



Newman & Leivars
Royal Court
12th May, 2014

JUDGMENT 21/2014

Claim for damages.

**Approved Text
12.05.2014**

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

Between: CHANEL BONNIE NEWMAN Plaintiff

-and-

TRISTRUM WAYNE LEIVARS Defendant

Hearing dates: 24th (PM), 25th, 26th, 27th (AM) February 2014

Judgment handed down: 12th May 2014

Before: Richard James McMahon, Esq., Deputy Bailiff

Jurats: D O Le Conte, S M Jones and N D McCathie

Advocate for the Plaintiff: Advocate A M Merrien

Advocate for the Defendant: Advocate A J Ayres

Cases, texts & legislation referred to:

The Royal Court (Reform) (Guernsey) Law, 2008

The Social Insurance (Guernsey) Law, 1978

Livingstone v Rawyards Coal Co (1880) 5 App Cas 25

Helmut v Simon [2009-10] GLR Note 16

Giambrone v Sunworld Holidays Limited [2004] EWCA Civ 158

Mills v British Rail Engineering Ltd [1992] 1 PIQR Q130

Introduction

1. On the evening of 23 March 2002, Chanel Newman, the Plaintiff, was the supervising driver in the front passenger seat of a Ford Escort Turbo driven by the Defendant, Tristrum Leivars, who was a learner driver. Whilst driving at hugely excessive speed, the Defendant lost control of the vehicle and collided head-on with a granite wall. He was subsequently convicted for the offence of dangerous driving. The Defendant has admitted in these proceedings that he is liable for the multiple and serious injuries and losses sustained by the Plaintiff as a result of that accident. This judgment is therefore confined to the question of the appropriate amount of damages to be awarded to the Plaintiff.

2. The judgment has been prepared in accordance with the provisions of section 16(5) of the Royal Court (Reform) (Guernsey) Law, 2008:

“(5) 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.*

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

The Deputy Bailiff did not sum up to the Jurats in open Court but instead indicated that the Court would reserve its judgment and retired with the Jurats, as he is permitted to do under section 14(2) of the 2008 Law.

3. In this judgment, the findings of fact are the unanimous findings of the Jurats.

Procedural background

4. The Plaintiff’s Cause was originally pleaded in May 2007 and was first tabled on 22 June 2007. The Defences were tabled on 6 June 2008, at which point it was clear that the only issue between the parties was in relation to the amount of damages to be awarded to the Plaintiff. The Defendant accepted certain aspects of the damages claimed and disputed others. The differences were set out in the Plaintiff’s Schedule of Special Damages and Future Loss and the Defendant’s Counter-Schedule of Loss. Before the matter came on for trial, the Plaintiff’s Schedule of Loss and Damage was updated twice, most recently on 26 June 2013 and the Defendant’s Counter-Schedule was also updated twice, most recently on 3 February 2014. The Plaintiff was represented by Advocate Merrien. The Defendant, acting through his insurers, was represented by Advocate Ayres, assisted by Advocate Bailey.
5. This has been an unusual case because the expert evidence adduced by the parties was agreed, with the consequence that there was no oral evidence in relation to any of the three disciplines concerned in which both the parties originally relied on their own evidence.
6. The Plaintiff had instructed Mr David Ricketts as an expert in orthopaedic surgery. His first report is dated 2 November 2005 and he provided an update on 26 January 2012. In this field, the Defendant instructed Mr Jeremy Hucker, whose report is dated 14 February 2008, which he augmented with two brief letters dated 8 May 2008. These two experts held a telephone conference on 19 October 2012, as a result of which they produced a Joint Statement, which they both signed a few days later.
7. Both parties instructed Consultants in the field of psychiatry. On behalf of the Plaintiff, Dr David Gill prepared a report dated 24 June 2012 and, on behalf of the Defendant, Dr Howard Sergeant prepared a report dated 28 November 2007. These two experts conferred on 11 June and 27 July 2013 and produced a Joint Statement dated 31 July 2013, which they have both signed.
8. The third area in which agreed expert evidence was adduced was in the field of employment-related matters. The Plaintiff instructed Mr Paul Jackson, whose report is dated 6 December 2011. The Defendant instructed Mr Trevor Gilbert, whose first report is dated 7 October 2010, and whose additional report is dated 14 September 2012. These two experts held a telephone conference on 4 June 2013 and produced a Joint Statement, which they both signed on 7 June 2013.

9. The Court was also provided with a report from Consultant Oral and Maxillofacial Surgeon, M. N. J. Baker, dated 14 April 2004, which had been sought on behalf of the Plaintiff and which was agreed by the Defendant.
10. In addition to the agreed expert evidence, to which more detailed reference will be made in due course, the Court heard oral evidence from four witnesses on behalf of the Plaintiff. The most extensive evidence was given by the Plaintiff and by her mother, Virginia Newman. Further evidence was given by the Plaintiff's partner, Jesse Duffy, and by Eduardo Fernandes, who purchased the Plaintiff's parents' chip shop business at the beginning of 2009. No witnesses were called on behalf of the Defendant. Advocate Ayres confined the Defendant's challenges to the Plaintiff's evidence to the way in which he sought to undermine it through cross-examination.

The facts

11. The essential facts relating to the accident in which the Plaintiff sustained her injuries are not in dispute. It is perhaps a blessing that the Plaintiff herself has no recollection of events from the time between being in the car earlier that evening to recovering consciousness in the hospital. The Plaintiff was born on 4 January 1979.
12. Shortly before the accident happened on 23 March 2002, the Defendant was already losing control of his vehicle when driving at a very dangerous speed along Bulwer Avenue. As a result, his vehicle crossed to the wrong side of the road, causing both the driver of a vehicle approaching and the Defendant to swerve so as to take evasive action to avoid a head-on collision. At this point, the Defendant's vehicle collided head-on with a granite roadside wall, before spinning across the road, colliding with a parked vehicle. The Defendant's car caught fire with the Plaintiff trapped inside. The Defendant and two rear seat passengers managed to get out. Mr Duffy was an eye-witness to these events because he had been outside his own vehicle, which had been parked up in the vicinity. It was Mr Duffy and a friend of his who, after some effort to open the passenger door of the Defendant's vehicle, managed to release the Plaintiff's seat belt and drag her to safety.
13. The emergency services arrived promptly and began working on the Plaintiff on the roadside. Mr Duffy had telephoned the Plaintiff's mother to alert her to the fact of the accident. Mrs Newman attended the scene and travelled to the hospital in the ambulance with the Plaintiff. On review in the Accident & Emergency Department, it was noted that there was a large wound over the lower left leg and multiple long bone fractures were present. The Plaintiff had a head concussion without neurological signs, an undisplaced left orbit fracture, a grade II compound fracture of the distal left tibia and fibula, a transverse fracture of the distal left femur and a comminuted diaphyseal fracture of the right femur. Later that night, the Plaintiff underwent surgery under general anaesthetic for approximately seven hours. Metalwork was inserted in both of the Plaintiff's femurs and her left tibia. The Plaintiff was in the Intensive Care Unit for three days and then on a ward until two weeks following the accident, at which time she was discharged.
14. Whilst in hospital, the Plaintiff had a consultation with Mr Bacon about the injury to her eye socket. She was referred to the maxillofacial unit at Southampton Hospital, where she underwent a further operation. Mrs Newman accompanied her for the week or so the Plaintiff spent at Southampton Hospital. Although the dates of hospital stays and discharges were slightly unclear, Mr Hucker's report refers to a discharge summary dated 7 May 2002, indicating that the Plaintiff was more likely than not to have gone to Southampton at the very end of April or the beginning of May 2002. Both the Plaintiff and Mrs Newman vividly described the poor weather conditions in which they flew on a special medical flight from Guernsey to Southampton.

15. On returning from Southampton, the Plaintiff took up residence at her grandparent's bungalow. This decision was reached because Mr Duffy was out at work all day, meaning that she could not sensibly return to her own bungalow, Barnstedt, which she had purchased in late 1998, and, because she was unable to negotiate stairs, it would have been less easy for her to have moved into her parents' house at that time. The Plaintiff's grandparents were available to provide care each day throughout the entire day and Mrs Newman also visited when she could around her work commitments, as did Mr Duffy.
16. The Plaintiff's recovery through the year following the accident saw her move from being wheelchair-bound, to using a pulpit frame, to using crutches and finally to using a stick. Again, the precise dates on which each stage was reached were unclear, although some indication of the likely dates involved can be derived from analysing the hire statements for equipment from the St John Ambulance & Rescue Service. By way of example, the walking aids pulpit was first hired on 29 May 2002 and the hire period was five weeks and crutches were hired on 28 June 2002, with the hire period being 11 weeks. The Plaintiff and Mrs Newman recalled that there was a time when the Plaintiff's progress with her mobility was such that she needed only to use one crutch but then, following a further operation, she reverted to using two crutches before again progressing to the single crutch. Mr Hucker's report refers to two further operations. The first was on 9 September 2002, where four interlocking screws from the nail inserted in the left tibia were removed. The second was on 31 January 2003, which was the occasion on which a soft tissue injury to the Plaintiff's left big toe, which had developed following the accident, was dealt with by fusion of the interphalangeal joint and the interlocking screws from the nail inserted in the left femur were also removed. The Plaintiff and Mrs Newman could not say which of those operations resulted in the Plaintiff reverting to two crutches, but believed it was the second of them because when the Plaintiff returned to live at her parents' house in October 2002 she was still using a wheelchair.
17. The Plaintiff moved back to Barnstedt at the beginning of 2003. She and Mr Duffy remained living at Barnstedt until February 2007, at which time that property was sold. The entire net proceeds of sale were used to release bonds in favour of HSBC Bank plc. The Plaintiff and Mr Duffy have been living at the Plaintiff's parents' house since that time.
18. From 1997 until the date of the accident, the Plaintiff worked in her parents' business, L'Islet Fish and Chip Bar, as a manageress. The business was effectively being run by Mrs Newman, because Mr Newman worked principally as a fisherman. The Newmans had acquired the business in 1995. Before that time, Mrs Newman had worked in fish and chip shops for a number of years. During 1996, the Plaintiff began helping out part-time after finishing her full-time job elsewhere. She was brought into the business in 1997 and paid £100 each week. The family's intention was that she would in due course assume responsibility for the business, thereby enabling Mrs Newman to retire at around her 50th birthday in April 2006. As a result of the accident, the Plaintiff could not return to work at the chip shop, meaning that the family's succession planning was thrown into disarray. After some years during which Mrs Newman was treated for cancer and suffered various family bereavements, the Newmans eventually sold their business to Mr Fernandes with effect from the beginning of 2009.
19. Since her accident, the Plaintiff has received benefits from the Social Security Department of the States of Guernsey. Until 20 September 2002, she received sickness benefit at the weekly rate of £81.06. Thereafter she was in receipt of invalidity benefit, initially at the weekly rate of £93.18 and rising thereafter annually. The parties were agreed that the effect of section 114 of the Social Insurance (Guernsey) Law, 1978 was that the Plaintiff is obliged to give credit for one-half of the sickness and invalidity benefits received by her in the five-year period following the accident, namely £14,995.92. The Plaintiff's invalidity benefit stopped with effect from the beginning of 2012, at which time she began to receive unemployment benefit as a jobseeker. As a result of more recent problems with her anxiety or depression, she has re-commenced receiving invalidity benefit.

20. The Plaintiff has not been in paid employment since the accident. She has undertaken some re-training through schemes offered by the Social Security Department, such as Pathways and Kickstart, although events have meant that she has not completed everything she began. She has studied a numeracy course, which she passed with an excellent result, and for a GCSE in Mathematics and also in Business and Communications Systems, as well as the European Computer Driving Licence. She did a part-time work placement with Northern Trust in 2012 but needed to stop that activity due to pregnancy-related illness not associated with her accident. Her daughter was born on 9 February 2013.

General directions

21. The Deputy Bailiff reminded the Jurats of their respective roles: the Deputy Bailiff remains the sole judge of questions of law and procedure and the Jurats are the sole judges of questions of fact. The Jurats were directed that they must accept his directions on the law and follow them.
22. 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 and the Deputy Bailiff explained that to establish something on the balance of probabilities means to prove that something is more likely so than not so. Insofar as the Defendant sought to establish any fact, the burden of proof rested on him to prove it to the civil standard.
23. The Deputy Bailiff further directed the Jurats to have regard to the whole of the evidence presented to the Court, and to form their own judgments about the witnesses, and which evidence they treated as reliable, and which they considered was 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. The Deputy Bailiff summarised that position by clarifying that, when it comes to the facts of this case, it is the Jurats' judgment alone that counts.
24. As a general principle, the Deputy Bailiff reminded the Jurats that an award of damages in tort is to compensate a plaintiff for the losses, pecuniary and non-pecuniary, sustained as a result of a defendant's wrongdoing. The Court's aim, therefore, must be to award the "*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*" (per Lord Blackburn in *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, 39). However, a plaintiff is also under a duty to mitigate his losses, in the sense that damages are not recoverable for such losses as a plaintiff has avoided by taking action subsequent to the tort. For example, if a plaintiff has lost his pre-accident employment as a result of an actionable injury, damages for loss of earnings must take account of any earnings in an alternative employment. These issues are questions of fact for the Jurats to determine. Overall, the Court's aim should be to make an award that is fair, reasonable and just in all the circumstances of the case.

The issues

25. At the beginning of the hearing, the parties' Advocates helpfully presented an Agreed Case Summary, identifying a number of admissions and areas of agreement and those issues that remained unresolved between them.
26. In relation to the general damages in respect of the Plaintiff's pain, suffering and loss of amenity, this head has been agreed at £22,650. Interest at 2% per annum from 27 May 2007 on that sum has also been agreed. Other heads of loss and damage were also agreed between the parties: past travel costs of £550.50; past costs of equipment hire of £176; past medication/prescription charges of £640; the cost of future psychological treatment of £840; and the cost of future medication/prescriptions of £2,139.65.

27. The two amounts in respect of which the Plaintiff is obliged to give credit have similarly been agreed. As previously noted, the Plaintiff is obliged to give credit for one-half of the sickness and invalidity benefits received, namely £14,995.92. There have also been three interim payments made towards the damages to be recovered: £10,000 was paid on 5 February 2003 and two further payments of £5,000 each were made on 26 January 2004 and 4 February 2010.
28. The most significant area of dispute between the parties relates to the Plaintiff's loss of earnings, both to date and, in particular, into the future. The Defendant contends that the Plaintiff has already failed to mitigate her losses through her choice not to undertake any paid work since the accident, in a situation where the expert evidence points to her capacity to have re-commenced some economic activity some years ago. The Court has therefore been required to determine the dates on which the Plaintiff could reasonably have been expected to commence work, initially part-time and thereafter full-time. Moreover, the Defendant has questioned the totality of the Plaintiff's remuneration package at the time of the accident and the likely earnings she would have received from the fish and chip business from the time it was envisaged she would take that over.
29. Other areas of dispute do not have quite the same financial consequences but also call for factual determinations by the Jurats. They relate to the value, if any, to be attributed to any personal items lost in the accident and its immediate aftermath; the cost, if any, of engaging others to care for the Plaintiff's horses in the months immediately following the accident; and the extent of care provided by the Plaintiff's family members, both in terms of the hours that can be claimed for the various periods involved and when this head of loss should cease to be payable. The Defendant accepted the principle that care and assistance at an hourly discounted nurse rate of £7 should be used for the calculation of what is payable, but has challenged the number of hours claimed by the Plaintiff.

Smaller amounts in dispute

30. The Deputy Bailiff directed the Jurats that the recoverability of these elements of the Plaintiff's claim largely turned on their assessment of the credibility of the evidence given by and on behalf of the Plaintiff. The Defendant's case did not involve denying that these aspects of the Plaintiff's claim were denied but rather putting the Plaintiff to strict proof in relation to them. Whilst Advocate Ayres had submitted that there was a complete absence of documentary evidence substantiating that monies had been expended on procuring care for the Plaintiff's horses or in relation to the items she claimed were damaged or lost as a result of the accident, the question, as Advocate Merrien had submitted, was whether, to the requisite civil standard, they were satisfied from the oral evidence they had heard that the amounts claimed had been expended and the values of items attributed by the Plaintiff were reasonable. In relation to the claim in respect of orthotic shoe inserts to treat the Plaintiff's varus left heel, the question was whether they believed that the Plaintiff would actually undergo this treatment.

Lost/damaged personal items

31. The Plaintiff has claimed in respect of the clothing she had been wearing at the time of the accident, all of which needed replacement, being a Puffer coat (£160), a Nike shirt (£65), a t-shirt (£50), Ben Sherman jeans (£95), underwear (£47) and shoes (£112). She also sought to recover the value of a watch (£230), a gold chain (£280) and an Ericsson mobile phone (£350). She explained that she had received the watch and gold chain as presents and so had estimated their value by reference to similar items. As regards her mobile phone, she recalled having saved up for a higher specification, and so more expensive, phone. She believed it had been lost in the fire following the car crash. The clothing that had been cut off her on the evening of the accident was still in her possession, but had not been produced to the Defendant's Advocates or the Court. In relation to the coat she was wearing, she further explained that this was of a type typically associated with horse-riding and not an everyday brand.

32. In relation to the items that the Plaintiff claimed were lost in the course of the accident, the Deputy Bailiff directed the Jurats that the initial question for them to consider is whether they accept, as was effectively conceded by Advocate Ayres, that there will inevitably have been clothing irreparably damaged and, if so, the value to be accorded to those items. The further question is whether the three items of personal belongings are accepted as having been lost and, if so, the proper value to attribute to them.
33. Whilst acknowledging that it might have been open to the Plaintiff to have provided more detail about the items damaged and lost so as to have enabled the Defendant's Advocates to consider whether the amounts claimed were reasonable or inflated, the Jurats concluded that they would allow this aspect of the claim in full. Their overall perception of the Plaintiff was that she had given her evidence in such a way that she was doing her honest best. Accordingly, in the absence of any evidence pointing to a different conclusion, the Jurats accepted her evidence in relation to the items damaged and lost and their value. They further took general notice of the fact that a top-of-the range mobile telephone has consistently been at or above the amount of £350 claimed by the Plaintiff and the way in which young people frequently want something more than a purely functional device, which lends credibility to the value placed on it by the Plaintiff. Similarly, despite being on a comparatively modest wage, the Jurats accepted that the Plaintiff, as a young woman of 23 at the time of the accident, was more likely than not to have invested in clothing of the type described.
34. The total amount awarded in respect of items damaged or lost in the accident is, therefore, the amount claimed of £1,389.

Care of horses

35. Before the accident, the Plaintiff was a keen horsewoman, competing in competitions locally. At the time of the accident, the Plaintiff owned a horse, which was stabled at the rear of her parents' house. The day following the accident, a new horse arrived in Guernsey. That horse had been purchased some time previously and arrangements made to transport it to the Island that weekend. As a result of the Plaintiff's accident, she was unable ever to ride that horse. It was also intended to be a horse to be trained for, and ridden in, competitions. Mrs Newman, with support from the Plaintiff, gave evidence that the nature of such a horse is that it has to be worked to maintain its level of ability. In short, the failure to work the horse would result in it rapidly losing its value as a competition horse. Accordingly, Mrs Newman took it upon herself to make arrangements for the two horses to be looked after properly whilst she concentrated on visiting her daughter in hospital in the immediate aftermath of the accident.
36. Arrangements were made with Matthew Le Pelley, who was a chip shop customer and a horse rider, to look after the horses. Mrs Newman explained that Mr Le Pelley did not wish to travel to her house for this purpose, so she had the horses taken to the Manor Stables. The two horses were stabled there for three weeks at a cost of £30 each week in respect of each horse. Mrs Newman took the decision to bring the two horses back to her house after those three weeks because of the costs involved. Mr Le Pelley continued to look after the Plaintiff's horses until 1 October 2002, ie, a total of 28 weeks. He was paid £175 each week for the services he performed. At some point, although the precise date was not given, the horse that arrived the day after the Plaintiff's accident was sold.
37. Advocate Ayres was critical about the way in which this element of the Plaintiff's claim was presented. Mr Le Pelley had left the Island by the time his name had been forthcoming and so there was no evidence from him confirming what he had been paid. The Plaintiff had not produced any receipts for the payments and no documentation relating to the three weeks the horses spent at Manor Stables. The Defendant, therefore, put the Plaintiff to strict proof in this regard as to the alleged need for, and cost of, this aspect of the claim.
38. The Deputy Bailiff directed the Jurats that they could, if they accepted Mrs Newman's evidence, supported by that of the Plaintiff, allow this element of the Plaintiff's claim. However, if they did not believe Mrs Newman about the amounts paid or the time period over

which payments to Mr Le Pelley were said to have been paid, then the claim should be reduced appropriately or disallowed in its entirety.

39. The Jurats concluded that the evidence given satisfied them to the civil standard that these expenses in relation to caring for the Plaintiff's horses had been incurred as a result of the accident. They took the view that Mrs Newman presented generally as an honest person and, although being confused about certain dates, did not consider that this meant that Mrs Newman had fabricated these expenses. Accordingly, they accepted what she said about the amount paid to Mr Le Pelley and also that these arrangements continued until the start of October 2002. That was, in their view, consistent with the overall rate of recovery of the Plaintiff and coincided with the time when she returned to her parents' house, meaning that Mrs Newman was spending less time visiting her daughter at the grandmother's bungalow.
40. The total amount awarded in respect of expenses incurred in relation to caring for the Plaintiff's horses is, therefore, the full amount claimed of £5,140.

Shoe inserts

41. The updated report of Mr Ricketts notes that there is a varus deformity to the Plaintiff's left foot subtalar joint. The treatment for this condition is with orthotics and he noted that a replacement orthosis might be needed during the period of one year during which, in his opinion, the deformity ought to be corrected. The Plaintiff has claimed for the costs associated with this treatment, which are £360 in total.
42. The Defendant has similarly put the Plaintiff to strict proof in relation to this element of her claim. The Defendant was questioned about why she had not made the purchase already and asserted that she has not had the money to do so. The inference the Defendant invites the Jurats to draw is that, because the amount involved is so small, it could readily have been found and this aspect of the Plaintiff's treatment for her injuries attributable to the accident could have been resolved by now, indicating that the Plaintiff does not intend to incur this expense in any event, in which case it is not a loss at all and this head of her claim should be disallowed. The Deputy Bailiff directed the Jurats that this question was a simple question of the Plaintiff's credibility.
43. The Jurats accept the Plaintiff's evidence on this issue. The Jurats noted that the Plaintiff's claim had also included the future cost of treatment for the operations to remove the remaining metalwork in her legs. The Plaintiff had understood for many years that this would entail surgery being undertaken in England. The total cost of this was put at £7,980. Although she wishes to have this surgery undertaken because it is believed that this will reduce the pain she suffers in her legs by around 50%, she has delayed it because of the costs involved. Those elements of her claim were conceded as no longer needing to be pursued by her because of information given on behalf of the Medical Specialist Group that the operations to remove the metalwork from the Plaintiff's legs could be undertaken in Guernsey at no cost to her. The Jurats were satisfied that future treatment had been combined in the Plaintiff's mind as something to address following the conclusion of these proceedings and this supported their conclusion that she did still intend to purchase the orthotic inserts to resolve the ongoing problems with her left foot.
44. The total amount awarded in respect of the future cost of equipment or aids is, therefore, the full amount claimed of £360.

Past care and assistance

45. Because of the severity of the Plaintiff's injuries, she has made a claim, on a reducing basis, in respect of the hours spent by family members providing care and assistance to her during her recovery. The Defendant has acknowledged that the Plaintiff is entitled to recover damages under this head, but has disputed the number of hours claimed and has submitted that the stage was reached much earlier in the Plaintiff's recovery when the assistance being provided by Mrs Newman was "*no more than the assistance a mother could reasonably be expected to provide to her daughter, in any event*". The parties were, however, agreed that

the appropriate manner in which to value the gratuitous services provided was by reference to the commercial value of the care given, discounting for the usual factors (see, eg, Helmut v Simon [2009-10] GLR Note 16). The hourly rate they agreed was £7.

46. The Plaintiff's claim was spread across different periods. Initially, upon returning from Southampton Hospital, the Plaintiff lived at her grandparents' bungalow. The period concerned was 20 weeks until October 2002, when the Plaintiff went to live at her parents' house. During those 20 weeks, the Plaintiff, Mrs Newman and Mr Duffy asserted that everything had to be done for the Plaintiff and that her grandparents were effectively providing round-the-clock care, in the sense of always being available if needed. The tasks performed included helping the Plaintiff in and out of bed or in and out of her wheelchair, assisting with the use of a commode or the toilet, personal dressing and bathing, taking medication, washing clothes and cooking. Allowing for the fact that they were not called on to provide constant care, the claim for that period is at 12 hours each day, which aggregates as £11,760. The Defendant has suggested that 8 hours each day is a more reasonable assessment of the time involved in caring for the Plaintiff, which equates to £7,840.
47. On moving to her parents' house from October to the end of 2002, which is taken as a 12-week period, the Plaintiff claims that her mother provided 8 hours of care each day, such care and assistance including cooking, cleaning, personal bathing, personal dressing and helping the Plaintiff use the commode or toilet. The Plaintiff and Mrs Newman claim that 8 hours every day was spent in this way, whereas the Defendant has suggested a more reasonable amount of time would be 4 hours each, thereby halving the sum of £4,704 claimed by the Plaintiff.
48. The one period where the parties agreed was the first calendar year when the Plaintiff moved backed to her own home, Barnstedt. The Plaintiff explained that she was still on crutches and so was dependent on others for assistance with everyday tasks such as cooking, cleaning and shopping. Her claim that her mother went every day for approximately one hour was accepted as a reasonable one by the Defendant. Accordingly, this element of the claim, being £2,548, was not in dispute.
49. Thereafter, the Defendant submitted that the gratuitous care claimed did not satisfy the test because what Mrs Newman was doing amounted to no more than occurs in the ordinary way of life where a mother and daughter see each other and the mother helps out, whether by cooking or tidying up or doing whatever happened to need doing at the time. Advocate Ayres compared this to the inter-family help provided by the Plaintiff herself once she had resumed driving approximately one year after the accident and helpfully regularly collected her younger brother from his school thereafter. The Plaintiff made a claim in respect of the calendar year of 2004 for 2 hours of such care each week and from the beginning of 2005 to 26 June 2013, which was the date on which the final Schedule of Loss and Damage was settled, for one hour each week. There was no distinction between the time when the Plaintiff continued to live at Barnstedt and after she moved to her parents' house after its sale in February 2007. It was also unclear why the claim for ongoing care and assistance from her mother had been ended at that time, rather than being projected into the future. The total amount claimed in respect of the 492 weeks from January 2004 to June 2013 was £3,808.
50. The parties also agreed that the test the Court should apply was that the care provided to the Plaintiff must have been "*distinctly beyond that which is part of the ordinary regime of family life*", referring to the decision of the Court of Appeal of England and Wales in Giambrone v Sunworld Holidays Limited [2004] EWCA Civ 158. The Deputy Bailiff directed the Jurats that they should, therefore, apply this test in deciding whether damages in respect of the care claimed by the Plaintiff should be awarded by the Court. They could then test the outcome against the other test drawn from Mills v British Rail Engineering Ltd [1992] 1 PIQR Q130 (as set out in para. 21 of the Giambrone case (*supra*)) that, in order to qualify for an award, the relative must have provided care well beyond the ordinary call of duty.

51. The Deputy Bailiff further directed the Jurats that, although the parties had agreed an approach based on an hourly rate, they should not regard themselves as obliged to make an award calculated in that manner. If they preferred, and if they felt that the circumstances of the case justified them in doing so, they could instead make an assessment on a rounded figure of the amount of damages to award for each period, or even generally, so as to reach a figure for the proper recompense for services provided gratuitously by the family members caring for the Plaintiff. Such an approach had been followed by the trial court in the *Giambrone* case (*supra*) and was endorsed by the Court of Appeal. The Deputy Bailiff also reminded the Jurats that any monies awarded under this head of the Plaintiff's claim would be treated as held by her on trust for the people who actually performed the services.
52. The Jurats took note of the way in which the Plaintiff's recovery had taken place. By reference to the hire of equipment from the St John Ambulance & Rescue Service, the Jurats noted that the commode was hired for a period of 13 weeks. There had been no suggestion on behalf of the Plaintiff that a commode had been obtained from an alternative source. Accordingly, the Jurats concluded that the Plaintiff's mobility was such that, during 2002, she progressed from being initially wheelchair-bound, to being able to move with the aid of a walking pulpit, and then to using crutches. They accepted that these difficulties inevitably meant that the Plaintiff required some care and that, had the level of care required not been provided by family members, it would have had to have been paid for. Having regard to the evidence of the Plaintiff herself, Mrs Newman and Mr Duffy, the Jurats assessed what they regarded as a reasonable amount of care being provided for each period, and chose to make use of the hourly rate on a strict arithmetical basis rather than taking a more general figure, whether rounded up or down.
53. The Jurats concluded that, whilst the Plaintiff was living at her grandparents' house in May to October 2002, the claim for 12 hours each day was excessive. Equally, however, they took the view that the extent of the Plaintiff's injuries and what she clearly needed help with meant that the Defendant's offer of 8 hours each day was on the low side. The Plaintiff clearly needed assistance at various times during the day and for someone to be available within a short time to deal with any requirements as they arose. In the circumstances, they were satisfied that the reasonable amount of care actually provided fell midway between the parties' assessments and determined that 10 hours each day was appropriate. Using a similar approach in respect of the 12 weeks that the Plaintiff spent at her parents' house, having regard to the medical evidence, the Jurats concluded that her recovery had progressed better than she, Mrs Newman and Mr Duffy contended and that each party had miscalculated the amount of care reasonably required to be provided. Accordingly, because Mrs Newman was out working full-time in the fish and chip shop business, the correct figure was 6 hours each day. A small element of each aspect of the claims made by the Plaintiff in respect of 2002 appeared to relate to companionship, which the Jurats considered fell outside of the test they had been directed to apply. In respect of 2003, the Defendant had agreed the number of hours claimed by the Plaintiff.
54. By the start of 2004, the Jurats were satisfied that the Plaintiff's recovery no longer required any care of the type that would attract an award of damages. The tasks being undertaken on behalf of the Plaintiff were within the family's ordinary call of duty and part of the ordinary regime of family life. In reaching that conclusion, they took into account that the Plaintiff had, by then, been living independently with Mr Duffy in her own house for a year and, whilst there may have been activities around the house that she may have found difficult to perform, in the same way as other families operate with various members lending helping hands where it is welcome, this was the state of affairs for the Plaintiff from that time onwards. As a result, the Jurats found, on a balance of probabilities, that the claim in respect of gratuitous care and assistance should cease at the end of 2004, in accordance with the position taken by the Defendant.
55. The total amount awarded in respect of past gratuitous care and assistance is, therefore, £15,876.

Loss of earnings

56. The most significant aspects of the Plaintiff's claim for damages are represented by her past and future loss of earnings. At the date of the accident, the Plaintiff was a young woman aged 23 years and 2 months. She was working full-time as a manageress in her parents' fish and chip shop business and effectively had a substantial part of her working life in front of her. She has taken some steps, with support from the Social Security Department, to return to work but had not, by the time of the hearing, actually done so. It was the Defendant's case that the Plaintiff should have returned to work, initially part-time and then progressing to full-time, in a different occupation some years previously. Advocate Ayres submitted that the expert medical evidence supported that contention. Accordingly, the Plaintiff's failure to resume working meant that she had not mitigated her losses as she is required to do. The parties also disagreed about what formed part of the Plaintiff's remuneration package at the time of the accident and what level of earnings she could have expected to have received had she taken over the ownership of the fish and chip shop business as envisaged by her and her mother and also about whether any allowance should be made for career breaks for bringing up a family.

Directions

57. In relation to past loss of earnings, the Deputy Bailiff directed the Jurats that they needed to find as a fact what was included within the Plaintiff's remuneration package at the date of the accident. Because there was no dispute about the Plaintiff being paid £100 each week, and that amount had been paid to her since she began full-time working for her parents in 1997, this issue turned principally on whether the mortgage payments in respect of Barnstedt also formed part of her remuneration. Further, the Jurats were directed to consider whether, as claimed, the weekly pay of £100 would have been increased in line with inflation, so as to reflect her higher costs of living, for the period after the accident up to the trial. In this way, the Jurats would be able to reach their conclusions about the losses sustained by the Plaintiff by reference to her pre-accident actual earnings.
58. The Deputy Bailiff also directed the Jurats that the approach taken by the parties in their pleadings was primarily to use these pre-accident earnings as the method of calculating the losses sustained by the Plaintiff up to the date of the trial but that, in relation to future loss of earnings, or earning capacity, the claim had been formulated and opposed on the basis that the Plaintiff would have become the proprietor of the family fish and chip shop business and so would have moved away from receiving wages but would instead have drawn from the profits of the business. The Jurats needed, therefore, to be satisfied from the evidence, which had not been challenged, that the family's plan would have been given effect by now and that it was appropriate to consider future loss by reference to drawings from the business rather than by reference to the ongoing receipt of wages. If they were so satisfied, they then needed to consider all the evidence they had heard and read about the level of drawings that the business, in the hands of the Plaintiff, would have been capable of generating in order to assess the starting point for calculating future loss. In particular, was the evidence adduced on behalf of the Plaintiff that £35,000 net was capable of being generated annually correct, was the Defendant's suggestion of using the accounts for 2005 correct or did the evidence support a conclusion somewhere in-between?
59. The parties had agreed that the appropriate multiplier to use was that relating to females to pension age 65 set out in Table 10 of the 7th edition of the Ogden Tables, and had further agreed that using the column for the rate of return of -1.5% was appropriate. They also agreed that an adjustment needed to be made for the vicissitudes of life. Since the time of preparing the Schedule of Loss and Damage, the Plaintiff has had another birthday, so the Deputy Bailiff directed the Jurats that they should use the figures in Table 10 and Table C adjusted accordingly. This produced a multiplier of 37.11 and an adjustment of 0.86. The remaining question for the Jurats to resolve was whether it was appropriate, as suggested on behalf of the Defendant, to adjust the multiplier further by using 34.06 on the assumption that the Plaintiff would take a further two years off work for the purpose of child rearing.

60. The final area for the Jurats to reach a conclusion on was, having regard to all the evidence in the case, about when the Plaintiff could reasonably be, or have been, expected to return to work. In that regard, the Jurats were charged with determining whether a phased return to work was appropriate, as both parties had accepted, and, if so, the dates applicable to part-time working and then full-time working. The Jurats were further directed that they also needed to decide the appropriate rates of pay to apply to the Plaintiff's resumption of working, paying particular attention to the agreed expert evidence, and then to use those figures to calculate the losses sustained by the Plaintiff.
61. By resolving these issues, the Jurats would address the questions posed by the Advocates in their Agreed Case Summary and would be able to make awards in respect of past loss of earnings and future loss of earnings, both of which the Defendant acknowledged were recoverable by the Plaintiff, the only dispute between the parties being about the quantum of each award.

Pre-accident remuneration

62. The Jurats accepted the evidence given by the Plaintiff and Mrs Newman about the Plaintiff's remuneration package. They noted that the Plaintiff had first begun working part-time in the fish and chip shop in 1996 so as to help out at a time when Mrs Newman was seeking to grow the business, having acquired it the previous year. She did not get paid anything for that part-time working. At the beginning of 2007 she was paid £100 each week. That was consistent with the approach described by Mrs Newman relating to the amounts that she and her husband paid themselves out of the takings on a weekly basis. They appear to have used round figures as much out of convenience. The Jurats further noted that financial matters, including what to put on tax returns, were placed in the hands of accountants and that the figure of £100 each week in 1997 kept the Plaintiff below the level of her personal tax allowance. There was scope to have increased the Plaintiff's wages in subsequent years and still to have kept her basic earnings below her personal tax allowance. Although no actual increases in that basic pay had been made, the Jurats considered that it was more probable than not that increases would have applied in the years following the Plaintiff's accident. In particular, they concluded that it was not reasonable for the Plaintiff's wage to have remained at £100 each week from 1997 through to the date of the trial. In doing so, they accepted the evidence of Mrs Newman that it was the intention of her and her husband to have given wage rises before the business was transferred to their daughter and understood that this had been overlooked previously because of the inclusion of the mortgage payments in the overall package. The Jurats concluded that increasing the Plaintiff's weekly wage by RPI from the beginning of each calendar year, commencing in 2003, as claimed by her, was a reasonable approach to take. The Jurats further noted that Advocate Ayres had acknowledged that the Final Counter-Schedule of Loss had been deficient in omitting to make any offer at all in respect of the Plaintiff's past loss of wages, whether at a flat rate of £100 or including annual increases.
63. In relation to the Plaintiff's claim that the mortgage repayments formed part of her remuneration, the Jurats noted that Barnstedt had been purchased on 17 December 1998. It was a two-bedroomed bungalow with a large parking area and an average-sized garden. A letter dated 21 June 2005 from HSBC Bank plc confirmed that the mortgage secured on the property had been taken in the joint names of the Plaintiff and Mrs Newman. The Bond was consented to by them and also by Mr Newman. The Plaintiff's parents had agreed to act as guarantors of the loan. The Jurats understood that this would most probably have arisen because of the low level of earnings of the Plaintiff in comparison to the size of the loan. The letter also confirmed that the mortgage payments had always been paid from the Plaintiff's sole account.
64. The Defendant had challenged the Plaintiff's assertion that the mortgage payments formed part of her remuneration package because when the property was sold in 2007 the entirety of the net proceeds of sale were taken by the bank to release four bonds that had been consented to in relation to it and because the Plaintiff had failed to include the payments on her income tax returns. Advocate Ayres queried whether the Plaintiff's remuneration package could really have more than doubled overnight when Barnstedt was purchased.

65. Notwithstanding those factors, the Jurats concluded that the mortgage payments made by the Plaintiff did represent remuneration received by her in respect of her employment in the family business. They took the view that the basic wage of £100, if taken in isolation, was insufficient given the amount of time the Plaintiff spent working in the business. Accordingly, they accepted that, once the business had become more established, it was part of the agreement within the family that the Plaintiff would look to buy her own home, because taking that step had been a long-held ambition. The Plaintiff had begun looking for a suitable property earlier in 1998. Instead of getting any pay increase, the Plaintiff and her parents had agreed that a full contribution would be made towards the costs of the mortgage and included within her remuneration package. The Jurats were satisfied that the arrangements made, with assistance from Mrs Newman's accountant, meant that the amounts paid in respect of the mortgage each month represented net amounts in the hands of the Plaintiff, under which the Plaintiff benefited from the mortgage interest tax relief available. That was the reason why the payments were routed through the Plaintiff's sole account with the bank. The arrangements under which, as part of its security requirements, the Plaintiff's parents were also involved in the purchase, did not affect that conclusion and the Jurats accepted Mrs Newman's evidence, which was unchallenged, that the net proceeds of the sale were used to re-pay the mortgage on her and her husband's own home.
66. The mortgage payments actually made by the Plaintiff between the accident and date of sale of Barnstedt were set out in her Schedule of Loss and Damage. The mortgage was on a capital repayment and interest basis until May 2005, when it was converted into being interest only. The Defendant accepted that, if the Court found these payments formed part of the Plaintiff's remuneration, they were recoverable in the amount pleaded, namely £43,391.36.
67. Following the sale of Barnstedt in February 2007, the Plaintiff's claim uses the average amount of the monthly repayments made in the 12 months preceding sale, which has been calculated as being £621.91 each month. Although this method of calculating past loss does not take into account any fluctuations in interest rates since that time or whether the mortgage might have reverted at any stage to making payments against the capital sum borrowed, in the circumstances of this case, the Jurats are satisfied that this is an appropriate way of assessing the notional loss caused to the Plaintiff as a result of the accident. However, they consider that the Plaintiff's calculation of the average monthly payment at £621.91, and the figure used by the Defendant to reach his total in respect of the remainder of 2008 are both mistaken. The Plaintiff's figure appears to have been reached by aggregating the 12 monthly payments made in March 2006 to February 2007 inclusive plus the final payment in respect of part of February 2007 plus the monthly payment made in February 2006, all of which total £7,463.02, which then becomes £621.91 when divided by 12 (ignoring any fraction). The Jurats have concluded that the simplest way of obtaining an average payment to use in respect of post-sale lost remuneration is to ignore the part month of February 2007 and to use the preceding 12 months of full payments. These aggregate to £6,550.50 and, when reduced to a monthly average, produce a figure of £545.88.

Inter-family transfer of business

68. The Jurats accepted the evidence of Mrs Newman that it was her plan to transfer the fish and chip shop business to the Plaintiff at or around her 50th birthday, which was on 10 April 2006. Such a transfer would have been undertaken without seeking any payment from the Plaintiff. Thereafter, the Plaintiff would have been running the business as her own, having by that time completed approaching 10 years of working there. The Plaintiff herself gave evidence that she would have continued to operate the business in pretty much the same way that her mother had and from whom she had learnt what was required to operate a successful fish and chip business.

Level of drawings

69. In many respects, the crux of the case turned on what level of drawings from the business the Plaintiff could reasonably have expected to be in a position to receive so as to calculate her future loss of earnings. The Jurats reached the conclusion that the assessment of what the business could realistically produce offered by Mrs Newman, and supported by the Plaintiff's

own assessment, was over-optimistic and not borne out by the other evidence. Equally, the Jurats rejected the approach suggested by the Defendant to make use of the last set of financial statements before the proposed transfer, which coincided with the time when Mrs Newman encountered various personal problems of illness and family bereavements, which have contributed to the business going into decline, because they consider the 2005 financial statements to be flawed through failing to take into account any depreciation. Accordingly, the Jurats have done their best from all the information provided to reach a conclusion on what they find to be a reasonable return to use for the basis of the calculation of the Plaintiff's future loss of earnings from the business she would have been gifted but for the accident.

70. In doing so, they did not find the evidence given by Eduardo Fernandes particularly helpful. Mr Fernandes purchased the Newmans' chip shop at the beginning of 2009. He provided copies of his financial statements for the first four years of its operation and explained how he set about conducting his new business. His opening hours may have been similar to those of Mrs Newman, perhaps even slightly shorter, but his approach relied on permanent full-time staff rather than the greater reliance placed on employing school-aged children and returning university students under which Mrs Newman ran the shop. Moreover, he had already been running a fish and chip shop in Town for some five years. He was quite rightly proud of his reputation for good food and service and explained that he quickly built up good custom at the L'Islet premises, which is what he explained he expected because it is a good location and has car parking. Because of the larger scale of his business, he is able to re-deploy his staff where they are most needed at any given time.
71. Because of these differences, the Jurats concluded that they could not draw a direct comparison between what Mr Fernandes has achieved in his years running the fish and chip shop and what the Plaintiff would have achieved over the same period. At best, the evidence of Mr Fernandes supported the Plaintiff's contention that the decline of the business experienced in the last few years when Mrs Newman operated it, perhaps reluctantly given that the family's succession planning had been thrown into disarray because they knew the Plaintiff was unable to work in that type of environment, would not have occurred had the chip shop been run by the Plaintiff from 2006, as everyone had envisaged. To that extent, the Jurats rejected the suggestion made on behalf of the Defendant that the Newmans' business was in terminal decline and that offering to use the figures from the 2005 financial statements was actually generous.
72. The Jurats carefully considered the evidence given by Mrs Newman and the position reflected in the financial statements of her business. They noted that Mrs Newman accepted that she mis-remembered dates but decided that these slips did not affect their assessment of her overall credibility. However, they could not find any evidence to support her assertion that the business was capable at any time of supporting net drawings for the proprietor of £35,000 per annum. They also noted that, when the new range was installed at the shop and the servery expanded at approximately the end of 2004, there was no immediate corresponding increase in business. Instead, it took Mrs Newman some time to adjust to the different cooking requirements, and she acknowledged that she lost some of her custom as a result of these teething problems.
73. The Jurats recognised that the financial statements in respect of the fish and chip shop from 2000 to 2008 did not show an overall consistent picture. The first four years indicated that there was a fairly close and consistent relationship between turnover and costs of supplies, however, costs of staff fluctuated quite significantly, affecting the net profit figures. There were two different sets of accounts for 2004. The first showed a lower turnover than the previous years, but with staff costs remaining as they had been, resulting in a net loss. The financial statements for 2005 included quite different figures in respect of 2004. The turnover shown nearly doubled, but the costs of sales and the administrative expenses appear to have been taken directly from the figures for 2003. As previously noted, no allowance has been made for depreciation in 2005 (or in the figures for 2004 in those financial statements). If only by way of example of the effect this omission has, the depreciation for the year in relation to the new range that had been installed was recorded in the Notes as being £15,000.

Had depreciation been taken into account, there would not have been any net profits for 2005 from which to base the calculations. For these reasons, the Jurats do not consider that they can properly place any reliance on the figures in these accounts, which showed a net profit for 2005 of £22,125 and which was the figure advanced on behalf of the Defendant as being the figure to use to calculate the Plaintiff's future loss of earnings.

74. Instead, the Jurats have had regard to the financial statements for the three years preceding 2005 in order to achieve a more realistic figure for the business that the Plaintiff would have taken over in 2006 but for the accident. In doing so, they have reached the conclusion that the profit available to the Plaintiff would have been a rounded figure of £18,000 per annum gross, which they have then translated into £15,000 net for the purpose of extrapolating to the date of the hearing.
75. In response to a question from the Jurats, the Deputy Bailiff further directed them that they could, if they wished, adjust the level of drawings available to the Plaintiff to reflect what they considered to be a reasonable figure to use to produce a just outcome when calculating the future loss of earnings from the date of the trial because to rely solely on the assessed amount of earnings as at the time of taking over the business in 2006 would result in an artificially low overall award. This is because the assessment of prospective loss of earnings is inevitably less precise than the calculation of accrued loss of earnings based on actual figures and the aim of the exercise is to put the Plaintiff into the position in which she would have been but for the accident.
76. Having regard to that direction, the Jurats considered that the Plaintiff struck them as a person who would have been able to make some improvement to the business, in real terms, between the time of assuming responsibility for it as owner and the date of the trial. There would also inevitably have been the type of increase in turnover and costs of sales experienced in the years in which Mr Fernandes has had the L'Islet fish and chip shop business and also the early years of Mrs Newman's tenure. For these combined reasons, the Jurats concluded that an increase in the profit levels available exceeding RPI was appropriate and that a rounded figure of 5% per annum, applied at the start of the year, would lead to a reasonable assessment of the type of level of drawings available to the Plaintiff as at the date of the trial. Using the weekly amount of £288.46 for 2006, representing annual drawings of £15,000 net, and applying the 5% per annum increase eight times for 2007 to 2014 inclusive, the weekly figure would have grown to £426.18 or £22,161.36 per annum. This is the net figure that the Jurats have determined should be used rather than the Plaintiff's suggested figure of £35,000 or the Defendant's of £17,216.87.

Motherhood

77. In relation to the question of whether, as suggested on behalf of the Defendant, the multiplier to use should be adjusted by two years to reflect the time when the Plaintiff would not have worked whilst raising a family, the Jurats first noted that the Plaintiff's unchallenged evidence was that she was not the type of person who could afford to take such a long period of time off for her children. The fact that she gave birth to her daughter on 9 February 2013 and had not resumed working since was attributable to other reasons. The Jurats also accepted that the arrangements envisaged within the family were such that the Plaintiff would have benefited from the support of Mrs Newman, thereby enabling the Plaintiff to resume working after giving birth within a short period of time. However, the main reason for rejecting the Defendant's submissions on this issue was that para. 40 of the Ogden Tables explains that *inter alia* Table C, which was agreed between the parties as being applicable to use to make the adjustment for the vicissitudes of life already allows "*for the interruption of employment for bringing up children*". It would, therefore, amount to a double deduction to make any further adjustment.
78. For these reasons, the Jurats rejected the contention of the Defendant and have determined that the appropriate multiplier to use when calculating future loss of earnings is 31.91 (being 37.11 x 0.86).

Resumption of employment

79. The Court received a good deal of evidence about why the Plaintiff had not yet returned to work and when she, Mrs Newman and Mr Duffy thought this might properly happen. The Jurats weighed up the competing conclusions that could be derived from the material provided from the Social Security Department file, noting that no direct evidence had been adduced by either party as to what those records actually meant to any officer at that Department. On the one hand, it was apparent that for a long period of time the Plaintiff had been in receipt of invalidity benefit, yet it was also apparent that efforts had been made to encourage the Plaintiff to be more proactive in taking steps to secure some form of paid employment.
80. The Defendant's case in relation to this key question was that the expert evidence contained opinions as to the dates on which the Plaintiff was capable of returning to work following the accident and, because that evidence had been agreed between the parties, it was not open to the Plaintiff to attempt to go behind it by explaining her position differently.
81. The Deputy Bailiff directed the Jurats that, in the absence of any difference of opinion between the parties' experts, that evidence should be accepted by them in the same way as any factual evidence adduced which went unchallenged, provided they regarded that evidence as reliable and being of assistance to the Court. There were Joint Statements prepared by each pair of experts to which they could best direct their attentions. Any evidence given by the Plaintiff, Mrs Newman or Mr Duffy pointing towards any different conclusion would have to be regarded with care and it would only be if that evidence was something that had not been taken into account by the experts that departing from their conclusions might be warranted. He reminded the Jurats that the assessment of the evidence was something particularly within their province.
82. In the Joint Statement of Mr Ricketts and Mr Hucker, under the heading "Work", they wrote:

"We are agreed that Miss Newman could not be expected to work in her parents' fish and chip shop in the future. She would be unable to spend time on her feet and to lift and carry. We are agreed that Miss Newman could have returned to a part-time office job at the beginning of 2006 and probably return full time to an office job at the beginning of 2007 if only her physical injuries were taken into account."

The Jurats noted that the orthopaedic experts' opinion was qualified by the fact that consideration would be needed to the combination of the Plaintiff's physical and psychiatric injuries.

83. Turning to the Joint Statement of Dr Gill and Dr Sergeant, the Jurats noted first that they were agreed that the severity of the Plaintiff's "*depressive symptoms was, in the main, mild*", but that her recovery had to an extent been hindered by other events in late 2006 and early 2007 within her family. At para. 9 of their Joint Statement they concluded that:

"Miss Newman's return to work appears to have been significantly related to her physical injuries. Purely from the psychiatric viewpoint, Miss Newman, if she had had help from an employment expert or a local skill centre, may have been able to have returned to part-time work from 2008 onwards. We consider that eventually Miss Newman ought to be able to return to an appropriate job, full time, until normal retirement age."

The Jurats noted that the psychiatric experts appeared to defer to the orthopaedic expert assessment of the likely date for returning to work, yet those orthopaedic experts had concluded that an earlier date to use would be appropriate if solely the physical injuries were taken into account. Accordingly, the Jurats took the view that the combination of the opinions of the two sets of experts entailed using the later dates set out in the Joint Statement of the psychiatric experts.

84. The Jurats then considered the Joint Statement of the employment experts, Mr Jackson and Mr Gilbert. That Statement confirmed that "*upon re-entering employment, given the protracted absence from employment, Miss Newman is likely to move into part-time work, at*

least initially” and, further, “*from commencement of job search, Miss Newman might anticipate a period of around six months before securing a suitable job*”. They were also agreed that the Plaintiff would require support for the whole period of the initial job search and wrote:

“It was agreed that, at least initially, and perhaps for a period of 6-12 months, say 9 months Miss Newman would be limited to part-time work”.

85. In the light of the totality of the expert evidence, and in the overall circumstances of the case and their assessment of what had been said by the Plaintiff, Mrs Newman and Mr Duffy about what the Plaintiff was capable of doing, both physically and mentally over the relevant period, the Jurats concluded that it was reasonable to have expected the Plaintiff to commence her job search for suitable part-time employment from the beginning of 2008. A period of suitable re-training, during which time the Plaintiff would not have had any earning capacity, to which Advocate Merrien referred, would have been concluded before the end of that job-search period. Given that the expected time taken to secure employment was six months, this would have meant that the Plaintiff should have commenced part-time work in July 2008. The Jurats were also prepared to adopt the mid-point period given in the Joint Statement of Mr Jackson and Mr Gilbert relating to the time before the Plaintiff was capable of progressing to full-time work, namely 9 months. As a result, full-time employment would have commenced from April 2009 and continued since that date.

Levels of pay

86. The Jurats noted that both parties had made use of the figures for the pay levels the Plaintiff could reasonably have been expected to earn set out in the Joint Statement of Mr Jackson and Mr Gilbert. For part-time working at 20 hours each week at the minimum wage of £6.30, they calculated it equated to £6,552 per annum on both a gross and a net basis. The net figure was surprising because, although income tax would not have been payable on that level of pay, social insurance would have been, with the consequence that a lower net figure probably ought to have been given. However, in the Plaintiff’s Schedule of Loss and Damage, the figure used for entry level part-time administrative work was £5,116.80 and the Jurats considered that it would be more appropriate to use the pleaded figure in respect of the time when the Plaintiff should have been in such part-time work. For full-time work the experts’ view was that the Plaintiff might anticipate earnings in the range of £14,995 to £18,720 gross per annum. The figure pleaded on behalf of the Plaintiff was approximately £14,430 net per annum and on behalf of the Defendant was £14,314.55. Once again, the Jurats have chosen to adopt the figure pleaded on behalf of the Plaintiff.
87. As a consequence, the Jurats are satisfied from all the evidence in the case that the Plaintiff is entitled to recover past loss of earnings without bringing into account any notional earnings she should have earned through re-commencing work from the date of the accident to June 2008. At that point in time, the Plaintiff should have commenced part-time work in order to mitigate her losses and would have been capable of earning £5,116.80 net per annum. Accordingly, over the 9-month period of undertaking such part-time work, she would have earned £3,837.60, which falls to be deducted from the amounts for the years 2008 and 2009. Thereafter, she should have progressed to full-time work at annual net earnings of £14,430 per annum, which amount falls to be deducted from the Plaintiff’s past loss of earnings from April 2009 until the date of trial and from the future loss of earnings by reference to the drawings she should have taken from the chip shop business.

Award in respect of past loss of earnings

88. In reaching their conclusions on the amount to be awarded in respect of the Plaintiff’s past loss of earnings from the date of accident to the date of trial, the Jurats’ award relates to 40 weeks in 2002, all of 2003 to 2013, and 8 weeks in 2014. As set out above, the award comprises the weekly pay of £100, increased by reference to an annual rate of RPI (using the rates pleaded up to 2012 and 2.7% for both 2013 and 2014), the mortgage payments actually made up to the sale of Barnstedt in February 2007 and, thereafter, a notional amount in respect of mortgage payments calculated using the last 12 full monthly payments made by the

Plaintiff, (all such mortgage payments from the date of accident onwards being indicative of her net losses) and then deducting the amount of net earnings she should have received had she re-commenced working, initially part-time and then full-time, in order to mitigate her losses with effect from July 2008 and April 2009 respectively. That calculation can be summarised as follows:

<u>Year</u>	<u>Pay (£)</u>	<u>Mortgage (£)</u>	<u>Attributed earnings (£)</u>	<u>Loss (£)</u>
2002	4,000.00	7,293.87		11,293.87
2003	5,403.32	10,173.64		15,576.96
2004	5,666.96	10,213.17		15,880.13
2005	5,855.72	7,721.62		13,577.34
2006	6,115.20	6,397.80		12,513.00
2007	6,415.24	(actual) 1,591.26 (notional) 5,635.22		13,641.72
2008	6,489.60	6,550.50	2,558.40	10,481.70
2009	6,635.20	6,550.50	12,101.70	1,084.00
2010	6,784.96	6,550.50	14,430.00	
2011	7,000.24	6,550.50	14,430.00	
2012	7,225.40	6,550.50	14,430.00	
2013	7,420.40	6,550.50	14,430.00	
2014	1,172.40	1,007.77	2,220.00	
Totals:	76,584.64	89,337.35	74,600.10	94,048.72

89. The effect of the attributed earnings from 2010 to the date of the trial, consistent with the Plaintiff's obligation to mitigate her losses, is that they exceeded the Plaintiff's losses for those periods. Accordingly, she sustained no past loss in respect of those years. With the losses sustained in those years being zero, rather than being treated as being a negative amount to take into account against the losses for previous years the total amount of the award in respect of past loss of earnings is £94,048.72.

Award in respect of future loss of earnings

90. Having reached the conclusion that the fish and chip shop business would have been operated by the Plaintiff in such a way that, by the date of the trial, it would have been capable of generating profits or drawings in her favour of £22,161.36 net per annum, the forward-looking loss, taking into account the attributed earnings from sedentary full-time employment of £14,430 net per annum, is £7,731.36. Applying the multiplier of 31.91, the total amount awarded in respect of future loss of earnings is £246,707.70.

Conclusions

91. For the reasons given, the Court's award of damages payable by the Defendant to the Plaintiff is comprised of:

General damages	£22,650.00
Past losses	£117,820.22
Future losses	£250,047.35

The amounts already received and which must be brought into account by the Plaintiff to deduct from those amounts, totalling £34,995.92, in respect of half the benefits received during the five years following the accident and the interim payments made, were agreed.

92. If only as a means of comparing what the Plaintiff claimed (omitting the claims for future orthopaedic treatment and associated travel costs, which were abandoned, and revising what the Plaintiff had agreed could be recovered for future medication and prescriptions), what the Defendant offered and what the Court has awarded, the following tables sets out the relevant figures:

<u>Head of claim</u>	<u>Plaintiff's figure (£)</u>	<u>Defendant's figure (£)</u>	<u>Award (£)</u>
Pain, suffering and loss of amenity	22,650.00	22,650.00	22,650.00
Past loss of earnings	154,294.99	49,753.98	94,048.72
Care and assistance	22,778.00	12,740.00	15,876.00
Items lost and damaged in accident	1,389.00	Nil	1,389.00
Costs of care for horses	5,140.00	Nil	5,140.00
Travel costs	550.50	550.50	550.50
Equipment hire	176.00	176.00	176.00
Medication/prescription charges	640.00	640.00	640.00
Less half benefits received	(14,995.92)	(14,995.92)	(14,995.92)
Less interim payments made	(20,000.00)	(20,000.00)	(20,000.00)
Loss of future earnings	706,255.80	84,022.16	246,707.70
Future psychological treatment	840.00	840.00	840.00
Future equipment, aids	360.00	Nil	360.00
Future medication and prescriptions	2,139.65	2,139.65	2,139.65
Totals:	882,218.02	138,516.37	355,521.65

93. In relation to the interest payable upon the amounts awarded, the parties had agreed that the general damages should attract interest at the rate of 2% per annum from the date of the cause (25 May 2007) to the date of the decision. The parties were also broadly agreed that interest on past special damages should be calculated by reference to half of the Special Account Rate, albeit that the Plaintiff's Schedule of Loss and Damage did not refer to the reduction in that rate for the month of June in 2009 to which the Defendant's Counter-Schedule referred. The Court invites Advocate Merrien to prepare interest calculations based on these rates in the light of the Court's award to be agreed with Advocate Ayres and provided to the Greffe within 14 days following the handing down of this judgment.
94. In relation to costs, at the conclusion of the hearing the Deputy Bailiff indicated that these would be reserved. Costs will normally follow the event. If the parties are able to agree an appropriate costs order its terms can be supplied to the Greffe for inclusion in the Act of Court. In the absence of agreement, the Deputy Bailiff will hear the parties' submissions when the matter is listed at a mutually convenient Interlocutory Court or through the Advocates seeking a further hearing for that purpose.

Postscript

95. This judgment was circulated to Counsel in draft, in accordance with Practice Direction No. 1 of 2012, on 17 March 2014. As a result, Advocate Ayres raised a question about whether the amounts received by the Plaintiff in respect of mortgage repayments had been decided as net or gross losses and, if the latter, if the figures in the draft judgment needed to be revised. Due to holidays and other commitments, comments on this issue from Advocate Merrien were received and considered by the Court more slowly than would usually be the case. In the light of both Advocates' comments, the Jurats' findings have now been clarified more explicitly for the benefit of the parties. These circumstances explain why this judgment has been handed down later than the Court would have liked, for which it apologises to the parties.