on the amount of carers' costs the Defendant considers to be reasonable - £8,360.83.*

Past Care – Paid Care – 26 July 1999 to 16 June 2002

262. Care was provided by PHC from the Plaintiff's return to Guernsey until the relationship with PHC broke down in June 2002.

263. Initially, from 26 July to 31 December 1999, PHC provided 24 hour care in addition to the care and support from Mrs Helmot. This was in accordance with the recommendations of Dr Alison Burbidge, the Locum Registrar to Professor D L McLellan in her Report of 8 June 1999 (Vol. 12.2). From January 2000, the level of care provided by PHC reduced to 18 hours per day.

264. In the Defendant's Counter-Schedule of Loss para 8.7 (page 1-369), it is stated that *“The Defendant agrees the level of care provided by Private Home Care [PHC] between 26 July 1999 and 16 June 2002. The Defendant does not agree the hourly rate paid to Private Home Care which it contends was unreasonable.”*

265. In the Report of Tessa Gough, at page 10-21, she notes the rates charged by other agencies in 1999: Guernsey Private Nursing Agency, £9.00 per hour; Carecall, £8.95

per hour and Nursing Services (Jersey) Ltd, £10.00 per hour. PHC, she says, were charging £13.00 per hour.

266. Mr Nutley, the Chief Officer of GSSD, gave evidence of the negotiations he conducted with PHC. We need to digress to consider the involvement of GSSD and the role that it has played. GSSD has been providing financial assistance to the Plaintiff pursuant to the powers vested in it by section 10 of the Supplementary Benefit (Guernsey) Law 1971 “to make such arrangements as GSSD may deem necessary or expedient for promoting the welfare of handicapped persons”. Mr Nutley described it as a very wide discretion conferred on GSSD and which is exercised by the political board of GSSD.

267. GSSD were involved before the Plaintiff’s return to Guernsey when arrangements were being made and it became apparent that, as none of the institutional homes in Guernsey would be appropriate, he would have to be cared for at home. On 23 July 1999, the Manager of the Supplementary Benefit Department wrote (Page 14-669a):

“The Authority is keen to give all possible assistance to Manuel in these difficult circumstances.

In cases such as these, the Authority expects its expenditure to be included in any claim for damages and in due course will seek to recover these costs from any insurance compensation.”

268. GSSD agreed to provide financial assistance in respect of the cost of providing carers and equipment for the Plaintiff, on terms that were set out in the document at page 13-448 of the Trial Bundle (although that copy is unsigned, there is no dispute between GSSD and the Plaintiff that those are the agreed terms). The document reads:

“I, Rosemary Helmot of Mon Abri, Rectory Hill, Castel, Guernsey, legal guardian of Manuel Paul Helmot, agree and declare on behalf of Mr Helmot that all monies paid or advanced by the Guernsey Social Security Authority to him or for his benefit are to be regarded as an interest free loan. The monies are to be expended on items which are to be included in Mr Helmot’s damages claim against Dylan Simon, and are to be repaid on receipt by Mr Helmot of his damages award or settlement. However, if damages are not awarded or agreed in respect of any item of expenditure for the purposes of which the Authority has advanced monies, then to that extent repayment shall not be due. If the defendant or his insurers resist or seek to compromise any item of expenditure for the purposes of which the Authority have advanced monies, my advocates will inform the Authority at once.”

269. Mr Nutley met with a representative of the Insurers around the end of 1999 or early in 2000. The representative was aware that monies advanced were expected to be reimbursed. An account in the sum of approximately £60,000 was paid immediately in respect of costs to date and thereafter quarterly invoices were sent from the Department to Ozannes and were reimbursed by the Insurers until the end of 2005 when the Insurers stopped and they have made no payments since that date.

270. The Deputy-Bailiff directed the Jurats that in assessing the quantum of damages they should be concerned with the loss that flows from the injuries caused by the Accident; they were not to be concerned with the arrangements between the GSSD and the

Plaintiff as to what monies are or are not to be reimbursed to GSSD at the conclusion of this case.

271. However, he suggested that the evidence of Mr Nutley, especially as to the negotiations he conducted with the care agencies, might assist the Jurats in assessing whether the level of charges was reasonable and might therefore be relevant to the Jurats' deliberations.
272. The Deputy-Bailiff also gave directions as to the relevance of the knowledge that the Insurers had of the arrangements and the fact that they made reimbursements until the end of 2005. Advocate Dawes is not seeking to claim that, as a matter of law, the Defendant is prevented, or estopped, from challenging the reasonableness of the expenses reimbursed by the Insurers. Instead, the Plaintiff is saying that the fact of reimbursement is evidence of the reasonableness of the sums claimed because if the Insurers had not considered the amounts to be reasonable, they would not have reimbursed GSSD for as long as they did.
273. The Deputy-Bailiff directed the Jurats that the fact of reimbursement was a factor to be considered by them when deciding the question of reasonableness, without being conclusive evidence that the payments were indeed reasonable. The weight to attach to such evidence was a matter for the Jurats. If the Jurats concluded that the payments were not wholly reasonable and that the full amount was not recoverable as part of the claim, they were not to concern themselves as to whether the unrecoverable excess was, or was not, to be recovered by GSSD from the Plaintiff.
274. Returning to the evidence of Mr Nutley, he said in examination in chief that he kept a close watch on the payments from the beginning as he was aware the costs had to be reasonable if they were to be recovered. He negotiated some of the rates with PHC, especially the initial rates, and did his best to reduce the costs.
275. He was questioned further in cross-examination and referred to a letter dated 30 July 1999 written by the Manager of Supplementary Benefit to Mrs George of PHC (page 14-669 of the Trial Bundle) informing her that:
- “The Authority has agreed to fund one carer on a 24 hours a day basis and a further carer for 28 hours a week, to enable Mrs Helmot to have some free time. With regard to your hourly charge, the Authority agreed to meet an hourly charge of £10.00, if this is now going to increase to £15 per hour you will need to submit full details of the extra work involved before any increase in funding is agreed.”*
276. Mr Nutley said he could not understand the proposed 50% increase in the hourly rate. GSSD therefore did some research to ascertain what others might charge. He was referred to the typed summary of manuscript file notes created by the Department beginning at page 14-673 of the Trial Bundle and in particular to the second paragraph on page 14-677 quoting an hourly rate for auxiliaries of £9.00 per hour which he said he understood to be the hourly rate they were paid, not the rate charged by the agency.
277. Armed with that information, Mr Nutley negotiated with PHC and initially agreed a new hourly rate of £13.00 per hour for 24 hours per day, seven days per week pending a decision by GSSD (see the file note at page 14-683 dated 3 September 1999). He

described it as a difficult negotiation because there was a need to keep the care regime in place balanced against the need for the costs to be reasonable. He added that he was not sure there was a cheaper option.

278. On 6 September 1999 he wrote to Mrs George of PHC to advise her that GSSD had agreed to pay £18 per hour on Sundays and Bank Holidays (reduced from £20 sought by the Agency) and £13 per hour on other days (page 14-685).

279. Later, a special rate had to be negotiated for New Year's Eve 1999/2000 (the Eve of the Millennium) and a memorandum (at page 14-687) records that for that night only a rate of £40 per hour was agreed from 8pm to 8 am. Mr Nutley said that he felt it was a high rate. The Jurats accept that, for that special night, there was no alternative but to pay it.

280. The evidence the Court heard suggests that Guernsey's Nursing and Care Agencies were principally, or exclusively, involved in providing carers for the elderly; they were not experienced in providing care to persons with acquired brain injuries and especially not to persons with such injuries who were as young as the Plaintiff.

281. There was no evidence that the Plaintiff's family were aware that the local Agencies lacked the necessary expertise. No-one told them that was so. The Jurats have accepted it was reasonable to employ an agency, rather than employing carers directly.

282. The evidence was that the arrangements for the Plaintiff's return to Mon Abri were put in place rather hastily; there would not have been sufficient time to recruit local carers. The level of care needed was assessed by Dr Burbidge as being more than Mrs Helmot and the family could possibly have provided between them. The level of care needed was greater than it is now; his condition was still improving and had not stabilised and, for example, he was not yet walking. It was not known how he would progress after his return and in all the circumstances, it was reasonable to use agency carers.

283. The decisions were not taken by Mrs Helmot and Mr Jordan alone. They had Dr Burbidge's advice to which we have already referred and they also had help from all the relevant States Departments and agencies. Mr Nutley was directly involved in the arrangements and negotiated the rates of pay with PHC. Other Departments, including the Health Department and its social workers also gave help and advice. Meetings were held and attended by members of the Plaintiff's family. The minutes of two meetings are at pages 14-679 and 14-682 and show the enquiries and investigations that were conducted.

284. The agencies concluded at the time that nothing else was available and the Jurats accept that evidence. The Insurers were aware of the arrangements and did not make any other proposals. Consequently, the Jurats are satisfied that the Plaintiff has proved the monies charged by PHC were reasonably incurred as detailed in Schedule "C1" amounting to £266,449.00.

Past Care – Paid Care: 2 August 2002 to end April 2003

285. During this period of 9 months, Anita Bourgaize was employed for 35 hours per week during the day-time as a domestic assistant/carer. The evidence of Mrs Helmot was

that there were no set duties for her, everyone helped by doing what they could. Anita became more of a carer as she gained experience; she had no previous experience of acquired brain injuries. Mrs Helmot showed her what was needed.

286. Unfortunately, Anita Bourgaize was not wholly satisfactory. In those days the Plaintiff went to the Fitness Factory and when Mrs Helmot thought Anita was competent, she allowed her to take him on her own. However, she discovered that Anita was leaving him there while she went elsewhere. Anita then agreed she would not leave him, but one day she took him from the Fitness Factory to stables where she mucked out her horse leaving the Plaintiff in the car, soaked in sweat from exercise, when she should have taken him straight home.

287. The Defendant, at page 1-369, agrees the level of care provided by Anita Bourgaize but does not agree the rate of pay, claiming that it was unreasonable “*being in excess of the rate of pay of a qualified nurse and above the level of salaries paid by local care agencies*”. Anita Bourgaize was paid £10.50 per hour and the Defendant contends that £5.90 would have been appropriate.

288. The Jurats considered carefully all the evidence produced as to comparative rates of remuneration. In their view, £5.90 was far too low. On the other hand, £10.50 was too high. They also noted that Mr Nutley did not negotiate the rate and his contemporaneous view was that £10.50 was high (page 14-689). The Jurats agree. Taking account of all relevant evidence, the Jurats consider £9.50 per hour was reasonable. They allow recovery at that rate for 35 hours per week totalling £332.50 to which the Jurats have added Employers Social Security Contributions at 5.4% i.e. £350.45 per week for 9 months (39 weeks) making an award of £13,667.74 (see paragraph 342 below).

Adult Literacy Classes

289. Before continuing the review of past care costs, it is convenient to look at the costs claimed in respect of the Adult Literacy Classes given by Rev. Ward.

290. The history is that before the Accident the Plaintiff attended adult literacy classes provided through the College of Further Education. In his agreed statement, Mr Brouard said (Vol. 2A .2) that the Plaintiff began in 1991 in a class for people with limited ability but progressed to Mr Brouard’s group in 1994, largely by reason of his attitude and personality.

291. After the Accident, the Plaintiff resumed the classes in 2000 or 2001. It was a well-intentioned attempt to reintroduce some normality into his life, to reintroduce him to some of his friends and to reintegrate him into society.

292. When Mr Brouard retired in 2001, another tutor took over. Unfortunately, the Plaintiff struggled. His cognitive function and memory deficiencies presented great difficulties. He had also lost the use of his dominant right hand. Furthermore, he was suffering very great pain and, at times, exhibited signs of depression. After a while, the replacement tutor found that she could not cope with the Plaintiff in her class and so the formal lessons that had been held at La Mare De Carteret came to an end.

293. Rev. Ward first met the Plaintiff when he was attending Mr Brouard’s formal classes. She was a former nurse who, at the time, was working as an adult literacy tutor in the

same building when one day Mr Brouard asked her if she could assist the Plaintiff as he was very distressed. She took him into a side room to listen to his concerns and the cause of his outburst. She then started to see him regularly at La Mare de Carteret. At times he was very distressed, he suffered flashbacks and he would say life was not worth living, thereby distressing other students. For a number of months, she would go midway through Mr Brouard's class to do one-to-one work with the Plaintiff. She continued to do so when Mr Brouard retired and the other tutor took over. She would usually be able to calm the Plaintiff down or, if not, she would call Mrs Helmot. This continued until early 2003 when Rev. Ward left because of other commitments. The tutor found that she could not cope with the Plaintiff in lessons and so his attendance at La Mare had to end.

294. Staff at the Education Department approached Rev. Ward and she agreed to provide him some tuition at her home, initially charging the same hourly rate as she had been paid at La Mare. This started, she said, in late 2003 or early 2004 on one morning per week only, and she continued with the work he had been doing in class.
295. The Court has seen samples of the Plaintiff's handwriting and how his ability to write with his left hand has greatly improved over the years. The Jurats are satisfied that it was reasonable for him to attend literacy classes and that he has benefited from them.
296. However, the duration and frequency of the classes has greatly increased with a consequent rise in cost. Rev. Ward has built a good relationship with the Plaintiff who trusts her and confides in her. She has also been able to provide continuity when other carers have come and gone. The Jurats are satisfied the Plaintiff enjoys going to her. He now attends four days per week for 3 hours at a time.
297. Mr Gibb, an Educational Psychologist called by the Defendant, was highly critical of the educational value of the lessons. In response, Rev. Ward described the other activities she undertakes with the Plaintiff which include specific projects, research into subjects of interest to him and discussions about his ideas for inventions.
298. The Plaintiff has also benefitted from the care that Rev. Ward has shown him and from the relationship that the two of them have established.
299. However, the Jurats accept the criticism of Mr Gibb, that the academic value of the Adult Literacy Classes is worthless. There have been no tests to measure the Plaintiff's progress and hence it is impossible to say what progress he has achieved and when, or even to say what academic progress has been made since he stopped attending at La Mare de Carteret and began to go to Rev. Ward at home.
300. The Jurats conclude that much of what Rev. Ward has done with him has been in the nature of care provision, rather than educational or academic in nature. Similar work, including for example the projects that Rev. Ward described to the Court which the Plaintiff had undertaken with her, could have been carried out with other carers, provided they had the right supervision and training to encourage and support them in their work.
301. Rev. Ward has been remunerated on the basis of the rate of pay that the College of Further Education were paying to her as an Adult Literacy Tutor when she was working at La Mare. She began charging £22.00 per hour and increased it by £1.00 per hour per annum to the current rate of £27.00 per annum which she has charged for

the past two years. In the view of the Jurats, it is not reasonable to award compensation based on that rate of charge, having regard to the evidence which has been received as to the rates of pay for carers.

302. It has been difficult for the Jurats to assess a reasonable rate of remuneration for the Adult Literacy Classes. The expert reports are of little assistance as they take extreme views, on the one hand justifying what has been charged and on the other that nothing is merited. The Jurats have therefore had to form their own view. Having said that much of Rev. Ward's contribution has been in the nature of care, the Jurats accept that it is specialist care and that Rev. Ward has used her broader experience, training and skills to give a quality of care that has been absent in other carers.

303. The Jurats have had to take a 'broad-brush' view of what should be recoverable in respect of the Adult Literacy Classes charges to date. They propose a 40% reduction in what is claimed and award the sum of £29,135.39 (item 12 of Appendix 1(b)).

304. As to the question of double recovery with general care provision, that is dealt with below.

Past Care – Paid Care – April 2003 to December 2004

305. This is the period from the end of Anita Bourgaize's employment until the Latvian Carers began to provide night-time care for the Plaintiff. During this time, care was provided by the Latvian Carers, as well as by Mrs Helmot and, to the extent described above, by Rev. Ward.

306. The manner in which the evidence and the documents was presented makes it difficult to establish exactly how many hours the Latvian Carers were working at different dates and their hourly rate of pay. The Re-Re-Amended Schedule of Loss states that the details are to be found in the reports of Mrs M Sargent (page 1-318). However, the details seem to be missing from her reports. The Court has had to endeavour to build the right picture from a combination of the oral evidence and interpretation of documentary evidence.

307. Ramona said, and other evidence confirms, that she started in April 2003. Her initial role was ironing and cleaning. Ramona said she did not work every day as she swapped with a friend. The impression given to the Court in oral evidence was that from April 2003, one or other of the Latvian Carers was providing domestic cleaning duties for 4 or 4½ hours every day. That impression is contradicted by the record of payments prepared by Ozannes in Schedule "C" suggesting that initially they worked only 13 hours per week, as explained below.

308. This Schedule needs to be read with some care because Mr Nutley said the GSSD had been unable to reconcile all the figures within the Schedule, although they confirmed the total at the foot of the Schedule was correct. (The Schedule is to be found at Vol. 14.5).

309. In the Counter-Schedule, the Defendant pleaded (page 1-370):

"8.9 The Defendant agrees the level of domestic assistance provided by Ramona Collins between May 2003 and December 2004 and the level of

overnight care provided by her between December 2004 and October 2006. Mrs Collins worked an average of 7 hours per week as a domestic assistant and on average 71.5 hours each week as a carer (the number of hours worked has had to be estimated from Mrs Collins' time sheets, which vary over time, because the Plaintiff has not expressly pleaded the hours Mrs Collins worked). The Defendant does not agree the hourly rate paid to Mrs Collins and contends that it was unreasonable, being in excess of the rate of pay of a qualified nurse and above the level of salaries paid by local care agencies.

Between May 2003 and September 2006 Mrs Collins was paid an hourly rate of £10.50, whereafter she was paid an hourly rate of £12.00. Her hourly pay rate later increased to £12.48. The Defendant contends that the hourly rates paid to Mrs Collins were unreasonable and that an hourly rate of £7.82 would have been reasonable.

*May 2003 – November 2004 = 78 weeks x £54.74 (7 x £7.82) = **£4,269.72***

*December 2004 – October 2006 = 95.3 weeks x £559.13 (71.5 x £7.82) = **£53,288.09.***

310. Page 2 of Vol. 14.5 shows that during the period 1 July 2003 to 30 September 2003, the GSSD paid £1,837.50 for carers and between 1 October 2003 and 31 October 2003, it paid £1,879.50. The date of 31 October 2003, appears to be a misprint and the Jurats have read it as 31 December 2003, because the following period commences on 1 January the following year.

311. There was oral evidence that the Latvian Carers were initially paid at the same rate as Anita Bourgaize i.e. £10.50 per hour. Also, in her report, Mrs Gough says, at page 10-22, that Ramona was initially paid £10.50 per hour. The Jurats have taken £10.50 per hour as the initial rate of pay. The Court initially understood that the payments in Schedule C also include Employer Social Security Contributions. The Court now understands that, to be more precise, Schedule C1 payments exclude such contributions which are shown only in Schedule C5. Assuming that each of the two quarterly periods referred to above contain 13 pay days, the figures recorded in Schedule 'C1' suggest that during 2003, the Latvian Carers were working only about 13 hours per week, or three afternoons of about 4½ hours each.

312. The Jurats have accepted that evidence and disregarded the suggestion the Latvian Carers were working daily in 2003.

313. The Schedule C1 records show increased quarterly payments during each quarter of 2004, rising to £4,830.00, or £371.54, in the final quarter, equivalent to about 35 hours per week at £10.50 per hour. Such an increase in the number of hours worked is consistent with the evidence which suggested that the Latvian Carers, especially Ramona, became more involved in a caring role, in addition to their domestic duties, as they got to know the Plaintiff and his family. However, there was no detailed explanation as to when and why the number of hours increased. There is, for example, no diary recording what the carers were doing at different dates. Nor is there any evidence that the increases in the number of hours were expressly agreed either by GSSD or, more importantly, by the Insurers. The Insurers continued to reimburse GSSD during this period and whilst that does not mean they expressly

approved the payments, it is nevertheless a factor for the Jurats to take into account when considering the reasonableness of the payments.

314. It is especially relevant that the only other paid carer at the time was Rev. Ward and the remaining care was being provided by Mrs Helmot gratuitously for which the Jurats have agreed to pay compensation on the basis of her lost earnings as a full-time carer for the reasons we have given above.

315. Having regard to all the relevant evidence, the Jurats are satisfied that it is reasonable to pay the number of hours claimed, on the basis of the information in Schedule C. As to the rate of remuneration, the Jurats are satisfied that it was reasonable to pay the Latvian Carers at £10.50 per hour increasing to £12 per hour in September 2006, having regard to their duties at the time.

316. The sum awarded for paid care during the period April 2003 and December 2004 is based upon the figures that appear in Schedule 'C1' for the period totalling £17,382.95. The Jurats have added Employer Social Security Contributions at the relevant rate, 5.5% to produce a figure of £18,339.01 (see paragraph 342).

Past Care – Paid Care – January 2005 –September 2006

317. During this period, care continued to be provided by the Latvian Carers who, from the beginning of 2005, provided night-time care in addition to their other day time duties which continued as before.

318. During the hearing the Defendant suggested that at this time Ramona was also working at a hotel during the day and challenged whether she could have properly performed both jobs. Ramona's evidence was that when she started the night-time duties at Mon Abri, she gave up her day time job at The Manor Hotel. The Jurats accept her evidence.

319. The additional hours worked at night-time are reflected in the payments recorded in Schedule C. The payments increased during the first quarter of 2005 to £12,195.75, equal to £938.13 per week for 13 weeks, which represents about 85 hours worked at an hourly rate of £10.50 plus Employer Social Security Contributions.

320. In a letter dated 17 January 2005 to Mr Nutley from Mrs Helmot, (which Mr Jordan would have prepared for her), she said that the two Latvian girls were employed for 111 hours per week at £10.50 per hour (page 14-694). One year later, on 25 January 2006, she wrote again saying the two girls were employed for 115 hours at £10.50 per hour (page 14-695). No explanation was given for the discrepancy between those figures and the number of hours actually worked as recorded in Schedule C.

321. The Jurats noted, with interest, the content of GSSD's e-mails sent on 31 December 2004 (pages 14-690 and 14-691). The e-mails demonstrate first, that GSSD were not involved in negotiating, or agreeing, the number of hours or the rate of remuneration, unlike the arrangements agreed with PHC after the Plaintiff's return to Guernsey in July 1999. Secondly, GSSD thought that this sharp rise would provoke a settlement from which it might be inferred that the GSSD thought the rise was unreasonable. Thirdly, the GSSD assumed that the Insurers would pay, in other words they appear to have assumed that the reasonableness of the payments would be challenged by the Insurers if they were considered unreasonable. There is no evidence that the Insurers

agreed the number of hours or the rate of remuneration. In fact, the Court was told that the Insurers stopped reimbursing GSSD at the end of December 2005, strongly suggesting that they were not in agreement with the cost of care at this period.

322. A similar pattern of care and expenditure continued until the appointment of Team Medical. The quarterly totals increased to £13,403.25 in the second quarter of 2006, following an increase in hourly remuneration from £10.50 to £12.00 (see Mrs Helmot's letter of 25 August 2006 to Mr Nutley).

323. During this period, night-time care was being paid as if on a waking carer basis, not a sleeping carer. It later became necessary to have only a sleeping carer, but the Jurats heard evidence that prior to the DREZ Operation, the Plaintiff was waking nearly every night, sometimes more than once, because of the pain he was suffering. No daily record was kept so it is impossible to corroborate the accuracy of that statement from any contemporaneous records, although it is consistent with the substantial evidence that the Court has heard, confirming that the Plaintiff was in considerable pain. In the light of that, the Jurats are satisfied that it is reasonable to remunerate the Latvian Carers on the basis that a waking carer was required until the date of the DREZ Operation and, possibly, shortly thereafter. For the sake of simplicity, the Jurats allow that rate to continue until the appointment of Team Medical.

324. The sum awarded for paid care during the period January 2005 to 30 September 2006 is based upon the figures that appear in Schedule 'C1' for the period totalling £39,213.75, to which the Jurats have added Employer's Social Security Contributions at 5.5% to produce an award of £41,370.51 (see paragraph 342).

Past Care – Paid Care - October 2006 to June 2009

325. During this period, Team Medical were employed to provide care between 1.00 pm and 10.00 pm each day. The Court has noted that an invoice from Team Medical (14-582) indicates they began on about 1 October 2006. The Latvian Carers continued to provide care from 10.00 pm to 12 noon or so, on days when Ramona was working, or until 10.00 am or so when she was away and another carer fulfilled her night-time duties. So, on most days there was 23 hours or so of paid care and, in addition, Mrs Helmot was continuing to pay herself a weekly wage out of the interim payments from Insurers. Rev. Ward was providing care through Adult Literacy Classes and additional domestic duties were performed by the Latvian Carers, by Iveta who worked for 4 hours per day, six days per week on cleaning and other domestic tasks, and also by Ramona who worked during the morning after the night shift. Ramona helped the Plaintiff with his morning exercises, showering and breakfast, and she continued to work after he had gone to Rev. Ward.

326. The considerable increase in cost is apparent in Schedule C. During 2007, the GSSD paid £93,382.92 in the first half of the year and £89,814.43 in the second six months, equal to £4,359.65 and £3,454.40 per week respectively. When Mrs Helmot's payments are added (£567.50 per week – page 2 of Vol. 14.1.1), and Rev. Ward's charges, say £750.00 per month (see for example July's invoice, B559) it can be seen the weekly cost of care had increased to somewhere in the region of £4,200.00 or £600.00 per day.

327. In a letter dated 5 October 2007 (page 14-697), Mrs Helmot informed GSSD as to the weekly cost of the Latvian Carers. Iveta was paid for 24 hours per week at £12.00 per hour, equivalent to six days per week from 1.00 pm to 5.00 pm. Ramona was absent from the Island so her night-time duties were performed by Andra who was paid for 46 hours per week; we were not told exactly what hours she worked. If she covered Ramona's night-time duties from 10.00 pm to 8.00 am on four nights per week, that would be 40 of the 46 hours.
328. On 29 December 2007, Mrs Helmot wrote again, (page 14-698), this time with more information. The rate of pay was said to be increasing to £12.48 per hour. Ramona was paid for 90 hours per week, equal to 15 hours per day for 6 days per week, presumably from 10.00 pm to 1.00 pm the next day. Andra was working 11.5 hours and she performed the other night-time duty, presumably from 10.00 pm to 9.30 am the next day.
329. As from 28 March 2008, when Iveta returned to the Island, the hours were:
- Ramona six nights from 10.00 pm to 12 noon;
Iveta six days from 1.00 pm to 5.00 pm; and
Andra one night from 10.00 pm to 9.30 am (page 14-700)
330. GSSD were kept informed of the changes in hours and rates of pay, but they were not consulted about the changes in advance, nor were they involved in any of the negotiations, unlike the situation when PHC was first engaged.
331. The Court noted that the huge increase in the cost of care in November 2006 arose when Mrs Helmot became ill and could not continue to provide the same level of care as previously. Head First were involved as case managers and engaged an English agency, Team Medical, who employed English resident carers to provide care from 1.00 pm to 10.00 pm daily. The carers came, generally, for one week at a time and lived in a self catering apartment in the Queen's Road.
332. Team Medical were instructed to provide carers who could drive, but some did not. Those who could, hired a car in the Island, whereas others took taxis. The claim comprises the cost of hire cars, taxis, airfares, expenses in travelling to the English airport of departure and taxis fares in Guernsey, to and from the airport. One carer travelled regularly from Newcastle and the cost of his flights are included.
333. Mrs Clark-Wilson gave evidence that the arrangements with Team Medical had to be put in place as a matter of urgency because Mrs Helmot was about to go into hospital. She said in cross-examination that the arrangements were intended as a stop-gap and ideally would have changed earlier, but any change is difficult to manage and as there was a lot going on with Mrs Helmot and Mr Jordan, she said it was difficult to find the right time to make the changes. So, Team Medical's carers were engaged in addition to the carers and domestic assistance already in place. No attempt was made to reduce the level or, more importantly, the number of hours or the cost of the whole regime.
334. There was no reduction in the level of care until December 2008 when Iveta's domestic services were discontinued.

335. The Jurats considered that the level of costs incurred at this time was wholly unreasonable. Generally, the Jurats have been very impressed with Head First and the support they provided. They are a professional organisation who knew, or should have known, that the care costs had to be reasonable if they were to be recovered. With the introduction of Team Medical, there was an opportunity to reduce the cost and level of care provided by others. It is not reasonable that the opportunity was not taken.

336. The Court has dealt earlier in this Judgment with the gratuitous care provided by Mrs Helmot. In terms of paid care, the Court awards damages on the basis set out in the table below. The rate for night time care is set at £75.00 per night being six hours sleeping care @ £12.50 per night. Nothing is included for Adult Literacy as that has already been dealt with. Nothing is allowed for cleaning, or “deep” cleaning (as is mentioned elsewhere) because on those mornings when the Plaintiff was at Adult Literacy classes, allowance is made for a carer to be employed until 1.00 pm. There may still be an element of double-counting but the Jurats have considered the matter carefully. They have decided this is the fairest and most pragmatic approach to take on the evidence available to them.

Morning Care	8.00 am – 1.00 pm	-	5 hours per day at £12.50 per hour, £62.50 per day, or £437.50 per week.	£437.50 per week
Afternoon & evening care	1.00 pm – 10.00 pm	-	9 hours care from Team Medical at £17.00 per hour. £153.00 per day, or £1,071.00 per week.	£1,071.00 per week
Night-time care	10.00 pm – 8.00 am	-	£75.00 per night £525.00 per week.	£525.00 per week
TOTAL				£2,033.50 per week

337. The inclusion of Employee Social Security contributions on the above figures where appropriate (excluding Team Medical) increases the above to approximately £2,100.00 per week. [The rate of contribution increased during this period from 5.5% to 6.5%]. The Court has allowed 140 weeks and awards £294,000.00 (see paragraph 342).

338. Additional costs were paid to Team Medical, as detailed at pages 25 and 26 of the Defendant’s closing speech. The accommodation costs of £47,208.00 are agreed. £28,026.22 is claimed in respect of travel costs; the Defendant proposes a 50% reduction on the basis that it was unreasonable to pay for a carer travelling from Newcastle on a regular basis and that a monthly or less frequent rotation of carers would have been appropriate. Having perused the claim, the Jurats are satisfied that a 50% reduction in travel costs is appropriate, so award £14,013.11 (see paragraph 342). There could have been a less frequent rotation of carers and their travel costs could have been reduced.

339. £15,781.97 is claimed for the costs of taxis and hire cars used by the Team Medical carers. The Defendant proposes £750 and says the carers should have had the use of the Honda CRV purchased for the Plaintiff. No carer has ever been allowed to use the Honda CRV as it has always been used by Mrs Helmot. The Court considers that the Honda CRV should have been available for the Plaintiff's use and hence that carers should have been allowed to drive it. However, the carers would have needed other transport to take them home at night, public transport would not have been running and Team Medical could not have taken the car home with them when finishing their shift at 10.00 pm because the car had to remain at Mon Abri so that it would be available to take the Plaintiff to Rev. Ward in the morning, or to wherever he had to go. During the day, the Honda CRV should have been available for use by the Team Medical carers when taking the Plaintiff to activities. The Jurats consider it is reasonable to allow only one half of the amount claimed for taxis and hire cars and therefore reduce this element of the claim to £7,890.98 (see paragraph 342).

Past Care – Paid Care – June 2009 to date of trial

340. The last of the Team Medical carers left early in June 2009. Since then, care has been provided by two Guernsey Resident carers, Mr Help and Mr Willcocks, as well as the Latvian Carers, in addition to Rev. Ward and Mrs Helmot.

341. In the opinion of the Jurats, the basis for compensation in respect of the carers used during this period should be the same as the basis they have adopted for the future. The amount awarded is based on the annual cost of future care, excluding "deep" cleaning, other expenses and case management, of £138,488.34 (see paragraph 357). The Jurats have allowed 18 weeks, $18/52 \times £138,488.34 = £47,938.27$. There is some double-recovery with the Adult Literacy costs included elsewhere, as with the award in respect of the time when Team Medical were employed, but the Jurats consider this to be the fairest approach.

Past Care – Summary of Paid Care and Other Expenses

342. In summary, the award for past paid care and other expenses is set out below:

Paid Care

26.07.99 – 16.6.02	£266,449.00	
02.08.02 – 30.04.03	£13,667.74	
April 2003 – December 2004	£18,339.01	
January 2005 – September 2006	£41,370.51	
October 2006 – June 2009	£294,000.00	
June 2009 – Hearing Date	£47,938.27	
Sub total		£681,764.53

Team Medical's additional expenses (para 338 & 339)

Accommodation	£47,208.00
Travel	£14,013.11
Taxis/Hire Cars	£7,890.98

Sub total	£69,112.09
<u>Past Care – Other Expenses (para 261)</u>	£17,883.00
Total (Item 5 of Appendix 1(b))	<u>£768,759.62</u>

Past Care – Case Management Costs

343. Past case management costs are claimed to the date of trial in an amended amount of £54,251.07 (see the amendment to paragraph 36 of the Re Re Amended Schedule dated 23 November 2009 received by the Greffe on 24 November 2009 under cover of a letter from Ozannes dated 23 November). The reason for the late amendment was to bring the costs up to date, to the date of commencement of the hearing, being the date which it was agreed would be the cut off between past costs and future costs.
344. The Defendant accepts, in principle, the need for case managers but, for the reasons summarized at pages 27 onwards of the Defendant’s closing speech, contends that Head First had overcharged and should be remunerated only £18,000.
345. The Jurats were impressed with the evidence of Jo Clark-Wilson of Head First and they were also impressed with what they read in the documents as to the support given by Head First, especially the help given to Mr Help and Mr Willcocks since their recruitment, as evidenced in the documents supplied at Vol. 15A.
346. Much of the Defendant’s criticism focuses upon the over-charging by Team Medical, an issue which was not initially spotted by Head First. The Jurats believe there is a reasonable explanation for that because the invoices were not being sent to Head First at the relevant time for them to check. It is accepted that Head First could not have been aware of the over-charging.
347. As Mrs Clark-Wilson said, their role had been difficult because the Plaintiff had been living at Mon Abri and Head First had had to gain the trust and confidence of Mrs Helmot and, to a lesser extent, Mr Jordan, as well as of the Plaintiff.
348. In the view of the Jurats, the evidence suggests that in the circumstances with which they have had to work, Head First have performed their duties reasonably. Hence their costs to the date of trial of £54,251.07 should be recovered as claimed (item 6 of Appendix 1(b)).

Future Costs – Case Management Costs

349. Mrs Sargent and Mrs Gough deal with the future costs of case management in their reports at pages 8 – 36 and 10 – 40 respectively. They agree on a basic hourly charge of £85.00 per hour. They disagree on the number of hours per annum and the number of visits to Guernsey that will be needed. The Jurats were persuaded by the evidence of Mrs Sargent because of the need to provide a complete care package without supervision by Mrs Helmot and Mr Jordan and to release them from day to day care, save where Mrs Helmot is required as a “bank” worker and otherwise leaving her free to be a mother rather than a carer. Subject to correcting an arithmetic error in her calculation, the Jurats award a sum based on Mrs Sargent’s proposal at page 8-36:

Case Management – 150 hours @ £85.00	£12,750.00
Travel time – 84 hours @ £42.50	£3,570.00
12 flights @ £173.60	£2,083.20
Taxis/car parking/mileage	£1,200.00
Total (para 357)	<u>£19,603.20</u> p.a.

Future Care

350. For the future, the care experts are agreed that night-time care should be provided from 10.00 pm to 8.00 am each day by a sleeping carer who will be paid £90.00 per night or £630.00 per week. A carer must also be provided during the other 14 hours of each day, or 98 hours per week.

351. The Jurats have received, both in oral evidence and in the documents, a considerable volume of evidence as to the appropriate rate of remuneration for a carer. Mr Help and Mr Willcocks are paid £15.00 per hour and the Plaintiff relies upon the fact that when advertising the posts at an hourly rate of only £12.50 per hour, there was no satisfactory response. The Jurats accept that the level of response to an advertisement is persuasive evidence of the “going rate” of pay. However, the particulars listed in the earlier advertisements were more restrictive and the post would have appealed to a narrower group of employees. The Jurats therefore agree with the Defendant that it is not possible to draw a direct comparison between the two sets of advertisements.

352. The Jurats have also noted the rates of remuneration offered by the Health and Social Services Department, as detailed in the agreed affidavit of Mr Mackey. The Jurats accept that it will be necessary to pay a higher rate than HSSD in order to obtain carers for the Plaintiff. The rate of pay will have to take account of the nature of the work, the fact that the post will at times be lonesome, the carers will be isolated, their work will be challenging and difficult and they will have to cope without the support of other similar carers working alongside. Furthermore, the post will offer no pension or other benefits. The Jurats consider that £15.00 per hour is too generous, whilst £12.50 per hour is too low. The Jurats have therefore decided to accept £14.00 per hour as the rate of pay for a basic day time carer.

353. In addition, the Jurats accept the evidence of the Care Experts that it will be useful to have a Team Leader. They believe that two 7 hour sessions per week will be sufficient for the Team Leader, i.e. 14 hours per week, and that the Team Leader will be paid an additional £5.00 per hour, or £70.00 per week. Such a person will be available to provide general supervision and training to the carers to assist them in helping the Plaintiff, inter alia, to develop his literacy skills. There will be no need for any other provision for adult literacy.

354. It will be reasonable for the Plaintiff to pursue some activities during the week for which two carers will be required. This is likely to be swimming, but it could be some other activity either in place of or in addition to the swimming. In the view of the Jurats, 6 hours per week should be allowed for a second Carer at £14.00 per hour or £84.00 per week. The Jurats have included an allowance for “deep” cleaning (claimed in paragraph 207A on page 1-354A). Mrs Ho and Mrs O’Brien agreed there will be such a need. The Jurats have allowed 4 hours per week at £12 per hour.

355. The Jurats have considered the other expenses proposed by the Care Experts and award the following:

Training	-	£1,000.00 per annum
Advertising (for replacement carers as and when a carer leaves employment)	-	£1,000.00 per annum
Food and other expenses at £50.00 per week	-	£2,600.00 per annum
Payroll costs (as claimed)	-	£500.00 per annum
Insurance	-	<u>£134.40 per annum</u>
Total of additional expenses	=	<u>£5,234.40 per annum</u>

356. The Jurats looked at the evidence of the Care Experts as to the number of weeks to allow per annum as a multiplier when establishing the annual multiplicand. They considered it to be reasonable to accept the figures on page 10-44 save that they would allow only 7 days sickness and hence they consider 59 weeks is reasonable, and this applies to all members of the employed team.

357. The calculation of loss in respect of future care is:

Night time care £90.00 per night x 7 nights		£630.00
Day time care 98 hours x £14.00 per hour		£1,372.00
14 hrs team leader @ additional £5.00 per hour		£70.00
6 hrs for additional carer x £14.00 per hour		£84.00
4 hours “deep” clean @£12 per hour		<u>£48.00</u>
Sub-total weekly cost	=	£2,204.00
Social Security Employers’ Contribution @ 6.5%		<u>£143.26</u>
		£2,347.26
x 59 weeks		£138,488.34
Additional expenses per annum		<u>£5,234.40</u>
Sub-total	=	£143,722.74
Plus future Case Management		<u>£19,603.20</u>
		£163,325.94
x 33.00 multiplier (Item 23 of Appendix 1(b))		<u>£5,389,756.02</u>

Swimming Pool

358. The Court has heard considerable evidence in support of the Plaintiff’s claim for a swimming pool. The facts relied upon by the Plaintiff are summarized in Advocate Dawes’s closing speech, paragraph 147:

“The most significant issue between the physiotherapists related of course to the question of a swimming pool and whether Manny reasonably required a pool. Mrs Filson was firmly of the view that he did and Mrs Clegg not. The Plaintiff relies on the following facts to justify the requirement of a pool:

- a) The need to exercise regularly, the pool would be used up to two times per day, each day of the year;*
- b) the ability to use the pool at the time of Manny’s choosing;*

- c) *the ability to access the pool without significant changes of air temperature and without the difficulty of having to make a special journey by car;*
- d) *the ability to control the air and water temperature to suit Manny;*
- e) *the ability to provide a safe pool environment avoiding hazards such as those present at St Pierre Park (slippery steps/tiles, foot bath);*
- f) *privacy;*
- g) *avoidance of conflicting swimmers, whether children or adults;*
- h) *the fact that friends and others may come around to swim with Manny; having his own facility may permit him to socialise more than otherwise he would and certainly if he went to a public pool;*
- i) *his lack of social inhibition and psychiatric problems.”*

359. The counter arguments are summarized in the Defendant’s closing speech starting at page 73 and the documents referred to therein.

360. The Jurats took note of the fact that the Plaintiff has not swum since he fell in the swimming pool at St Pierre Park Hotel. Mrs Helmot said that she had encouraged him to swim but it is noted from the daily sheets completed by Mr Help and Mr Willcocks that they would have liked to encourage him to do so, but have been dissuaded.

361. The Court noted that the expert advice was that the Plaintiff would require two carers to assist him in entering the swimming pool. On the date he fell, only one carer was supporting him, as Mrs Helmot was at the other end of the swimming pool. The fall illustrates the importance of having two carers, properly trained, to assist the Plaintiff if he is to be able to use a swimming pool safely.

362. There is no evidence that any attempt has been made to encourage the Plaintiff to use disabled swimming facilities when on holiday. If it is that important that he should be swimming, and the only reason for not swimming in Guernsey is because of a lack of facilities, it would have been reasonable to have made use of adequate facilities elsewhere. The evidence as to whether the Plaintiff wishes to swim and, if so, whether he would use a swimming pool for any length of time, is therefore inconclusive.

363. Furthermore, it is apparent that the Plaintiff’s case has been prepared on the basis of assuming a private swimming pool will be required and without fully investigating alternative facilities available in Guernsey at other locations such as the swimming pools expressly provided at taxpayers’ expense for disabled people in the Island’s schools. No such investigation was made until it was suggested by the Court.

364. Mrs Clegg, on behalf of the Defendant, suggested that the St Pierre Park Hotel pool would be perfectly adequate. The Jurats accept her evidence.

365. Consequently, the Jurats conclude that the Plaintiff has not proved, on the balance of probabilities, that it is reasonable for him to have a private facility.

366. Instead of his own private swimming pool, the Court allows the cost of the use of leisure club facilities as claimed. (Item 24.5 of Appendix 1(b)).

Cycle Track

367. As with the swimming pool, the Court heard substantial evidence as to the desire for a private cycle track although this facility appears to have been advocated with less enthusiasm than a swimming pool by the Plaintiff's counsel.

368. It is a relevant fact that the Plaintiff was an accomplished cyclist before the Accident, competing at a very high level and that he was passionate about his cycling.

369. It was also remarkable that he learned to cycle again after the Accident and, in particular, that Mr Jordan taught him to balance a bicycle. The opening of the cycle track at Delancey Park which the Plaintiff was asked to perform publicly was a remarkable highlight in his achievements since the Accident. It is unfortunate that the difficulties experienced both at Delancey and at Les Vauxbelets have prevented him from continuing to cycle. As a result, there has been no attempt made for him to cycle in the last 7 years, not even when he has been on holiday and when, presumably, other facilities, or less crowded venues, could have been found.

370. The Plaintiff enjoys using his static exercise bike. His level of enjoyment is evidenced by the fact that he wears his special cycling kit when using the bike.

371. Overall, having considered all the relevant lay and expert evidence, the Jurats are not persuaded that it would be reasonable to have a private cycle track.

Additional holiday Expenses – Past Expenses

372. The Plaintiff claims a total of £29,647.75 for 'Additional Holiday Expenses' in respect of which the Defendant offers £4,875 (page 63 of the Defendant's closing speech). The details of the Plaintiff's claim are contained under 38 sub-headings in Section 15 of the Schedule of Claim and relate to holidays and trips taken from March 2003 onwards.

373. The nature and purpose of every trip were not examined in detail in the evidence. The Defendant's criticisms of the amount claimed include the number and frequency of the trips, the number of persons accompanying the Plaintiff being more than the one carer for whom he has been risk assessed, and trips to England to attend medico-legal appointments have been extended on many occasions to include a holiday break.

374. The Plaintiff argues that the trips include holidays which he would not otherwise have taken but which his family considers were necessary. He draws attention to the cramped conditions at Mon Abri. The evidence was that the Plaintiff enjoys the trips. But for the Accident he would not have holidayed with his mother and step-father for all these years. Both of them gave evidence that when they are away, they have to work hard to look after the Plaintiff and the trips are not holidays, in the strict sense, for either of them.

375. The Plaintiff proposes an allowance of, say, £5,500 for holidays the Plaintiff would have taken in any event, approximating to £500 p.a.
376. The Deputy-Bailiff reminded the Jurats that they are to award compensation to restore the Plaintiff to the position he would have been in but for the Accident, as far as money can compensate.
377. The Jurats accepted that, but for the Accident, the Plaintiff would have continued to pursue a cycling career and would have divided his time between cycling in France and taxi-driving in Guernsey. Whilst doing so he would not have had time to take extended holidays. However, they believe he would have continued the pre-Accident pattern of taking occasional short breaks to visit friends (or his girl-friend) in France and to participate in sporting activities, especially judo, outside Guernsey.
378. After the conclusion of his cycling career, the Jurats accept the evidence that he would have spent £500 p.a. on holidays.
379. The Jurats accept that additional expenses have been incurred because of the need for him to be accompanied on holiday at all times, although the carers' wages are accounted for elsewhere.
380. Mrs Helmot and Mr Jordan have testified that the holidays were a necessity but the Jurats are not aware of any medical or other expert evidence to persuade them that, to date, he has needed more holidays than would otherwise have been the case.
381. The Plaintiff makes no claim for additional holiday expenses prior to 2003, presumably because his state of health prevented him taking holidays at that time.
382. For annual holidays taken since 2003 the Jurats have adopted the figure of £2,000 p.a. agreed by the occupational therapists for future holidays and have given credit for the cost of holidays and trips he would have taken in any event of £500 p.a., giving a net figure of £1,500. Therefore, they allow an additional £1,500 p.a. as the extra costs incurred as a result of the Accident and allow that for the past seven summers i.e. 2003 to 2009 inclusive. Their award is therefore £10,500 (item 15 of Appendix 1(b)).

Additional Holiday Expenses – Future Loss

383. The Jurats accept the agreed annual cost of £2,000 referred to in the preceding paragraph, and give credit for £500 p.a. for holidays he would have taken anyway. After having decided to disallow the cost of a camper van, the Jurats revisited the award for future loss and were satisfied it need not be altered in the light of that decision (item 29 of Appendix 1(b)).

Camper Van/Mobile Holiday Home

384. The Plaintiff had his own camper van prior to the Accident which he took to France with him when cycling. It is likely that he would have continued to own a camper van had he not suffered injuries in the Accident. Mrs Helmot and Mr Jordan are keen campers and the Court had the benefit of the DVD footage showing them in their own camper van on a camp site in England.

385. The details of the camper van sought are at page 8-241. It is an Auto Trail Chieftain G. It was claimed that the internal layout, especially the double bed, would be well suited to the Plaintiff's special needs.
386. The Jurats consider that a camper van was not properly recommended by the experts. The Plaintiff's expert, Mrs Ho said that she would recommend the purchase of a camper van where appropriate. On this occasion, she did not initially do so and only included it in her report after it had been suggested to her by the Plaintiff's guardians. She said it would be "*a jolly good idea*". Further evidence that it was not her idea comes from the fact that the literature produced was researched by Mr Jordan or Mrs Helmot, and not by herself.
387. Mrs O'Brien was strongly opposed to the Court awarding the cost of a camper van.
388. The Jurats are satisfied that the expert evidence did not support the purchase of a camper van as being reasonably necessary as a consequence of the Accident. The item is therefore disallowed.

Loss of employment – Past Loss; Cycling Career

389. The arguments of the parties are summarised in their respective closing speeches (page 6 of the Plaintiff's and page 9 of the Defendant's).
390. The first issue addressed by the Jurats is what would have happened to the cycling career of the Plaintiff if he had not suffered the Accident. Mr Jordan said in evidence that the Plaintiff's passion was to become a self-employed taxi driver and that his cycling would have taken second place to taxi-driving. That evidence was contradicted by other evidence. The Jurats are not persuaded that Mr Jordan and the Plaintiff shared the same view on this issue and the fact that the last conversation between the Plaintiff and his mother before the Accident was on this subject which was apparently troubling him suggests that he was not in agreement with the views of his step-father.
391. The Jurats are persuaded that, in the short term, the Plaintiff would have continued to cycle in France as much as he could and would have worked in Guernsey for long enough each year to earn the money he needed to cycle. Taxi-driving was a good occupation for him because it provided him with the flexibility to come and go as he wished and to work when it suited him. The Jurats believe he would not have purchased his own White Plate whilst he was still cycling in France because that would have been a commitment he did not need and he did not have the money to purchase either a White Plate or a car. He had no savings and whatever he earned would have been used to support his cycling.
392. It was suggested he might have become a professional cyclist but there was no evidence to suggest that he was good enough to do so. The Jurats concluded that he would have continued as an amateur.
393. The Jurats accept that he would have spent six months a year in France. It was suggested he might have continued until he was 36 years old as that is generally

considered to be the age at which a cyclist starts to decline. That would have been another 8 years. The Jurats are not persuaded that he would have continued so long. They believe that at some point he would have wanted to settle down in a permanent relationship and to have a family and probably he would have done so before he was 36. The Jurats have assumed that he might have wanted to continue cycling until the next Commonwealth Games in 2002, which would have been for another four years, but not thereafter. He therefore would have been looking for a full-time job at the age of 32.

Loss of employment – Past Loss; Career after Cycling

394. At age 32, would the Plaintiff have become a full-time self-employed taxi driver? He would not have been able to acquire his own White Plate immediately because the regulations require him to have been driving for the previous 12 months. There was evidence that the regulations are not strictly enforced but the Jurats are not prepared to award compensation on that basis. So, if he had taken up taxi driving full-time in the latter part of 2002, it would have been as an employed driver for the first 12 months at least.

395. There would have been many options available to the Plaintiff if he had not wanted to drive a taxi.

396. He could have returned to unskilled or semi-skilled work in the construction industry or as a driver of heavy goods vehicles using his HGV licence.

397. He was a motivated and hard-working individual who, if he had settled down with a family, would have wanted to earn enough to provide for them. If it is the case that taxi-drivers earn less than labourers or lorry drivers then, in the opinion of the Jurats, it would be likely that he would have become a labourer or lorry driver.

Loss of employment – Assessment of Earnings

398. The evidence given by the employment experts is possibly the least helpful evidence of any of the experts. There was little reliable factual evidence of the actual earnings of a Guernsey taxi-driver. Anecdotal evidence of earnings based on conversations with drivers, unsupported by documentary proof, is of little help to the Court.

399. The accounts of Mr Jordan's taxi business should have offered greater assistance. Unfortunately they are unaudited and what information they contained was in conflict with other evidence given by Mr Jordan. For example, he said that whilst Mr Sehmi was working for him, Mr Jordan drove the car in the evenings and Mr Sehmi during the day. He also said that Mr Sehmi paid him 60% (he initially said 70% but later corrected the figure) of what he earned during his 12 hour shift. Yet the accounts appear to show that Mr Sehmi took 40% of the total earnings of the car, which would only be consistent if Mr Jordan never drove the car.

400. The details of average earnings obtained from the Income Tax Department are of little help simply because they are an average of a group of tax-payers that includes certain other workers and also includes part-time drivers.

401. The Jurats have therefore turned to the evidence from Mrs Le Roi, of Bluebird Services Ltd, as to the Plaintiff's actual earnings between April 1998 and the date of the Accident when he appears to have worked for 18 of the 35 weeks. The average for that period may be slightly distorted because it does not include the whole of the winter months; however the Plaintiff was absent during the peak of the summer and therefore, in the absence of any better evidence, the Jurats have assumed it is representative of the whole year.
402. At page 1-312 of the Re Re Amended Schedule of Loss, the Plaintiff assessed the pre-Accident earnings at £221.70 per week, which seem to be the average earnings in the period immediately prior to the Accident. The Jurats have taken that figure as their starting point. They believe it to be net earnings being after deduction of income tax and employee's States Insurance contributions. The Jurats have then added a figure to represent the tips he would have received. Tips are difficult to assess in the absence of direct evidence. They are likely to be not more than 10% of the fares he carried and must be discounted to allow for payment of tax. The only evidence the Jurats have about the relationship of earnings to fares is that Mr Jordan said that some drivers, such as Mr Sehmi, would work on the basis of splitting earnings with their employer; Mr Sehmi worked on a 60/40 split, but Mr Jordan said an equal split is now the norm. The Jurats have also assumed that not every passenger would leave a tip. It may be said that these are crude calculations but they are the best the Jurats believe they can do on the evidence adduced. They have allowed £38.30 net per week for tips added to the net earnings of £221.70, and taken the Plaintiff's total net weekly earnings to be £260 per week.
403. The Jurats have not had to consider whether taxi-drivers under-report their earnings to the Income Tax Office to the extent suggested by the Plaintiff's expert. Mr Jordan did not say that he had done so and it seems unfair to label all the Island's taxi-drivers as tax cheats. Furthermore, it is unrealistic to assume that the Tax Office does not scrutinise the Tax Returns of taxi-drivers and other self-employed persons in order to look out for cases of such blatant mis-statement of earnings.
404. The Jurats have assumed that the Plaintiff would have continued in full-time employment until the age of 65 years and then would have worked half-time until 70, which he could easily have done as a taxi-driver.
405. Having started with a figure of £260 per week for the Plaintiff's net earnings in 1998, the Jurats have increased that figure annually by the Guernsey Retail Price Index as published by the States of Guernsey. They noted the Plaintiff's arguments that earnings increase by more than prices but as there is no other index available, they have used Guernsey RPI. That has led to a figure of £362.79 for net weekly earnings in 2009. Multiplying that figure by 52 produces £18,865.08 for net annual earnings. A multiplier of 52 does not allow for holidays so, once again, it is a crude estimate but if earnings have risen faster than prices, the one off-sets the other.
406. Mr Jackson, on behalf of the Plaintiff, estimated the earnings of labourers and lorry drivers based on a survey in 1998 and uplifted by RPI plus 1%. He estimated their gross earnings to be £390.02 for labourers and £433.03 for lorry drivers in 2008 (page 9-132) or £495.17 and £549.78 respectively in 2009 after adding a 20% increment for overtime. Those figures are gross before deduction of Income Tax and Social Security contributions.

407. Mr Jackson also estimates the earnings of an owner-operator taxi driver in 2009 to be £25,069 gross. The figures are, in the view of the Jurats, unreliable because they are based on Mr Jordan's unaudited accounts which, as we have said, are inconsistent with his oral evidence.

408. Mr Gilbert estimates the earnings of a self-employed taxi driver in 2009 (at page 10-338) to be £12,850 p.a. or £247.12 per week.

409. The Plaintiff's claim is based on a multiplicand of £19,367.97 p.a.

410. We have set out in some detail the way the Jurats approached these calculations. The Jurats have decided that damages in respect of past loss of earnings are to be awarded on the basis of his weekly earnings being £260.00 per week in 1998 and increasing annually in line with RPI, as shown in the table set out below. The Jurats are unable to decide how many weeks' holiday the Plaintiff would have taken and have therefore assumed that from 2003 onwards he would have worked for 52 weeks every year. Having based the calculation on the Plaintiff's earnings as an employed taxi driver, the Jurats do not consider it to be appropriate to give any credit for the cost of purchasing a White Plate or any other capital costs that the Plaintiff might have incurred if he had become a self-employed taxi driver.

Year	GRPI	Weekly Earnings (Net)		Number of weeks	Net Annual Earnings
1998			260.00	8	2,080.00
1999	2.40%	260.00 <u>6.24</u>	266.24	26	6,922.24
2000	3.90%	266.24 <u>10.38</u>	276.62	26	7,192.12
2001	1.90%	276.62 <u>5.26</u>	281.88	26	7,328.88
2002	4.40%	281.88 <u>12.40</u>	294.28	26	7,651.28
2003	3.90%	294.28 <u>11.48</u>	305.76	52	15,899.52
2004	4.90%	305.76 <u>14.98</u>	320.74	52	16,678.48
2005	3.30%	320.74 <u>10.58</u>	331.32	52	17,228.64

2006	4.40%	331.32 <u>14.58</u>	345.90	52	17,986.80
2007	4.90%	345.90 <u>16.95</u>	362.85	52	18,868.20
2008	1.20%	362.85 <u>4.35</u>	367.20	52	19,094.40
2009	-1.20%	367.20 <u>-4.41</u>	362.79	39	14,148.81
Total for past Loss of Earnings (item 3 of Appendix 1(b))					<u>£151,079.37</u>

Future Loss of Earnings

411. In respect of future earnings, the Jurats' assumption and calculation led to a multiplicand of £18,865.08 p.a. That is substantially greater than is claimed by the Defendant and is within £500 of the Plaintiff's claim. The Jurats acknowledge that their calculations are based on a number of assumptions. They are unable to say that, for the future, their multiplicand is any more accurate than the Plaintiff's. They also believe that in the longer term there were a number of options of employment that would have been available to the Plaintiff, including the possibility of having a second, part-time job. Such options would have enabled him to increase his earnings above the level the Jurats have assumed. Accordingly they accept the Plaintiff's figure of £19,367.97 as having been proved (item 22 of Appendix 1(b)).

Future Accommodation Costs

412. The parties' main accommodation experts, Mr Docker and Mr Wethers had not met before the start of the hearing to attempt to agree their evidence and so the Court allowed them time to meet just before starting to give evidence. That meeting led to a measure of agreement but a number of issues remained outstanding. They are summarised at page 10-144A although this document needs to be read with caution. It was prepared by Mr Docker and the Plaintiff's Advocate and then shown to the Defendant's Advocate moments before the Court resumed and there was no time to show it to Mr Wethers who, when he saw it, disagreed with some aspects.

413. With those words of caution in mind, the Jurats have approached their task by reference to the issues identified in the document.

414. *What sort of property does the Plaintiff require?* The specification proposed by Mr Wethers at page 10-159, para 9-01 of his Report was agreed between the experts. The proposal was to purchase a property with four bedrooms and two reception rooms and to extend and alter it to meet the Plaintiff's special needs. The existing bedrooms would be allocated as follows: a guest bedroom, a storeroom, a bedroom for carers and a kitchenette for carers. A bedroom for the Plaintiff and en suite shower room

would be provided by way of extension, as well as a conservatory. Any further accommodation would also be provided by extension and we refer to this below.

415. *Should the property be Open Market or Local Market?* The proposal for an Open Market property appears to have arisen at a time when a number of care options were under consideration and it was thought there might have been a need to accommodate a live-in carer without local residential qualifications. That was before the recruitment of locally resident carers who are not required to reside with the Plaintiff. There was also evidence, from the Deputy Director of Housing Control, advising that in principle the Housing Department would grant a short term housing licence to the Plaintiff's carers if required (Vol. 4.4). It was suggested by Advocate Dawes that a 3 year licence would give a lack of continuity but there was other evidence to suggest that it is unusual for carers to remain with the same client for more than three years. In those circumstances, it seems to the Jurats that the Plaintiff failed to justify the need for an Open Market property.

416. *What will the property cost to buy?* On this issue, the Court heard evidence from Mr Docker on behalf of the Plaintiff; he emphasised that he was a qualified Valuation Surveyor and had been liaising with Guernsey Estate Agents in connection with his instructions in this case and also had a personal interest in house prices as he might like to move to the Island. Valuation evidence for the Defendant was given by Mr Paisley, a Chartered Building Surveyor, but not a qualified Valuation Surveyor; however he is resident in Guernsey and has had experience of valuing Guernsey properties, mainly for mortgage purposes, for 23 years.

417. The Jurats found the evidence of Mr Paisley to be more persuasive than that of Mr Docker. One issue on which they differed was the question of whether a 'true' bungalow, that is a property on ground floor level only, was more expensive than a chalet or dormer bungalow offering the same accommodation, some of which is on the first floor. Mr Docker said a 'true' bungalow was more expensive. Mr Paisley disagreed, saying that the price would be the same for the same amount of accommodation, whether it was on one or two floors. The Jurats accept his evidence based upon his experience of the Guernsey property market and, in doing so, they reject the academic arguments that a 'true' bungalow would be more expensive on the grounds that such properties are rarer and occupy a bigger footprint.

418. Mr Paisley explained the way that he reviewed the price of suitable properties at page 10-191 onwards of his Report. In Scenario 'A', he reviewed the cost of properties that represent the accommodation requirements deemed necessary by Mr Wethers and at Appendix 1 on page 10-203, he gave the details of six properties that either meet the requirements or that could, by extension and alteration, be adapted to meet the criteria. The Jurats accept the properties as being evidence of the kind of property that would be available and consider that it does not matter whether the properties are, or are not, currently on the market; they are accepted as being illustrative of what would be available.

419. Mr Paisley said at page 10-189 that the purchase costs associated with Scenario 'A' would be £650,000 and the extension cost £75,000. Having reviewed all the evidence and all the property particulars adduced to the Court, the Jurats have concluded that £675,000 is a more realistic assessment of the purchase price; as for the extension costs, those are addressed below.

420. *What will be the cost of adaptations?* The Jurats have considered carefully the Schedules produced by the experts at page 10-181 (Mr Wethers) and 10-181A-C (Mr Docker). The only difference between 10-181A and 10-181B is in the regional variation factor and the experts later agreed that 1.34 was the appropriate factor. The difference with 10-181C is the cost of a special bath; the Jurats reject this schedule because they are not persuaded that such a bath is reasonably necessary.
421. Therefore, the Jurats have compared the two Schedules, 10-181 and 10-181A and have considered the evidence of each of the experts in relation to each of the items in dispute. In every case except one, they found the arguments of Mr Wethers to be preferable to those of Mr Docker. They felt that the latter was over-specifying what was needed whereas Mr Wethers identified better what is reasonably necessary in consequence of the injuries suffered by the Plaintiff in the Accident. For example, they agree with Mr Wethers that the evidence demonstrates that he can cope with shallow steps, there is no medical or other evidence to suggest otherwise and therefore there is no necessity to create level access doorways. However, Mr Wethers's figure of £638.34 at item 1.02a must be doubled to allow also for the back door.
422. Similarly, the Jurats reject Mr Docker's costings for a burglar alarm, his higher estimates to overhaul the central heating system which included a sum for a new boiler which would not be needed to cope with the small increase in accommodation, and his higher estimates of the cost of bathroom fittings and kitchen fitting alterations which included for items that are not necessary.
423. The item of cost proposed by Mr Wethers with which the Jurats disagree is the cost per square metre of the proposed extension, £1,397.08. Mr Wethers was cross-examined in detail by Advocate Dawes and the Jurats were not convinced by his explanation; on the other hand, they consider that Mr Docker has over estimated. The Jurats have decided to allow £61,000 for the cost of the extension.
424. The Jurats' award is therefore based upon Mr Wethers' schedule at page 10-181 to which the Jurats have added an extra £638.34 in respect of the back door and have allowed £61,000.00 for the extension instead of £57,839.11. The sub-total before applying the regional variation factor is £85,887.40. After applying the weighting of 1.34, adding 10% for contingencies and 15% for architect/surveyor fees, the total awarded is £139,147.65.
425. The Jurats have not allowed for a workshop as they consider the Plaintiff would have had a workshop in any event in which he would have kept and maintained his cycles and where he would have kept any other tools and equipment. They consider that if the house does not have a utility room when it is purchased, there will be no need to add one because the level of soiling of bed clothes does not justify the need for the washing to be in a room separate from the kitchen. There is no need for an extra hobbies room or activities room; the reception rooms and conservatory will be sufficient. Also, the carers can use the existing family bathroom in the house and do not need a separate shower room/WC for their exclusive use and nor do they need a separate kitchenette.
426. *What should be allowed for extra running costs?* The Jurats' comments on the extra running costs, and their awards, are to be found in the Schedule attached to this Judgment and items 25.12 to 25.21 and sub-totalled in item 25.22.

427. *The swimming pool and cycle track?* These are addressed elsewhere in this judgment.

Accommodation Costs – Applying *Roberts v Johnstone*

428. Advocate Dawes submitted that the 100% recovery principle is to be applied by the Court and that is inconsistent with the approach of the English courts in *Roberts v Johnstone* [1989] QB 878. The latter would produce only a small award for net accommodation costs in the present case and hence would cause an injustice to the Plaintiff. He said any balance of injustice should come down in favour of the Plaintiff and against the Defendant.

429. The *Roberts v Johnstone* approach has repeatedly been called into question in England and an alternative solution is being sought. Guernsey, he said, should not follow an approach that has been heavily criticised when the alternative is to apply the 100% recovery principle.

430. The Deputy-Bailiff is not persuaded that we should do other than to follow *Roberts v Johnstone*. The starting point for the Guernsey law of tort is to follow English law, as was recognised in *Morton v Paint* quoted above. Although the English approach is considered to be flawed, no one has been able to devise a better solution. There is a need for certainty in Guernsey law in order to encourage cases to settle without having to come to Court. Most importantly, Advocate Dawes has not been able to suggest a more satisfactory solution. If the Court simply awarded the Plaintiff damages in a sum equal to the cost of acquiring and converting a property for his use, it would leave a substantial windfall for his realty heirs, more than compensating him for the financial loss suffered by reason of the Accident.

431. Advocate Dawes suggested that Guernsey might be able to find a solution based on the customary rights of enjoyment of a surviving spouse over the real property of his or her deceased partner. He did not elaborate on what that would involve. In the view of the Deputy-Bailiff, it would give rise to a number of difficulties. Significantly, there would be no ‘clean break’ between the Plaintiff and the Defendant; the *nue-propriété* would have to be vested in an entity on behalf of the Defendant, or in this case, the Insurers. The Insurers would therefore have to be involved in finding and approving the property to be purchased. Any alterations would require their approval and there would have to be ongoing contact between them if the Insurers are to be able to satisfy themselves that the Plaintiff is discharging the duties of a *usufruitier*.

432. In a substantial case, like the present, there is likely to be more than one insurance and reinsurance company involved, some of whom may not want to continue to hold an asset for possibly another forty years or so. If the Court sought to impose such a solution on the parties, it is likely that they would seek to dissolve it by selling the *nue-propriété* to the *usufruitier*. To do so, they would have to value the *nue-propriété*, no doubt by conducting a similar actuarial exercise and assessment of discount rates as the Court has been asked to consider in this case.

433. The Deputy-Bailiff therefore directed the Jurats to apply *Roberts v Johnstone*. We comment here on each of the figures to be inserted into the *Roberts v Johnstone* formula.

434. The cost of the new house, as we have said above, is £675,000.00.
435. The value to be added by the extension is estimated by Mr Wethers to be £35,000.00 (page 10-160, para 9.07). Mr Wethers acknowledges that he is not a valuer and the Jurats think his estimate may be on the low side but as it is the figure proposed by the Defendant at page 1-388 of the Counter-Schedule, they accept it.
436. The next question considered by the Jurats is whether the Plaintiff would have purchased his own house but for the Accident. In their view, the estimate of his future earnings suggests that he would not have had a sufficient borrowing capacity and even if he had married a wife with similar earnings, their combined borrowing capacity, would still have been too low. The view of the Jurats is that the Plaintiff probably would have looked for Social Housing, most likely through the Housing Association and possibly on a shared ownership, or shared equity, basis. However, the Court has no evidence of how such a scheme would work and hence has had to adopt the Defendant's assumption that the Plaintiff would have rented in the private sector. As to rental values, the Defendant produced correspondence from Mrs Z Bougourd which has not been contested by the Plaintiffs. The Jurats consider that the Defendant's assumption of annual rent of £4,500 is low. Nevertheless, as that figure is proposed by the Defendant, the Jurats have adopted it.
437. There was a suggestion in the Plaintiff's case that he would have purchased a property for about £350,000 at the age of about 36 but there was no evidence as to where that assumption originated and no other evidence to support it.
438. The multiplier is the appropriate whole life multiplier: 33.00. The discount rate used to assess the annual cost must be the same as the Court has used elsewhere, that is 1%.
439. In carrying out the *Roberts v Johnstone* calculation, the Court has followed the basis of the calculation set out by the Court of Appeal in its judgment at page 893 of the Law Report. With regard to the alterations that will cost £139,147.65 and result in an increase in the value of the property of £35,000.00, the Court has followed the approach of Hobhouse J. (as he then was) in *Willett v North Bedfordshire HA [1993] PIQR Q166*, as recommended by the Law Commission in paragraph 4.27 of its Report entitled "*Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits*" (Law Com No 262):

"Damages should therefore be assessed by applying the appropriate annual rate of return to the increase in value of the property or (if smaller) the total cost of the alterations and then applying a multiplier to this sum; any 'wasted costs' (i.e. any balance of the cost of alteration minus the increase in value) should then be added."

The discount rate (and multiplier) is applied to the amount that represents the additional capital that the Plaintiff will have invested in the property over and above what he would otherwise have spent on accommodation costs. In calculating the additional capital sum, the Court has taken the purchase price of the property, added the increase in value that will result from the alterations and deducted the capitalised sum that represents the rent he would otherwise have paid in rented accommodation. After applying the discount rate the Court added the 'wasted cost' of the alterations and the additional costs that will be incurred in acquiring the property.

440. The *Roberts v Johnstone* calculation is:

Cost of new house	£675,000.00	
Plus value added by extension and conservatory	<u>£35,000.00</u>	
	£710,000.00	
Less amount of rent payable for whole of life £4,500.00 x 33.00	<u>(£148,500.00)</u>	
Therefore, additional capital cost	<u>£561,500.00</u>	
Annual cost @ 1% per annum £5,615.00 x 33.00		£185,295.00
Add:		
Extension and alteration (item 25.6 of Appendix 1(b))	£139,147.65	
Less: value added by extension and alteration	<u>(£35,000.00)</u>	
Wasted cost of alterations		£104,147.65
Cost of conveyancing (item 25.2 of Appendix 1(b))		£24,375.00
Removal expenses (item 25.3 of Appendix 1(b))		£770.00
Surveyor's fees (item 25.4 of Appendix 1(b))		£2,500.00
Redirection of mail (item 25.5 of Appendix 1(b))		0.00
Design and Inspection Fees (item 25.10 of App1(b))		0.00
Fit out and renewal costs (item 25.11 of App 1(b))		<u>£7,406.00</u>
Total Loss (item 25 of Appendix 1(b))		<u>£324,493.65</u>

Future Trust Administration Expenses

441. The parties are agreed that the damages to be paid to the Plaintiff must be settled into a trust for his future benefit. The Court wholeheartedly endorses such a settlement and will hear any applications as to how the monies payable pursuant to this judgment are to be held pending the establishment of a trust. The Court also understands that the guardians will be applying to the Royal Court under its guardianship jurisdiction for leave to settle the funds into a trust, the details of which will have to be approved by the Royal Court.

442. The parties' respective trust experts, Mr G B Dix for the Plaintiff and Mr M S Heyworth for the Defendant met and substantially agreed the costs of establishing, constituting and administering an appropriate vehicle.

443. They agreed the following (in their joint report at Vol.11.5):

The cost of establishing a trust:	£5,000.00
The cost of constituting the trust and establishing a relationship with the Plaintiff, his family and his advisors:	£28,000.00
Charges in the first year, additional to the ongoing administration:	£79,500.00
Initial charges for the protector:	£1,500.00
Total of one-off costs (item 35 of Appendix 1(b))	£114,000.00

Ongoing trust administration:	£27,500.00 p. a.
Annual protector fee:	£1,500.00 p.a.

Total ongoing annual charges: (item 35 of Appendix 1(b)) **£29,000.00 p.a.**

444. The experts did not agree as to whether a company would be required as part of the structure, although they agreed that if there was to be a company, the additional annual cost would be £5,000.00. They both gave evidence on this disputed issue and their arguments are conveniently summarised at pages 11-53 and 11-54.

445. Mr Dix advocated the need for a company. He said it would be normal in a structure of this sort established for a wealthy family, and also it would be normal where there are trading assets which it is desirable to segregate from capital assets. The trust will be responsible for the running of the Plaintiff's home and the employment of his carers, it will be entering into employment contracts, insurance arrangements, property maintenance, utility contracts and many other undertakings that are akin to the commitments of a commercial enterprise; it would be normal for asset protection purposes to keep such liabilities separate from the capital assets.

446. He said there are practical reasons for having a company, including that, for the convenience of the trustee, it would be preferable if the company were to employ any staff such as carers or enter into contracts with the case manager and other entities, rather than the trustee having to do so in its own name.

447. Furthermore, he pointed out that, if the title to the property is held in a company, no conveyancing fees would be incurred on a change of trustee. In addition, on a future conveyance to a third party beneficial owner, there would be a saving in Document Duty (as currently assessed).

448. In the Plaintiff's closing speech, paragraph 190, Advocate Dawes submits: "*His [Mr Dix's] recommendation of a company to own and run what amounts to a nursing home for one person with all the attendant risks should be adopted*". Yet, the Jurats noted that when asked in evidence what were the risks, Mr Dix could not identify any that should not be covered by insurance, and accepted that if the trustee inadvertently failed to take out or renew an insurance policy, it would be liable for the loss, although there might be a time delay in making recovery against the trustee.

449. On the other hand, Mr Heyworth argued that a company is not a necessity. There are no activities that would need to be carried out that could not be performed by the trustee in its own name and there were no risks that he could identify that would justify the inclusion of a company in the structure. Furthermore, in the UK where he was qualified as a solicitor (although he is the director and part owner of a Guernsey trust company) a company would not normally be used.

450. The Jurats have carefully considered the evidence. They see the argument as boiling down, essentially, to a cost versus risk analysis. The cost of £5,000.00 per year for the Plaintiff's lifetime is not insignificant and cannot be justified simply on the basis that a wealthy client would be advised to have a company.

451. As for the risks, none have been identified.

452. The argument that it is administratively more convenient to the trustee to have a company may have some merit but, if so, the trustee should be able to provide the company within its overall fee of £27,500.00 per annum.
453. The argument that conveyancing fees will be saved on a change of trustee is insufficient; there will be other costs incurred on such a change that have not been claimed and there is no assumption as to when, if ever, or how often trustees will change.
454. Overall, the Jurats are of the view that a competent smaller trust company, as recommended by the experts, could run the trust without a company. The Plaintiff has not discharged the burden of proof and so the cost is disallowed.

Benefits Received

455. The Plaintiff has received statutory benefits under the Social Insurance (Guernsey) Law 1978. The parties are agreed that, pursuant to Section 14(1) of that Law, the Plaintiff must give credit for *“one half of the value of any rights which have accrued or probably will accrue to him therefrom in respect of sickness benefit, invalidity benefit, industrial injury benefit or industrial disablement benefit for the five years beginning with the time when the cause of action accrued”*.
456. They are also agreed that the amount of credit in respect of such benefits is £18,928.29.
457. The issue for the Court is whether credit should also be given for Attendance Allowance received by the Plaintiff, in the amount of £33,342.38. Advocate Ayres relies upon the judgment of Lord Bridge of Harwich in *Hodgson v Trapp* [1988] UKH69 in which, after referring to the principle that there should be no element of double recovery in the award of compensation, he said, at page 6 of the decision (consolidated bundle of authorities volume 3, page 1316):
- “There could hardly be a clearer case than that of the attendance allowance payable under section 35 of the Act of 1975 where the statutory benefit and the special damages claimed for cost of care are designed to meet the identical expenses. To allow double recovery in such a case at the expense of both taxpayers and insurers seems to me incapable of justification on any rational ground.”*
458. Advocate Dawes concedes there should be no double recovery and proposes the *“fair result would be to allow damages in full but require the Plaintiff to repay the monies to the States of Guernsey”*. He submits that Guernsey Law does not have to follow English Case Law in this context.
459. In the view of the Deputy-Bailiff, the decision of the House of Lords in *Hodgson* is highly persuasive. He can see no good reason in law as to why the Court should adopt Advocate Dawes’s suggestion of requiring the Plaintiff to repay the Attendance Allowance to which he has been entitled, and has received, to the States.

460. Accordingly, the Court orders that credit be given for the benefits received in the total sum claimed by the Defendant, namely £18, 928.29 plus £33,342.38 that is £52,270.67 (item 20 in Appendix 1(b)).

Interest on Past Loss

461. The Court has already dealt with the award of interest on general damages. In relation to past loss, the Plaintiff claims 3% on the balance of past loss, after allowing for interim payments made (para 124 of Plaintiff's closing speech). The Defendant claims that nothing is due as the interim payments made exceed the amount of special damages (page 69 of Defendant's closing speech). The Court's award for past losses exceeds the total of interim payments received from Insurers. The Court's preliminary view is that interest should be paid at 3% of the difference between the award and the interim payments from the date of the Accident. However, the Court is willing to hear further submissions from the parties.

Conclusion

462. The Court's award in respect of damages based on this Judgment and the Schedule in Appendix 1(b) which forms an integral part hereof is summarised in the attached Summary of Damages Award in Appendix 1(a).

General Damages	£235,000.00
Total of Past Losses	£1,328,389.57
Total of Future Losses	£7,774,462.70
Total Damages	£9,337,852.27

Credit is to be given for the interim payments paid by Insurers excluding the sum of £2,441.57 paid in respect of Mrs Helmot's treatment at London Bridge Hospital (Item 8.29 of Appendix 1(b)). Such credit has not been included in the attached Summary.

463. The Court will hear submissions from Counsel in respect of interest and costs.

464. The Court wishes to express its thanks to Counsel for their assistance, for the manner in which the case was presented, for the courtesy and respect they showed to each other and to each other's witnesses, and for starting and finishing the lengthy hearing on time.

HELMOT v SIMON**Appendix
1 (a)****14.01.2010****SUMMARY OF DAMAGES AWARD****GENERAL DAMAGES**

1.1	Pain, suffering and loss of amenity:	235,000.00
1.2	Interest on general damages:	To be agreed

TOTAL OF GENERAL DAMAGES£235,000.00**PAST LOSSES**

2.	Loss of cycling career	Nil
3.	Past loss of earnings	151,079.37
4.	Past care	
4.1	Past care: Mrs R Helmot	200,651.66
4.2	Past care: Mr K Jordan	55,000.00
4.3	Past care: Mrs M Brown	2,000.00
5.	Past care: Paid care and other expenses	768,759.62
6.	Case management	54,251.07
7.	Travel and other expenses (Southampton)	3,654.12
8.	Subsequent travel and ancillary expenses	19,698.19
9.	Additional dry cleaning costs	2,250.00
10.	Aids and equipment	12,272.35
11.	Medical expenses	22,743.30
12.	Adult literacy	29,135.39
13.	Additional household expenses	9,624.74
14.	Additional clothing	3,000.00
15.	Additional holiday expenses	10,500.00
16.	Transport: Vehicles	23,611.85
17.	Miscellaneous expenses	10,831.58
18.	Orthotics	1,260.00
19.	Damage to property	337.00
20.	Credit for benefits received	-52,270.67
21.	Interest on past losses	To be agreed

TOTAL OF PAST LOSSES£1,328,389.57

HELMOT v SIMONAppendix
1 (a)

14.01.2010

SUMMARY OF DAMAGES AWARD (Continued)**FUTURE LOSSES**

22.	Future loss of earnings	451,564.20
23.	Future care and case management	5,389,756.02
24.	Physiotherapy	60,565.00
25	Accommodation	
	Roberts v Johnstone calculation covering claims 25.1 to 25.6 and 25.10 to 25.11	324,493.65
25.7	Swimming pool	Nil
25.8	Cycle track	Nil
25.9	Workshop	Nil
25.22	Additional running costs in claims 25.12 to 25.21	138,121.50
26.	Reinstatement of Mon Abri	4,714.95
27	Transport costs	
27.1	Honda CRV	67,608.09
27.2	Mrs Helmot's replacement vehicle	4,285.00
28.	Future travel	Nil
29.	Future additional holiday costs	49,500.00
30.	Additional cost of activities	Nil
31.	Aids and equipment	49,485.22
32	Medical expenses	
32.1	Prescription charges	962.59
32.2	Occupational therapy	4,620.00
32.3	Podiatry	5,280.00
32.4	Neuropsychology	53,950.00
32.5	Rehabilitation consultant	Nil
32.6	Orthotics	10,026.72
33	Adult literacy	Nil
34	Miscellaneous expenses	88,529.76
35	Protective Trust administration costs	1,071,000.00

TOTAL OF FUTURE LOSSES£7,774,462.70**TOTAL OF GENERAL DAMAGES, PAST
LOSSES AND FUTURE LOSSES**£9,337,852.27

HELMOT v SIMON - SCHEDULE OF CLAIM

APPENDIX 1 (b) 14.01.2010

This Schedule was produced to the Court by Advocate Ayres at the start of his closing speech. The Court has found it to be a helpful document which it has decided to incorporate as an Appendix to, and an integral part of, the Judgment. The information in the first four columns was prepared by Counsel. The fifth column “Comments” has been completed by the Court following the conclusion of the hearing. It incorporates concessions made by the parties during their closing speeches. References to pages, paragraphs (or “para”) refer to pages and paragraph numbers in counsels’ written closing speeches unless otherwise stated. The sixth, and last, column contains the Court’s Award.

Item	Head of Claim	Plaintiff’s figure	Defendant’s figure	Comment	Award
1.	General damages:				
1.1	Pain, suffering and Loss of Amenity	£250,000.00	£190,000.00	See Judgment paragraphs 94 to 115	£235,000.00
1.2	Interest on general damages	£54,575.00	£4,484.00	During his closing address, Advocate Dawes agreed that interest on general damages should be calculated at the rate of 2% p.a. from the date of issue of proceedings.	To Be Agreed
	Sub-total of General Damages:	£304,575.00	£194,484.00	SUB-TOTAL	To Be Agreed
2.	Loss of cycling career	No more than lost earnings of taxi driver or labourer	Nil	See Judgment paragraphs 389 to 393	Nil

3.	Past loss of earnings	£173,701.73	£74,216.24	See Judgment paragraphs 389 to 410	£151,079.37
4.1	Past care: Mrs R Helmot	£324,809.99	£66,274.24	See Judgment paragraphs 204 to 249	£200,651.66
4.2	Past care: Mr K Jordan	£100,000.00	£5,000.00	See Judgment paragraphs 250 to 257	£55,000.00
4.3	Past care: Mrs M Brown	£2,000.00	Nil	See Judgment paragraphs 258 to 260	£2,000.00
5.	Past Care: Paid care and Other Expenses	£913,145.02	£560,611.03	See Judgment paragraphs 261 to 342	£768,759.62
6.	Case management	£37,851.94	£18,000.00	See Judgment paragraphs 343 to 348	£54,251.07
7.	Travel and other expenses incurred whilst the Plaintiff was in hospital in Southampton:		SEE GENERALLY APPENDIX 1 OF COUNTER SCHEDULE	SUB-TOTAL	£3,654.12
7.1	Bus passes and petrol 23/11/98 – 23/05/99	£26.76	£26.76	Agreed	£26.76

7.2	Air fares and accommodation (January 2000)	£531.80	£245.07	The Jurats do not accept that it is reasonable for the Plaintiff to recover the additional cost of a third person accompanying him for his surgery. The Jurats would have allowed only one extra air fare at £243.40. However, they award the sum of £245.07 offered by the Defendant.	£245.07
7.3	Air fares and accommodation (February 2000)	£318.65	£318.65	Agreed	£318.65
7.4	General additional living costs	£1,766.65	Nil	Plaintiff proposes half (£883.32 – para 64), as part of £10,000 general credit offered. The Jurats consider that it would have been more expensive for Mrs Helmot to purchase her food in Southampton than if she had been preparing her food at home. The Plaintiff's proposed reduction is reasonable.	£883.32
7.5	Additional clothing	£510.60	Nil	The Jurats consider the claim is reasonable as it was necessary for Mrs Helmot to purchase clothing in Southampton. They accept her evidence as to the need for the clothing.	£510.60

7.6	Accommodation for Mrs Helmot at Mellor House	£720.00	£720.00	Agreed	£720.00
7.7	Travelling expenses	£928.00	£688.00	Plaintiff is willing to concede the difference of £240 (re Ms Tan) as part of £10,000 general credit offered (para 66). The Jurats consider it is not reasonable for the Defendant to have to pay this cost.	£688.00
7.8	Telephone expenses	£201.72	£201.72	Agreed	£201.72
7.9	Electricity key meter charges	£60.00	£60.00	Agreed	£60.00
8.	Subsequent travel and ancillary expenses:		SEE GENERALLY APPENDIX 2 OF COUNTER SCHEDULE	SUB-TOTAL	£19,698.19
8.1	Travel to Unstead Park (March 2000)	£319.20	£319.20	Agreed	£319.20
8.2	Taxi fares to and from Guernsey Airport	£12.00	£12.00	Agreed	£12.00

8.3	Flights to Southampton (Professor McLellan)	£200.40	£200.40	Agreed	£200.40
8.4	Travel and ancillary expenses (appointment at Royal National Orthopaedic Hospital)	£232.25	£232.25	Agreed	£232.25
8.5	Travel and ancillary expenses (Stanmore – September 2000)	£1,296.03	£879.27	The Jurats do not consider it is reasonable to recover the cost of three persons (Mrs Helmot, Mr Jordan and a carer) accompanying the Plaintiff and so allow for two accompanying persons as offered by the Defendant.	£879.27
8.6	Visit to Stanmore (October 2000)	£712.05	£615.98	Plaintiff accepts the offer as part of £10,000 general credit offered (para 68)	£615.98
8.7	Travel and ancillary expenses to Stanmore on 12 November 2000	£1,140.53	£799.88	The Jurats adopt the same principle as at 8.5 above.	£799.88
8.8	Stanmore visit (November 2000)	£38.20	£21.95	Plaintiff accepts the difference as being de minimis and as part of £10,000 general credit offered (para 70)	£21.95
8.9	Flights and ancillary expenses for appointment at Bolsover Street Clinic (February 2001)	£692.80	£692.80	Agreed	£692.80

8.10	Travelling expenses to Stanmore (June 2001)	£830.92	£593.19	The Jurats adopt the same principle as at 8.5 above.	£593.19
8.11	Subsistence with Plaintiff admitted to Hospital (September 2001)	£29.25	£29.25	Agreed	£29.25
8.12	Travel and ancillary expenses in relation to the Plaintiff's appointment in Southampton (October 2001)	£781.29	£781.29	Agreed	£781.29
8.13	Travel and ancillary expenses – Stanmore appointment (January 2002)	£1,039.08	£1,039.08	Agreed	£1,039.08
8.14	Travel and ancillary expenses – appointment with Mr Carlstedt (January 2002)	£957.27	£181.47	Plaintiff agrees the lower figure is correct (para 72).	£181.47
8.15	Miscellaneous expenses – appointment in Southampton (January 2002)	£59.40	Nil	Plaintiff agrees this will form part of costs and disbursements claimed (para 73).	Nil
8.16	Travel and ancillary expenses – appointment with Dr Leng (March 2002)	£769.28	Nil	Plaintiff agrees this will form part of costs and disbursements claimed (para 74)	Nil
8.17	Travel and ancillary expenses – Stanmore appointment (8 July 2002)	£849.89	£849.89	Agreed	£849.89

8.18	Travel and ancillary expenses – appointment at Stanmore (August 2002)	£1,146.72	£1,146.72	Agreed	£1,146.72
8.19	Petrol expenses	£4,934.75	£4,934.75	Agreed	£4,934.75
8.20	Travel and ancillary expenses – appointment at Stanmore (January 2003)	£689.89	£689.89	Agreed	£689.89
8.21	2003 congestion charge	£40.00	£40.00	Agreed	£40.00
8.22	Subsistence costs when Plaintiff was admitted to Princess Elizabeth Hospital in 2003	£21.20	£21.20	Agreed	£21.20
8.23	Travel and ancillary expenses – appointment at National Hospital, Queen’s Square	£976.04	£976.04	Agreed	£976.04
8.24	Travel and ancillary expenses – consultation with Professor Thomas	£768.70	£768.70	Agreed	£768.70
8.25	Travel and ancillary expenses whilst Plaintiff undergoing DREZ operation	£2,699.08	£2,418.04	The Jurats agree with the Defendant that the costs of theatrical shows, taxi to the shows and cycle-taxi from the show are not reasonably recoverable.	£2,418.04

				Furthermore, expenses claimed but unsupported by receipts are not recoverable.	
8.26	Consultation with Professor Thomas (June 2006) (DREZ operation related)	£1,071.69	£500.00	Plaintiff accepts £500.00 (para 76).	£500.00
8.27	DREZ operation related travel, accommodation and car hire expenses	£1,361.33	Nil	<p>The claim includes three elements. Regarding the first element, at page 39, para 27 of his closing speech, the Defendant submits this does not relate to the DREZ Operation but to “Head First 26th – 30th June”. The Jurats accept Mrs Helmot’s evidence that they had to attend with Professor Thomas in June so that he could examine the Plaintiff before the operation. The invoice at B361, Vol. 14.2 page 954 suggests the visit was originally arranged from 26 June to 28 June but was later extended to 30 June. No explanation was given for such an extension. However, the Jurats allow the costs of flights and hotel as originally booked, £789.80 (page 954).</p> <p>The second element of the amount</p>	£954.95

				<p>claimed includes the costs of calls from Mrs Helmot’s mobile phone for “keeping in contact with the team”, when the Plaintiff underwent the DREZ Operation, only half of which is reasonably recoverable, in the view of the Jurats (£116.68).</p> <p>The third element of the claim relates to phone calls from the Plaintiff’s mobile keeping in touch with his mother when he was in hospital for the DREZ Operation; that element is agreed by the Defendant at £48.47.</p> <p>The Jurats’ award is therefore $£789.80 + £116.68 + £48.47 = £954.95$</p>	
8.28	Travel and ancillary expenses – appointment with Mr Evans (March 2007)	£836.60	Nil	Plaintiff agrees this is to be claimed as costs and disbursements (para 78).	Nil
8.29	Mrs Helmot’s treatment costs – London Bridge Hospital	£2,441.57	Nil	The Jurats agree that the Defendant is not legally liable for payment of Mrs Helmot’s treatment costs. However, their understanding of what is proposed by the parties in their written	Nil

				<p>closing speeches (Defendant’s speech at page 40, para 29 and the Plaintiff’s speech at page 18, Para 79) and their oral submissions is that the Defendant is accepting responsibility for the payment without admitting it is liable in law to do so. So, the parties appear to be in agreement that this item be excluded from the claim and that the credit to be given for interim payments received by the Plaintiff be reduced by the same amount. The Jurats respect that agreement.</p>	
9.	Additional dry cleaning costs	£2,779.22	£1,250.00	<p>Plaintiff agrees £170 is duplicated and offers a further £250 reducing the claim to £2,359.22 (para 80).</p> <p>The Jurats have examined the Schedule of payments made and are satisfied that the vast majority relate to bedding. Given the evidence of the Plaintiff’s incontinence, especially in the early years, and of his tendency to spill contents from his urine bottles the Jurats have taken a “broad-brush” approach and award £2,250.</p>	£2,250.00

10.	Aids and equipment:		SEE GENERALLY APPENDIX 3 TO COUNTER SCHEDULE	SUB-TOTAL	£12,272.35
10.1	Special manufactured lipped pottery	£300.00	£300.00	Agreed	£300.00
10.2	Life jacket for swimming	£35.76	£35.76	Agreed	£35.76
10.3	Specially manufactured bedside cabinet for storage of urine bottles	£90.00	£90.00	Agreed	£90.00
10.4	Walkman to try to bring the Plaintiff out of his coma	£98.00	£98.00	Agreed	£98.00
10.5	Travel Walkman to ease travel sickness	£124.90	Nil	Plaintiff agrees not to pursue (para 81).	Nil
10.6	Hammock (swing bench with canopy)	£232.26	Nil	The Jurats consider it was reasonable that the hammock was purchased to enable the Plaintiff to sit in the garden to aid his recovery especially the canopy would have provided shade from the direct sunlight whilst allowing him to sit in the fresh air.	£232.26

10.7	Additional television	£1,000.00	£1,000.00	Agreed	£1,000.00
10.8	Beds and mattresses purchased to date	£9,929.00	£4,979.00	The Jurats are not persuaded that there was a reasonable need to purchase the second bed in November 2005 and allow only the balance of the claim in respect of the first bed and one replacement mattress.	£4,979.00
10.9	Bedding to fit the Plaintiff's specialist bed and replacement bedding	£2,888.39	£714.00	<p>Plaintiff proposes 25% discount – reducing claim to £2,166.29 as part of £10,000 general credit offered (para 84).</p> <p>The Jurats have considered the parties' closing submissions (Defendant's speech page 43, para 9 and Plaintiff's speech page 20, para 84) together with the relevant lay and expert evidence, especially of Mrs O'Brien. They have taken a "broad-brush" approach and propose £1,650.00 which is a little more than £150.00 p.a. during the period since his discharge from Southampton. It is more per annum than they allow for future loss but it takes account</p>	£1,650.00

				of additional soiling, washing and general usage in the early years.	
10.10	Spectacles purchased, repaired and/or replaced	£1,746.54	Nil	Plaintiff proposes 25% discount reducing claim to £1,309.91 as part of £10,000 general credit offered (para 85). The Jurats allow £300.00 as being reasonable to allow for replacement as a result of additional breakages arising from the accident.	£300.00
10.11	Tens unit and spare pads	£180.97	£180.97	Agreed	£180.97
10.12	Magnifying glasses	£26.99	£26.99	Agreed	£26.99
10.13	Towels and towel wraps	£528.56	£46.50	Plaintiff proposes $\frac{1}{3}$ discount reducing claim to £352.37 as part of £10,000 general credit offered (para 86). The Jurats consider £250.00 is reasonable.	£250.00
10.14	Tool tidy	£198.00	Nil	The Jurats consider the Plaintiff would have had a Tool Tidy in any event.	Nil

10.15	Posture chair	£89.75	£89.75	Agreed	£89.75
10.16	Home training unit	£395.00	Nil	Plaintiff proposes to include this in the £10,000 general credit offered (para 88). The Jurats have no evidence as to what this item represents.	Nil
10.17	Toys/board games to assist with rehabilitation	£377.64	£377.64	Agreed	£377.64
10.18	Art work/materials (ongoing rehabilitation)	£196.45	£196.45	Agreed	£196.45
10.19	Replacement wheelchair	£883.15	Nil	Plaintiff is not pursuing this claim (para 89).	Nil
10.20	Powerbox and cable for exercise bike	£100.10	£100.10	Agreed	£100.10
10.21	Non-slip shower mats (2) @ £13.41 each	£26.82	£26.82	Agreed	£26.82
10.22	Conversion of exercise bike	£17.04	£17.04	Agreed	£17.04

10.23	Hand warmers	£27.80	£27.80	Agreed	£27.80
10.24	Replacement TV for carers	£485.00	Nil	The Jurats accept a TV in the carer's room is reasonable. A reasonable cost would have been £200.00.	£200.00
10.25	Washing machines/tumble dryers purchased/repaired and/or replaced	£1,992.47	£691.25	Plaintiff proposes to reduce claim to £1,250 as part of £10,000 general credit offered (para 92). The Defendant's offer is based on the estimated future cost. The Jurats award £900 because in the past there was even more washing due to the Plaintiff's incontinence.	£900.00
10.26	Replacement shower mats	£97.78	£97.78	Agreed	£97.78
10.27	Computer, laptop plus upgrades and/or repairs to the same	£2,847.90	Nil	Plaintiff proposes to limit claim to £1,000 (para 93). The Jurats accept the evidence of Mrs Helmot that he would have purchased these items in any event.	Nil
10.28	Portable DVD player	£349.99	Nil	Plaintiff not pursuing the claim as part of £10,000 general credit offered (para 94). The Jurats	Nil

				accept the submissions of the Defendant at para 28 on page 48 of his closing speech.	
10.29	Computer printers, ink jets, refills and ancillary equipment	£346.46	Nil	Some allowance is reasonable to cover the cost of additional ink used by Mr Jordan.	£100.00
10.30	Adult literacy materials	£406.37	Nil	Having perused the supporting invoices, the Jurats allow part only.	£150.00
10.31	Hobbycraft materials	£389.38	£389.38	Agreed	£389.38
10.32	Replacement shower mats	£17.00	£17.00	Agreed	£17.00
10.33	Woodworking tools	£123.55	£123.55	Agreed	£123.55
10.34	Replacement iPod	£94.99	Nil	The Jurats accept the evidence that the iPod was dropped down the lavatory as a consequence of his deficiency in manual dexterity.	£94.99
10.35	Dictaphone memory card and replacement Dictaphone	£74.49	£74.49	Agreed	£74.49

10.36	Recordable CDs	£5.45	Nil	Plaintiff says de minimis (para 98).	Nil
10.37	Watch repairs	£51.35	£51.35	Agreed	£51.35
10.38	Replacement camera parts	£38.75	£38.75	Agreed	£38.75
10.39	Camera accessories	£4.99	£4.99	Agreed	£4.99
10.40	Replacement kitchen equipment	£16.49	£16.49	Agreed	£16.49
10.41	Repairs to exercise equipment	£35.00	Nil	Agreed. In Defendant's closing speech at page 51, para 41, he offers £35.00.	£35.00
11.	Medical expenses:		SEE GENERALLY APPENDIX 4 TO COUNTER SCHEDULE	SUB-TOTAL	£22,743.30
11.1	Replacement pads for Tens machine	£39.82	£39.82	Agreed	£39.82

11.2	Unstead Park assessment fee	£1,500.00	£1,500.00	Agreed	£1,500.00
11.3	Provision of medical records to Unstead Park	£81.48	£81.48	Agreed	£81.48
11.4	Fee paid to Dr C J Farmer	£384.00	£384.00	Agreed	£384.00
11.5	Rehabilitation treatment by Julia Harris	£2,920.00	£2,920.00	Agreed	£2,920.00
11.6	Replacement electro pads for Tens unit	£25.50	£25.50	Agreed	£25.50
11.7	Fees paid to Dr R Browne 2 July 2008	£3,555.00	£3,555.00	Agreed	£3,555.00
11.8	DREZ operation fees	£13,060.50	£13,060.50	Agreed	£13,060.50
11.9	Fees for Bowen therapy	£495.00	Nil	Bowen therapy was recommended by a reputable therapist. The Jurats accept that in the light of the excruciating pain the Plaintiff was suffering, it was reasonable to	£495.00

				incur this cost.	
11.10	Herbal medication	£952.61	Nil	There was no evidence that herbal medication was recommended by anyone outside the family. Having perused invoices, the Jurats reject this claim.	Nil
11.11	Chiropody	£50.00	£50.00	Agreed	£50.00
11.12	Medication for toes and feet	£382.00	£382.00	Agreed	£382.00
11.13	Fees paid to Professor Thomas	£400.00	Nil	Defendant offered £250 at page 54 of closing speech. Plaintiff accepts the offer at para 101 of his speech.	£250.00
12.	Adult literacy	£48,558.98	Nil	See Judgment paragraphs 289 to 304.	£29,135.39
13.	Additional household expenses:		SEE GENERALLY APPENDIX 5 TO COUNTER SCHEDULE	SUB-TOTAL	£9,624.74

13.1	Dismantling wheelchair ramp and reinstating garden wall and pathway	£1,482.19	£1,482.19	Agreed	£1,482.19
13.2	Bedroom conversion	£1,162.75	£1,162.75	Agreed	£1,162.75
13.3	Wheelchair ramp installation	£1,760.11	£1,760.11	Agreed	£1,760.11
13.4	Recasting steps and patching pathway	£253.16	£253.16	Agreed	£253.16
13.5	Stairlift repairs	£446.90	£446.90	Agreed	£446.90
13.6	Re-landscaping garden to allow for wheelchair access for the house and recreation area	£1,182.45	£1,182.45	Agreed	£1,182.45
13.7	Laying drains with a view to a shower and WC being fitted	£26.47	£26.47	Agreed	£26.47
13.8	Additional heating oil	£2,354.58	Nil	Although there was some conflicting evidence, the Jurats accept that additional heating costs have been incurred because of spending more time in the	£2,354.58

				home and as a result of the Plaintiff's poor temperature control. The claim for one third of the total cost seems reasonable.	
13.9	Sigma Group – products to reduce static electricity	£56.13	£56.13	Agreed	£56.13
13.10	Additional electricity costs	£900.00	Nil	The Jurats accept there has been additional usage of electricity with extra washing, drying etc.	£900.00
14.	Additional clothing	£10,437.02	£2,448.00	<p>Plaintiff proposes 50% reduction to £5,218.51 as part of £10,000 general credit offered (para 110).</p> <p>The Jurats agree that additional clothing is required to allow for wear and tear from the sling, the Plaintiff's weight fluctuations, accidents and spillages that would not have happened but for the Accident. The Jurats resolved to allow 5 years @ £325 p.a. and thereafter @ £225 per annum plus rounding, say, £3,000.</p>	£3,000.00
15.	Additional holiday expenses:		SEE PARAGRAPH 18 OF COUNTER SCHEDULE 1-375 AND 376: £4,875.00	See Judgment paragraphs 372 to 382 in respect of all items claimed under this sub-heading.	£10,500.00

			OFFERED		
15.1	Short term travel insurance for Ms R Gulbe	£15.00	“		
15.2	A short break in London (March 2003)	£1,817.80	“		
15.3	Holiday (December 2004)	£2,698.00	“		
15.4	Holiday (May 2005)	£2,796.51	“		
15.5	Tours in London after visiting UK for medical appointments	£99.45	“		
15.6	Camping trip and equipment (July 2005)	£461.35	“		
15.7	Holiday (October 2005)	£1,736.58	“		
15.8	Holiday in Paris (February 2006)	£2,778.20	“		

15.9	Trip to Sark (June 2006)	£290.26	“		
15.10	Trip to Alderney (June 2006)	£232.05	“		
15.11	Herm trip (September 2006)	£574.18	“		
15.12	Flights to United Kingdom for visit to Birmingham NEC (invoice dated 24 October 2006)	£485.88	“		
15.13	Holiday in Sark (October 2006)	£631.89	“		
15.14	Alderney (November 2006)	£922.85	“		
15.15	Birmingham	£565.34	“		
15.16	Alderney (March 2007)	£741.25	“		

15.17	Easter break (2007)	£52.10	“		
15.18	Holiday in France (July 2007)	£780.07	“		
15.19	Additional items for camper van	£127.12	“		
15.20	Camping fees – France (July 2007)	£19.58	“		
15.21	Extra passenger ticket on Condor Ferries	£46.50	“		
15.22	Fuel for motor home	£34.73	“		
15.23	Condor Ferries (July and September 2007)	£806.00	“		
15.24	Diesel for motor home (September 2007)	£26.24	“		

15.25	Holiday activities	£49.50	“		
15.26	Holiday expenses (October 2007)	£1,528.30	“		
15.27	Travelling expenses – appointment in Southampton (October 2007)	£872.21	“		
15.28	Holiday in Cyprus	£900.46	“		
15.29	Jersey trip (April 2008)	£213.80	“		
15.30	Holiday at Lake Garda	£3,049.19	“		
15.31	Holiday (May 2008)	£1,016.36	“		
15.32	Trip to Herm and related expenses	£82.45	“		

15.33	Trip to France and related expenses	£1,037.38		“		
15.34	Trip to Jersey and related expenses	£719.21		“		
15.35	Tours/expenses incurred whilst in UK attending medico-legal appointment	£240.40		“		
15.36	Tours/expenses incurred whilst in UK attending medico-legal appointment	£305.55		“		
15.37	Expenses incurred re short trip to UK whilst attending medico-legal appointments	£874.51		“		
15.38	Trip to Herm	£19.50		“		
16.	Transport:				SUB-TOTAL	£23,611.85
16.1	Vehicle 1	£15,455.00	£10,345.85		The Jurats accept the need for the Plaintiff to have a suitable, reliable vehicle for his use. They do not accept that a Honda CRV is the only vehicle that meets his requirements. As Mrs O’Brien said, there is a range of cheaper	£10,345.85

				vehicles available. The Jurats accept Mrs O'Brien's evidence and make their award accordingly.	
16.2	Vehicle 2	£18,019.00	£13,266.00	<p>Plaintiff offers to reduce by £3,474 to allow for optional extras in vehicle 2 (para 112).</p> <p>The Jurats accept the need for the Plaintiff to have a suitable, reliable vehicle for his use. They do not accept that a Honda CRV is the only vehicle that meets his requirements. As Mrs O'Brien said, there is a range of cheaper vehicles available. The Jurats accept Mrs O'Brien's evidence and make their award accordingly.</p>	£13,266.00
17.	Miscellaneous expenses			SUB-TOTAL	£10,831.58
17.1	Befriender expenses	£112.50	Nil	There is no supporting invoice and this has not been proved on the balance of probabilities.	Nil
17.2	Trolley case	£15.99	£15.99	Agreed	£15.99

17.3	Fitness club subscriptions	£3,045.00	£2,120.33	The Jurats accept the Plaintiff's claim being the amount that has been incurred in the absence of evidence that a discount would have been available in the past.	£3,045.00
17.4	Batteries	£8.49	£8.49	Agreed	£8.49
17.5	Ambulance and rescue subscriptions	£188.50	Nil	The Jurats agree that the Plaintiff should subscribe to St John but in the light of Mrs Helmot's evidence that she gave it to family members as a present it is disallowed.	Nil
17.6	Tools	£30.00	£30.00	Agreed	£30.00
17.7	Broadband subscriptions	£1,646.26	Nil	Plaintiff offers to reduce by one-half to £823.13 (para 117). The Jurats note the first invoice was Feb 2005, and believe he would have subscribed for Broadband by that date in any event.	Nil
17.8	Additional entertainment to include additional costs relating to the carers and food for the carers	£9,098.21	£5,200.00	Having perused the invoices, the Jurats consider that the claim includes some extravagant meals. Allowance must also be given for meals the Plaintiff would have	£6,000.00

				taken in any event. Adopting a “broad-brush” approach the Jurats reduce the Plaintiff’s claim by approximately one third.	
17.9	Gardening expenses (for rehabilitation purposes)	£1,905.22	£500.00	The Jurats consider that the project was well-intentioned but the number of seeds and shrubs purchased is excessive, so reduce by approximately one-half.	£950.00
17.10	Advertisements	£1,243.90	£630.20	Plaintiff proposes to reduce claim to £762.20 (para 120). The Jurats accept the submission of the Defendant in his closing speech page 66.	£630.20
17.11	Stationery (wage books etc)	£125.90	£125.90	Agreed	£125.90
17.12	Administrative expenses	£26.00	£26.00	Agreed	£26.00
17.13	Mr Jordan’s loss of earnings in accompanying the Plaintiff and/or Mrs Helmot to various appointments	£642.00	£426.00	To avoid duplication, the Jurats deal with this as part of the claim for gratuitous care.	Nil
18.	Orthotics	£1,791.00	£1,260.00	Plaintiff says in para 122 of his closing speech, the Defendant’s lower figure is agreed.	£1,260.00

19.	Damage to property	£337.00	£337.00	Agreed	£337.00
20.	CREDIT for benefits received	(£18,928.29)	(£18,928.29)	The credit for benefits received is agreed as being £18,928.29). The Defendant also claims there should be credit for Attendance Allowance received of £33,342.38 (page 67 of closing speech). The Plaintiff's response is at Para 198, page 29 of his closing speech. See Judgment paragraphs 455 to 460.	(£52,270.67)
21.	Interest on past losses	£122,444.34	Nil	See Judgment paragraph 461	To Be Agreed
	FUTURE EXPENSES:				
22.	Future loss of earnings	£626,941.19	£220,056.25	Plaintiff's multiplicand as agreed with Jurats is £19,367.97. To age 65 Ogden Table 9 at 1% taken as average of 22.06 and 21.30 being 21.68 x £19,367.97 = £419,897.59. To age 70 Ogden Table 11 at 1% taken as average of 25.31 and 24.59 being 24.95. Multiplier is 24.95 – 21.68 = 3.27 x £9,683.98 = £31,666.61 See Judgment paragraph 411	£451,564.20

23.	Future care and assistance and case management	£9,792,217.14	£2,554,761.30	See Judgment paragraphs 349 to 357	£5,389,756.02
24.	Physiotherapy:			SUB-TOTAL	£60,565.00
24.1	Neurological physiotherapy	£1,050.00	£1,050.00	Agreed	£1,050.00
24.2	Ongoing physiotherapy	£13,600.00	£9,455.40	The Defendant's offer is at page 71 of closing speech. The parties agree £1,020 as a one-off cost. They also agree £340 p.a. but disagree with the multiplier. Total	£1,020.00 (one-off cost) and £340.00 p.a. x 33.00 = £11,220.00 £12,240.00
24.3	Acute musculoskeletal physiotherapy	£4,800.00	£4,800.00	Agreed	£4,800.00
24.4	Pace hydraulic resistance stepper	£1,815.00	£640.00	The two experts agreed the Plaintiff would have to be assessed to find the correct model. They have allowed an approximate average of the two figures.	£1,225.00

24.5.			Defendant offers equipment and sum to purchase health club membership (see §§28.7 and 28.8 of Counter Schedule 1-385	The Jurats consider it is reasonable that the Plaintiff should join a health club with swimming and other facilities. He may or may not join the St Pierre Park, but the cost of membership at that Hotel has been accepted by the Jurats in the absence of any evidence as to costs elsewhere. It includes the cost for the Plaintiff plus one carer (see letter at 11-36A).	£1,250.00 p.a x 33.00 = £41,250.00
25.	Accommodation:			Roberts v Johnstone calculation incorporating items 25.1 to 25.6 and 25.10 to 25.11 – See Judgment paragraphs 412 to 440	£324,493.65
25.1	Purchase of bungalow	£1,325,000.00	£750,000.00 (including extension. <u>Roberts v Johnstone</u> to be applied)	See Judgment paragraphs 412 to 440.	See above
25.2	Conveyancing costs @ 3.75%	£49,687.50	£16,917.65	See Judgment paragraphs 412 to 440.	See above

25.3	Removal expenses	£770.00	Nil	Removal expenses would not have been incurred but for the Accident. See Judgment paragraphs 412 to 440. £770.00	See above
25.4	Surveyor's fees	£4,075.00	Nil	A survey will be needed - £2,500.00 is considered to be sufficient. See Judgment paragraphs 412 to 440.	See above
25.5	Re-direction of mail	£39.00	Nil	The Plaintiff would have incurred this in any event.	See above
25.6	Basic adaptation costs	£244,000.00	£89,284.76	See Judgment paragraphs 412 to 440.	See above
25.7	Swimming pool	£425,500.00	Nil (but agreed at £360,000.00 if Court decides this is a reasonable requirement)	See Judgment paragraphs 358 to 366.	Nil
25.8	Cycle track	£64,500.00	Nil	See Judgment paragraphs 367 to 371.	Nil

25.9	Workshop	£17,250.00	Nil	The Plaintiff would have had a workshop in any event.	Nil
25.10	Design and inspection fees	£112,687.50		Included in alteration costs allowed – see Judgment paragraphs 412 to 440.	See above
25.11	Fit out and renewal costs	£15,950.00		Mr Whethers proposes £7,406.00 (page 10-161). The Jurats are persuaded by Mr Whethers whose figures they consider are sufficiently generous – see Judgment paragraphs 412 to 440.	See above
25.12	States of Guernsey and Parish charges	£120.00		Defendant proposes £200 (10-165). Jurats agree £120.00.	£120.00 p.a.
25.13	Water charges	£110.00	£690.04 for water heating and electricity	Defendant proposes £100.00 for water charges.	£110.00 p.a.
25.14	Heating	£1,845.00	See above	Jurats are persuaded by Mr Whethers and the methodology adopted by him in respect of heating.	£529.50 p.a.
25.15	Electricity	£122.00	See above	The differences between the two experts are small in relation to water and electricity; the Jurats adopt the Plaintiff's figure for	£122.00 p.a.

				these items.	
25.16	Telephone	£100.00		It is reasonable that allowance be made for the cost of covering phone calls e.g. by carers to the case manager.	£100.00 p.a.
25.17	Maintenance of property	£2,769.00		Mr Whethers proposes £1,879.60 p.a. The Jurats consider that, in this instance, he has underestimated Guernsey construction and labour costs. Adjusting for true costs would produce a figure similar to the Plaintiff's, which the Jurats accept.	£2,769.00 p.a.
25.18	Maintenance of fixed special equipment	£400.00		The need has not been proved to the satisfaction of the Jurats.	Nil
25.19	Building insurance premium	£358.00	£198.89	The Jurats accept the Plaintiff's claim.	£358.00 p.a.
25.20	Contents insurance	£77.00	£60.34	The Jurats accept the Plaintiff's claim.	£77.00 p.a.
25.21	Exercise pool	£7,508.00	Not agreed, but agreed at £7,500 should court decide that own pool	See Judgment paragraphs 358 to 366	Nil

			reasonably necessary		
25.22	SUB TOTAL	£496,133.00		The SUB-TOTAL of ongoing annual costs from 25.12 to 25.21 is £4,185.50. Applying a multiplier of 33.00 produces £138,121.50.	£138,121.50
26.	Reinstatement of Mon Abri	£4,714.95	£4,714.95	Agreed	£4,714.95
27.	Transport:				
27.1	Honda CRV	£221,815.00	£50,828.99	<p>Plaintiff proposes annual cost reduced to £4,000 from £5,995 (para 170 of closing speech and 234 of Re-Re Amended Schedule of Loss).</p> <p>The Jurats accept the need for the Plaintiff to have a suitable, reliable vehicle for his use. They do not accept that a Honda CRV is the only vehicle that meets his requirements. As Mrs O’Brien said, there is a range of cheaper vehicles available. The Jurats accept Mrs O’Brien’s evidence and make their award</p>	<p>£2,048.73 p.a. x 33.00 =</p> <p>£67,608.09</p>

				accordingly.	
27.2	Mrs Helmot's vehicle	£4,285.00	£4,285.00	Agreed	£4,285.00
28.	Future travel	£44,400.00	Nil	Plaintiff has reduced his claim by one-half (para 172). This item relates to annual trips to England for medical purposes. The Jurats note the Defendant's submission at pages 77 – 79 of his closing speech and agree there is no evidence of need for future medical trips to England.	Nil
29.	Future additional holiday costs	£127,354.00	£37,215.00	See Judgment paragraph 383	£1,500.00 p.a. x 33.00 = £49,500.00
30.	The additional cost of activities	£92,500.00	Nil	Plaintiff agrees this is duplicated (para 178)	Nil
31.	Aids and equipment:		SEE GENERALLY APPENDIX 6 TO COUNTER SCHEDULE	The SUB-TOTAL of annual costs in items 31.1 to 31.32 is £1,490.34. Applying a multiplier of 33.00 produces One-off costs in items 31.5, 31.7	£49,181.22 £304.00

				and 31.15 total	= £49,485.22
31.1	Microwave	£20.00	Nil	Not pursued by the Plaintiff (para 179)	Nil
31.2	Food processor	£9.00	Nil	The Jurats accept it would be reasonable for the Plaintiff to have a food processor and they accept Mrs Helmot's evidence that he would not have bought a food processor but for the injuries.	£9.00 p.a.
31.3	Dishwasher	£45.00	Nil	The Jurats agree it would be reasonable to have a dishwasher but accept Mrs Helmot's evidence that the Plaintiff hates washing dishes and would have bought his own in any event.	Nil
31.4	Wheeled luggage	£20.00	Nil	Not pursued by the Plaintiff (para 179 at page 42).	Nil
31.5	Hands-free telephone and answerphone	£24.00	One-off purchase of £35.00 only	In their joint statement the Occupational Therapists agreed the need for a one-off purchase with no replacement costs. (Page 11-11). They disagreed on costs. The Jurats accept Mrs O'Brien's	£35.00 one-off purchase.

				evidence.	
31.6	Computer	£330.00	Nil	Not pursued by the Plaintiff (para 179 at page 42).	Nil
31.7	Computer software	£67.00	Nil	The Jurats have considered the OTs' respective reports, especially (8.173, 8-316 and 10-109 and 10.126). They accept the need for specialist software and left-handed keyboard; the software to be replaced every 5 years @ £200, so £40 p.a. The keyboard is a one-off cost.	£40.00 p.a. plus £89.00 one-off cost
31.8	Mobile home	£10,239.60	Nil	The Plaintiff now claims £8,700 p.a. with 85% depreciation and 5-yearly replacements. See Judgment paragraphs 384 to 388.	Nil
31.9	Shower mat	£4.00	Nil	The Jurats consider that in the future he will have a level entry shower without the need for a shower mat.	Nil
31.10	Soap, shampoo and conditioner dispensers	£20.00	Nil Bath mitts £14.00	The Jurats prefer the evidence of Mrs Ho; they do not believe a bath mitt would be reasonable. They accept Mrs Ho's evidence of £100 cost, replaceable every 5	£20.00 p.a.

				years.	
31.11	Electric toothbrush	£10.00	Nil	Not pursued by the Plaintiff (para 179 at page 42).	Nil
31.12	Replacement brush heads	£10.00	Nil	Ditto	Nil
31.13	Shower seat	£20.59	£20.59	Agreed	£20.59 p.a.
31.14	Specialist lever taps	£10.00	One-off purchase of £100.00 only	The OT experts agree one-off purchase – thence usual replacement (page 11-10). The Jurats consider it to be part of the new accommodation costs and do not want to duplicate the cost here.	Nil
31.15	Après shower body dryer	£45.60	Bathrobes as alternative £60.00 one off purchase	The Jurats agree with Mrs O’Brien. They reject Mrs Ho’s “ <i>dignity argument</i> ” as a carer will need to assist in any event with washing; he also has difficulty regulating temperature and with his lack of initiative he would need to be prompted to	£180 one-off cost.

				leave the drier. The Jurats accept Mrs O'Brien's recommendation in her report at 10-104 of 3 bath-robies @ £60.00 each.	
31.16	Aprés shower body dryer annual maintenance	£45.00	Nil	See above.	Nil
31.17	Profiling bed with massager	£428.00	Purchase of one only at £3,980.00	The Jurats consider there is no need for a massager because of his general level of mobility. The OT experts agree the need for an Adjustamatic bed but disagree replacement time (page 11-6). The Jurats consider 20 year replacement at a purchase cost £3,980.	£199.00 p.a.
31.18	Safety cooking basket	£7.08	£2.83 Purchase cost agreed, replacement time in dispute	The Jurats prefer the evidence of Mrs O'Brien and in respect of this item and other items of kitchen equipment, they accept the longer replacement periods proposed by her.	£2.83 p.a.
31.19	Electric can opener	£5.00	£5.00 ditto	Experts agree capital cost of £25.00. Jurats allow 5 yearly replacement.	£5.00 p.a.

31.20	Undoit	£1.77	£0.67 ditto	Experts agree capital cost £3.35 (page 8-314 and 10.106). Jurats allow 5 yearly replacement.	£0.67 p.a.
31.21	Twister	£1.55	ditto	OT experts agree £3.10 capital costs (pages 8-314 and 10-106). Jurats allow 5 yearly replacement.	£0.62 p.a.
31.22	Rex potato peeler	£2.10	ditto	OT experts agree £4.20 capital cost. Jurats allow 5 yearly replacement.	£0.84 p.a.
31.23	Spread board	£4.50	ditto	OT experts agree £9.00 capital costs. Jurats allow 5 yearly replacement.	£1.80 p.a.
31.24	Bottle opener	£2.00	ditto	OT experts agree £4.00 capital costs. Jurats allow 5 yearly replacement.	£0.80 p.a.
31.25	Reflex knives	£7.08	£3.19 (one only)	The Jurats consider that to encourage the Plaintiff to assist in preparing food, a set of knives would be reasonable. They accept the evidence of Mrs Ho as to capital cost and replacement time.	£7.08 p.a.
31.26	Free-hand tray	£6.21	Nil	The Jurats agree a free-hand tray is reasonable. Capital cost is £31.05. Jurats allow 5 yearly	£6.21 p.a.

				replacement.	
31.27	Extendible duster	£3.75	£1.50 Purchase cost agreed, replacement time in dispute	OT experts agree the capital cost @ £7.50 and accept Mrs O'Brien's evidence of 5 yearly replacement.	£1.50 p.a.
31.28	Increased cost of daily items	£520.00	£416.00	In Mrs O'Brien's report at page 10-118, she said an extra £6 per week is needed but miscalculated that as being £416.00 p.a. The Jurats accept £6 per week, noting that wet wipes are no longer used.	£312.00 p.a.
31.29	Wander Call alarm system	£47.00	Nil	The Jurats consider there is no evidence of night-time wandering to justify this item.	Nil
31.30	Moisture sensing alarm	£62.40	£62.40	The Jurats reluctantly agree to accept this item agreed between the experts but they are not persuaded he will allow such an item of electric equipment in his bed.	£62.40 p.a.
31.31	Future equipment needs	£100.00	Nil	The Jurats consider there is no evidence of the need for additional items over and above what is itemised above.	Nil

31.32	Periodic renewal costs	£1,300.00	Nil	This is pleaded at para 241, page 1-343 and is dealt with in Mr Docker's letter at 9 -58. There is no need for blinds in the swimming pool as that has been disallowed. The Jurats consider that all the items are renewable every 10 years. The cost is, floor coverings and curtains of £3,550, window blinds for the conservatory of £950 and additional furniture and equipment in the carers' accommodation of £3,500. Total cost every 10 years in £8,000.00. Allow £800.00 p.a.	£800.00 p.a.
32.	Medical expenses:				
32.1	Prescriptions	£2,793.22	£701.95	The Plaintiff proposes to reduce the claim by $\frac{1}{3}$ to £1,862.15. At para 243 on pages 1-344 the Plaintiff claims for prescriptions for Citalopram and anti-psychotic medication which he is not presently taking. There is agreed evidence from the psychiatrists as to the importance of taking anti-psychotic medication which the Jurats strongly believe he should be encouraged to take. There is no evidence he is prescribed	£44.40 p.a. to age 65 only. x 21.68 = £962.59

				Citalopram. The Jurats will allow 12 prescriptions per annum @ £2.70 each plus 4 repeat prescriptions @ £3 as set out in para 243, total: £44.40 p.a.	
32.2	Occupational therapy:	£64,060.00	Nil	<p>Mrs O’Brien agreed 2 hours p.a. @ £70 per hour (see also Plaintiff’s closing speech para 181).</p> <p>The Jurats are not satisfied that occupational therapy has to be obtained from outside the Island, so they disallow travel costs. As to additional OT (para 182 of Plaintiff’s closing speech), the Jurats are not persuaded such cost is reasonable in addition to a team leader and case management.</p>	<p>£140.00 p.a. x 33.00 = £4,620.00</p>
32.3	Podiatry	£7,400.00	£3,969.60	The parties have used different multiplier. As to multiplicand, the Plaintiff proposes £200 p.a. and the Defendant £160 p.a. The Jurats accept the need for podiatry but there is no evidence to justify the higher figure.	<p>£160.00 p.a. x 33.00 = £5,280.00</p>
32.4	Neuropsychology: §245A §245B	£58,800.00 £750.00	£42,984.00 £750.00	The difference between the parties is in the multiplier. The multiplicands are agreed as per paras 245A and 245B on page 1-	£11,950.00 plus £1,400 p.a. for life, less 3 years.

				354A	£1,400.00 x 30.00 = £42,000 + £11,950.00 = £53,950.00
32.5	Consultations with rehabilitation consultant	£10,360.00	Nil	This is not pursued (para 186 at page 43).	Nil
32.6	Orthotics	£24,982.40	£6,723.59	The Jurats accept the Defendant's submission at para 6 on page 87 of his closing speech, as it is based on an analysis of the last 12 months usage.	£303.84 p.a. x 33.00 = £10,026.72
33.	Adult literacy costs	£451,083.28	Nil	See Judgment paragraph 353 and paragraphs 289 to 304.	Nil
34.	Miscellaneous expenses:		SEE GENERALLY APPENDIX 7 TO COUNTER SCHEDULE	The SUB-TOTAL of ongoing annual costs from items 34.1 to 34.10 is £2,682.72. Applying a multiplier of 33.00 produces	£88,529.76
34.1	Ambulance and Rescue Service subscription	£20.50 (annual)	Nil	Mrs Helmot's evidence is that she provides this and always has done, as a gift to her family.	Nil

34.2	Additional petrol	£783.81 (annual)	£250.00	The Jurats accept that the Plaintiff will incur additional petrol costs in future which they assess at £10 per week.	£520.00 p.a.
34.3	Replacement bedding	£260.86 (annual)	£68.00 £8.47	The Jurats accept the need for additional bedding over and above what he would have needed. They accept the evidence of Mrs O'Brien.	£76.47 p.a.
34.4	Gardening/DIY etc	£2,000.00 (annual)	One off cost of £2,000.00 then £565.38	The Plaintiff acknowledges this item overlaps with the claim forming part of the accommodation costs. The Jurats consider that the plaintiff will be able to do some gardening with his carers. Additional assistance will be required at, say, £60.00 per month = £720.00 p.a.	£720.00 p.a.
34.5	Replacement glasses	£150.00 (annual)	Nil	The Jurats accept Mrs Helmot's evidence that the Plaintiff has broken glasses three or four times. Some allowance would be reasonable to make for the additional cost over and above any breakages that might have occurred in any event.	£30.00 p.a.

34.6	Replacement washing machine	£181.04 (annual)	£8.75	£61.25 p.a. is agreed between the OT experts (para 189 of Plaintiff's closing speech and para 6 in page 89 of Defendant's closing speech).	£61.25 p.a.
34.7	Broadband	£305.00 (annual)	Nil	Not pursued by Plaintiff (para 189)	Nil
34.8	Psychiatric treatment	£3,000.00 (annual)	£900.00	The Jurats accept the Defendant's submission at page 1-417 and para 8 on page 89 of closing speech because it is based on the recent past.	£900.00 p.a.
34.9	Clothing	£1,000.00 (annual)	£225.00	The Plaintiff proposes £500 p.a. (para 189). The Jurats accept the need for extra clothing arising from additional wear and tear from extra washing and the wearing of his sling. They accept Mrs O'Brien's evidence.	£225.00 p.a.
34.10	Dry-cleaning	£500.00 (annual)	£60.00	The Plaintiff proposes £250.00 p.a. (para 189). The Jurats accept the need for extra dry cleaning.	£150.00 p.a.
35.	Costs of administering a protective trust on the Plaintiff's behalf	£1,299,810.00	£954,884.50	See Judgment paragraphs 441 to 454.	£114,000 – one off cost £29,000 p.a. x

					33.00 = £957,000.00 + £114,000.00 = £1,071,000.00
	Credit for interim payments: Credit for payments to SSD:	(£366,462.49)	(£643,011.81) (£366,462.49)		

APPENDIX 2

POST-ACCIDENT CHRONOLOGY

18 November 1998	The Accident.
19 November 1998	The Plaintiff is admitted to the Neurosciences High Care Unit at the Wessex Neurological Centre in Southampton general Hospital.
30 November 1998	Sedation was withdrawn.
24 December 1998	The Plaintiff was well enough to sit out of bed for short periods.
8 January 1999	The Plaintiff was transferred to the Rehabilitation Unit, Southampton General Hospital under the care of Professor D L McLellan.
End January 1999	The Plaintiff was able to walk with an Argo walking frame but his trunk control was poor.
23 February 1999	The Plaintiff pulled out the gastrostomy tube.
26 July 1999	The Plaintiff was discharged and returned to Mon Abri with care provided by carers from PHC.
10 January 2000	Mr Carlstedt (now Professor Carlstedt) performed the nerve transfer operation at the Royal National Orthopaedic Hospital at Stanmore.
16 June 2002	The arrangement with PHC breaks down and the Plaintiff's family assume sole responsibility for his care.
6 August 2002	Anita Bourgaize was employed to provide Domestic support.
April 2003	Anita Bourgaize's employment ends.
22 April 2003	The Latvian Carers, Ramona and Iveta start work. Other Latvian Carers are also employed from time to time thereafter.
29 June 2006	Head First prepare a report on the subject of the Plaintiff's ongoing Case Management and Support Work Needs, having just become involved.
12 July 2006	The DREZ Operation is performed by Professor Thomas at the National Hospital for Neurology and Neurosurgery.
September 2006	Team Medical are employed to provide care to the Plaintiff.
1 August 2008	The Summons is issued and these proceedings are commenced.

May 2009	Mr Help and Mr Willcocks, the Guernsey resident carers are employed.
June 2009	The arrangement with Team Medical ends.
5 October 2009	The hearing commences.