

Appeal against the quantum of damages awarded by the Royal Court in a personal injury claim.

[2020]GRC028

IN THE COURT OF APPEAL OF GUERNSEY

CIVIL DIVISION – APPEAL NO. 534

8th June 2020

Before: **James McNeill QC**
Sir Michael Birt
Jeremy Storey QC

Between: **Simone Simon** **Appellant**
-and-
The Committee for Health and Social Care, States **Respondent**
of Guernsey

Decision handed down: 8th June 2020

The Appellant in person
Advocate G S K Dawes for the Respondent

Birt JA

1. This is the judgment of the Court.
2. This is an appeal against the judgment of the Royal Court (Roberts, OBE, QC, Lieutenant Bailiff together with Jurats Helyar-Wilkinson, Wyatt and Robilliard) (“the Judgment”) dated 2nd September 2019 whereby the Appellant, as plaintiff, was awarded damages totalling £11,436.58 plus interest against the Respondent. The Appellant’s claim had been for in excess of £400,000 and the Respondent had made a ‘without prejudice save as to costs’ offer in June 2018 of £15,000. The Lieutenant Bailiff therefore ordered the Appellant to pay the costs of the Respondent from the date of the offer. This sum will no doubt greatly exceed the damages and the outcome has therefore been a disaster from the Appellant’s point of view.
3. She now appeals against the quantum of damages awarded by the Royal Court.

The background

4. On 29th June 2014 the Appellant slipped and fell in a corridor at the Princess Elizabeth Hospital when visiting her mother. The floor had recently been washed and there was no sign warning

that it was wet. Liability for the incident was in due course conceded. The only issue therefore which came before the Royal Court was as to the quantum of damages. The case was heard over four days on 1st – 4th July 2019.

5. As already mentioned, there was a vast difference between the parties as to the quantum of damages. The Appellant claimed that as a result of the incident she had suffered multiple physical injuries plus post-traumatic stress disorder (“PTSD”), which together she valued (finally) at £62,000 in respect of general damages, together with past and future loss of earnings of £335,104 and past and future medical bills of over £8,000. The Respondent’s case was that the incident caused only minor injuries which resolved within months, for which general damages for pain, suffering and loss of amenity should be in the region of £5,000. The Respondent further denied that the Appellant had suffered or would in future suffer any loss of earnings or had any medical or medication costs as a direct result of the incident.
6. The Appellant was aged 54 at the time of the Judgment. Her full medical records were available to the Royal Court together with a 24 page chronology drawn from those records (both before and after the incident) prepared by Mourant Ozannes on behalf of the Respondent. The Judgment also contains at paragraph 7 a three page summary of some of the medical issues of the Appellant prior to the incident. Given the chronology and the summary in the Judgment, it is not necessary for us to set out such matters in any detail. For the purposes of this appeal, we would mention only the following matters relating to the Appellant’s medical history prior to the incident:
 - (i) In 1990, when working as a nurse, the Appellant injured her back whilst lifting a patient; subsequently she developed severe back pain which resulted in five years off work. She had however had intermittent back pain in the 1980s and had also had an arthroscopy of her left knee in 1986. In the 1990s, beginning in 1993, she was involved in 5 road traffic collisions most of which involved her car being struck from behind. From 1993 onwards she suffered from neck pain as well as back pain. Her treatment for her back included epidural injections. In August 2000 she reported experiencing pain in her head, neck, shoulders, arms, back and legs. She spent 10 days in hospital for an intensive manipulation of her cervical spine under anaesthetic.
 - (ii) In February 2001 a scan showed widespread degenerative change in her neck. In a letter from Mr Simpson to Dr McClymont dated 20th July 2001 it is stated “*she has had severe persistent neck pain and arm pain mainly on the right for about 3 years and low back pain radiating into the legs for about 2 years. The pain in her neck and arm is severe, continuous and has had a significant effect on her life. She sleeps badly in a chair wearing a collar. In addition to the pain, function of the dominant right upper limb is impaired.*”
 - (iii) In 2003 she had an operation on her cervical spine at C5/6 and in 2006 an operation on C6/7. These involved discectomies and fusions.
 - (iv) In a letter dated 7th January 2004 from Dr Savundra, consultant audiological physician to Dr Smith, he said, amongst other matters, “*she has persisting discomfort around her right shoulder blade, although her neck problems have improved following her neurosurgery*”.
 - (v) In a letter dated 21st September 2005 from Dr Smith to Mr Harrison at the Princess Margaret Hospital in Windsor, Dr Smith noted “*... over the course of the last 4 or 5 months, she has had increasing pain in the lower part of her neck and across her*

shoulders, together with paraesthesia, again in both hands. ... Clinically, she is acutely tender over the lower part of the cervical spine and upper dorsal spine, as well as over both trapezius muscles. Power appears to be quite markedly restricted in her hands and arms affecting all muscle groups and her reflexes are rather equivocal ...”

- (vi) In October 2006 she underwent another arthroscopy on her left knee.
- (vii) In July 2008 she was referred to Mr Casey, consultant neurosurgeon, with the referral letter dated 28th July stating *“You operated on this patient’s neck about 2 years ago ... She did quite well following this but is now having a recurrence of neck pain, together with pain radiating into her left shoulder. On examination she is extremely tender in the mid-cervical spine and down the upper dorsal spine...”*.
- (viii) On 12th January 2011 she slipped on a wheelchair ramp and fell sideways on her right side landing on a flowerpot. In November 2011 she was recorded as having heard a pop in her right knee followed by pain and limping. The doctor questioned whether it was a cartilage tear.
- (ix) In October 2012, she was diagnosed with cancer in her right breast. After chemotherapy and radiotherapy, a partial mastectomy was carried out in April 2013 together with an LD mini-flap reconstruction with axillary dissection.
- (x) On 18th September 2013 she was referred to Southampton and she was stated to be *“struggling with neck pain and pain radiating down her right arm ...”*.
- (xi) On 21st October 2013 Dr Gomes wrote to Dr Elliott stating *“She gives a two month history of painful wrist and knees...”*.
- (xii) On 20th November 2013 Mr Vajramani wrote to Mr Vhadra *“She has had long-standing neck and arm pain for which she had undergone two level anterior cervical discectomy ... Unfortunately in 2011 she had an episode of slip and fall resulting in worsening of her neck and arm pain. Since then she has been having intermittent right-sided brachalgia. The pain seems to be getting worse... Her symptoms are similar to her previous symptoms prior to her neck surgery”*.
- (xiii) On 20th January 2014, the Appellant’s physiotherapist wrote to Mr Vhadra *“On examination she had pain on most cervical movements ... altered sensation in the right arm ...”*.
- (xiv) On 16th February 2014, she was the subject of an assault which caused her to attend upon A&E, which recorded that she had fallen backwards onto her bottom and then banged her head on tarmac. On 13th March 2014, her GP Dr Elliott wrote *“... It was noted that she had an 8cm area of bruising on her lower back ...”*.
- (xv) On 26th March 2014, Dr Elliott wrote to the Social Security Department stating *“... As indicated on her medical certificate, radicular symptoms related to her cervical disc disease have also been an active problem in recent months. She was reviewed by a neurosurgeon in Southampton in November 2013, who advised against any surgery. Her right arm pains had been improving with physiotherapy, but she has developed further pain following an alleged assault she suffered last month. This has understandably shaken her somewhat and, having made progress with counselling, has now taken a step back psychologically. When I saw her earlier this week she was rather low in mood and tearful. She also has some symptoms*

consistent with a post-concussion syndrome, having sustained a head injury during the assault. Having felt close to being able to return to work prior to the assault, I feel it may be several weeks before she is back at this stage ...”.

(xvi) On 31st March 2014 she attended A&E which recorded that she had had a fall five weeks ago and was complaining of “*severe head/neck pain... R sided headache ... and numbness in R hand and arm.*”

(xvii) On 8th April 2014 Mr Amroch wrote to Dr Elliott stating “*She complains about back pain and problems with movement of the right arm with tingling ... Otherwise she feels quite well.*” On 14th April she had an ultrasound of the right shoulder. The notes referred to increasing pain in her right arm and reduced range of movement in her shoulder with possibly a rotator cuff tear following the assault. However, the ultrasound disclosed no obvious abnormalities.

7. As previously stated, the incident took place on 29th June 2014. The Appellant has been consistent in saying that, as a defensive measure she put her right arm up instinctively to cover her breast (because of her operation) and that her right hip and shoulder banged against the wall of the corridor with the palm of her left hand hitting the floor to break her fall. Although she did not mention this originally (e.g. in her affidavit of 17th November 2015), she has since also asserted that her right leg twisted under her left leg during the fall, as a result of which her big toe on her right foot was bent backwards.
8. She was seen in A&E at the time. The notes recorded “*fall – multiple minor injuries ... tender R ankle, left elbow and left scaphoid, hip also tender but able to flex hip ... discharged home ... has own pain relief ... diagnosis: multiple minor.*” The front page had also recorded her as having sustained injury to “*wrist/shoulder/ankle*” and stated that she had “*good movement in arm/shoulder but painful on movement*”. X-rays were taken at A&E but showed no fractures. It is therefore not disputed that her injuries were entirely soft tissue injuries.
9. Since then the Appellant has been in considerable pain and her various conditions have been the subject of ongoing investigations. Operations have included in November 2015 a carpal tunnel decompression of her left hand following a diagnosis of carpal tunnel syndrome and an arthroscopy in December 2015 to the right knee due to a meniscal tear. Osteoarthritic changes were noted within the right knee and, in July 2017, within the right shoulder. She has also had surgery to her right shoulder in December 2018. She has substantial problems in walking for more than a short distance and uses a crutch. She has not been able to return to work.
10. A convenient description of her current state can be found in a letter from Dr Schreiber, a consultant rheumatologist who examined her at the request of her GP on 1st July 2018. His report to the GP of that date contains the following passage:

***“On examination she appears in distress. She walks with a crutch, a left wrist support and a right ankle support. She holds her right ankle in marked plantarflexion. She has exquisite tenderness over the right acromioclavicular joint and at the right greater trochanter. She allows only about 30 degrees of knee flexion on the couch but can sit with 90 degrees of flexion. She holds the right foot in extreme plantar flexion with tenderness over the right peroneal tendon and around the ankle. She has reduced pin prick sensation over the right ankle. The right ankle is weak.*”**

***... She is clearly symptomatic with chronic pain in several areas...*”**

11. Her schedule of loss and damage filed 18th March 2019 summarised her injuries as follows:

“As a direct result of the incident, the Plaintiff has sustained soft tissue injuries to her right hip, right knee, left hand, left wrist, right ankle, right hand, right shoulder and exacerbated pre-existing cervical spine pain and lower back pain which has also caused the Plaintiff to undergo surgery to her right knee, left hand and right shoulder as a direct result of the index incident and for which the Plaintiff relies upon the ‘thin egg shell rule’ (sic). Furthermore the Plaintiff has developed Post-Traumatic Stress Disorder and 54 months post-accident recovery or resolution is unlikely to occur whilst the Plaintiff continues to suffer Chronic Pain and Pain is likely to be persistent for constitutional and accident related reasons. The Plaintiff’s prognosis remains poor due to her ‘Susceptibility to Chronic Pain after relatively minor injuries’ and existing vulnerabilities. The Plaintiff continues to receive ongoing treatment from a multidisciplinary pain management team in respect of the injuries sustained as a direct result of the index incident.”

12. She summarised her claim for pain, suffering and loss of amenity and psychological damage as follows:

“Ankle injury causing permanent disability (CRPS); knee injury requiring surgery – early degenerative disease; hip injury causing shortening of the hip; right shoulder injury requiring surgery for arthritis; right hand deformity and extensive swelling; CTS injury requiring surgery and permanent disability; CRPS left wrist; great toe injury (right foot requiring surgery); widespread chronic/complex pain syndrome leading to disability; post-traumatic stress disorder requiring extensive treatment and medication.”

Her general damages for pain and suffering and loss of amenity were assessed as £62,000. There was then a claim essentially for loss of past earnings and loss of future earnings together with medication costs coming to just over £340,000, bringing the total claim to a little over £400,000.

The evidence before the Royal Court

13. At a time when she was still legally represented, the Appellant instructed Mr Patrick Armstrong as an expert to prepare an orthopaedic and trauma report. That report was dated 30th January 2017 with an addendum dated 21st November 2017. The Appellant did not wish to rely upon Mr Armstrong as a witness at the trial but, as his report and addendum had been disclosed to the Respondent, they were available as evidence at the trial pursuant to Rule 16 of the Evidence in Civil Proceedings (Guernsey and Alderney) Rules 2011.
14. The Respondent instructed Mr Richard Coombs to provide expert orthopaedic evidence. His report was dated 11th June 2018 and he attended to give oral evidence. The report and addendum of Mr Armstrong were available to Mr Coombs at the time he prepared his report and part of Mr Coombs’ report was written by reference to whether or not he agreed with Mr Armstrong.
15. Expert psychiatric reports were also obtained. Dr Jose Belda produced a report dated 1st August 2017, with an addendum dated 4th December 2017, on behalf of the Appellant and the Respondent instructed Dr Paul Courtney, who produced a report dated 31st August 2018. There was also a joint statement of the psychiatric experts dated 27th February 2019 which set out the areas of agreement and disagreement. Both psychiatric experts gave oral evidence at trial. The evidence before the Royal Court therefore consisted of oral evidence from the Appellant, the Appellant’s daughter Kayleigh Marquis, Mr Coombs, Dr Belda and Dr Courtney together with their witness statements, affidavits or reports. The Royal Court also had the medical records of the Appellant, both before and since the incident together with the report and addendum of Mr Armstrong.

16. The Judgment dealt with the evidence rather briefly but we have had the advantage of seeing the witness statements, reports and the transcript of the oral evidence. We would summarise the key elements of the evidence as follows.
17. The Appellant accepted that she had indeed had the various medical issues over the years which were summarised in her medical records. She had been off work for five years after the incident in 1990, for some months in 2000, for two years from 2008 to 2010 (although she had attempted to find employment during that period) and from October 2012 to the date of the incident following her diagnosis of cancer. However, apart from these periods she had a good work record and she had no doubt that she would have returned to work very shortly if it had not been for the injuries which she sustained in the incident. She referred in particular to the letter from Dr Elliott dated 26th March 2014 (quoted at para 6(xv) above), which stated that she had felt close to being able to return to work prior to the assault in February 2014 and that the assault had deferred matters by several weeks. The inference was that she would have been able to return to work at or shortly after the time of the incident. Her job at Connie's Carers had been held open for her.
18. In short, prior to the incident, she had not suffered the chronic pain and limitations of movement in the areas which she now had. She referred the Royal Court to a video taken in 2011 which showed her dancing around a swimming pool without apparent difficulty. It was only since the incident that she now suffered from chronic pain in the various areas which she had injured during the incident, together with limitations of movement. She now had to walk on crutches and had a deformed right hand. It had been a life-changing event for her as she had been unable to return to her employment, she could not enjoy life in the same way and her mental health was suffering. Although she had suffered from bouts of depression prior to the incident, she was now suffering from post-traumatic stress disorder as described by Dr Belda.
19. As to expert orthopaedic evidence, Mr Armstrong's report recorded the limitations of movement in respect of the various areas of complaint which he found on examination, together with the Appellant's description of the pain she was suffering in respect of each area. He then gave his opinion in relation to each area as follows:
 - (i) As to the cervical spine, he noted that she had had neck pain for over 20 years and had had two operations. In spite of these operations, she had still had symptoms in the period leading up to the incident. It was his opinion that the incident exacerbated her underlying chronic condition, but that he would have expected this to have settled within six months, so that any ongoing symptoms or effects on her daily activities after that point would have occurred anyway due to the natural progression of her condition.
 - (ii) As to her shoulder pain, he considered it to be a secondary effect to her neck pain and a combination of referred pain from her neck and altered biomechanics in her shoulders causing internal impingement as a secondary effect. It was again his opinion that any shoulder pain after six months would have occurred even if she had not suffered the incident, because it was related to her neck pain.
 - (iii) As to her right knee pain, although an MRI had shown a medial meniscal tear in 2015 which had been removed surgically by arthroscopy in December 2015, this operation had had no effect on her symptoms. He was therefore of the opinion that her symptoms were due to the early degenerative changes in her knee seen during the arthroscopy. He would have expected the symptoms resulting from the incident to have settled within six months and any symptoms extending beyond that and their effects would have occurred even if the incident had not occurred.

- (iv) As to the swelling in her right arm and right hand, he concluded this was related to her previous breast surgery and neck problems and was not related to the incident.
 - (v) As to the right hip, right ankle and left hand and wrist, these were soft tissue injuries which he would have expected to have settled within six months of the incident. Any ongoing symptoms after that period were related to the fact that she had a susceptibility to develop chronic pain after relatively minor injuries.
20. As to the prognosis, he considered that the pains she described were likely to be ongoing indefinitely, although they would vary in their intensity.
21. As to her employment prospects, he considered that her prospects on the open market were affected by her current problems and she was unlikely to be able to do any job that involved even low levels of physical activity, but it was his view that, due to her chronic neck problems, this would have been the case even if the incident had not occurred.
22. In his report of 11th June 2018, Mr Coombs largely agreed with Mr Armstrong. He also found limitations of movement in relation to her cervical spine, right shoulder, left wrist, right knee and right ankle. She also had some restriction of her right hip rotation. As to the various injuries, his opinion was as follows:
- (i) The arthroscopy of the right knee in December 2015 showed arthritic changes in the knee joint. Although she had also suffered a torn meniscus, which could have occurred during the incident, the pain in her knee would have ceased following the arthroscopy if it was due to the torn meniscus. The fact that the pain had not ceased suggested to him that it was due to the underlying arthritis rather than to the meniscal tear.
 - (ii) The pain in the right shoulder was also, in his opinion, linked to the osteoarthritic problems in the acromioclavicular joint. It could also have been affected by the reconstruction of the right breast following the mastectomy.
 - (iii) As to the cervical spine, he noted that she had had pain and discomfort in this area for many years and had had two previous major cervical spinal procedures to fuse the cervical spine. He agreed that any continuing pain was related to her pre-existing issues in the cervical spine.
 - (iv) As to the left hand and wrist injury he noted that a carpal tunnel decompression had not assisted in terms of pain, with the result that carpal tunnel syndrome could not be the explanation for her pain.
 - (v) As to the swelling of the right arm and hand, he noted that breast surgery with the re-section of lymph nodes can be associated with a degree of lymphoedema and the swelling in the right arm appeared therefore to be related to the breast surgery rather than to the incident.
 - (vi) He agreed with Mr Armstrong that the injuries to her right hip and right ankle were soft tissue injuries which he would have expected to settle within six months.
23. In summary, Mr Coombs was of the opinion that all the injuries sustained in the incident were soft tissue injuries. Although he appeared in the earlier part of his report when reviewing Mr Armstrong's report to agree with a settlement period of '*within six months*', his final conclusion in his report was that any pain and discomfort associated with those soft tissue injuries should have resolved within a period of 8-10 weeks. The Appellant's continuing pain and discomfort

were therefore related to very substantial underlying constitutional problems, spinal symptoms following her 5 road traffic accidents, or to osteoarthritic changes in the region of the right shoulder and the right knee. He considered that, on the balance of probabilities, the Appellant would have had difficulty with any type of employment which required even low levels of physical activity and this would have been the case even if the incident had not occurred.

24. In his oral evidence, Mr Coombs essentially maintained the opinions expressed in his report subject to the following matters:
 - (i) He said that whereas he had given a “quite generous” period of 10-12 weeks for the symptoms resulting from the incident to settle and Mr Armstrong had spoken of settlement within six months, he felt that, if they had had the opportunity to discuss the matter, they might well have compromised on a period of perhaps 3–4 months.
 - (ii) In his report, he had agreed with Mr Armstrong’s opinion that the Appellant had a susceptibility to chronic pain after relatively minor injuries. However, on reflection, he had now changed his mind on that score and was no longer of that opinion. He had reviewed the medical reports, with their catalogue of previous problems, and had noted that she had nevertheless managed to rise with fortitude and obtain a job as a carer. He had had the chance to reflect on the point and did not subscribe to his previous opinion now.
 - (iii) In response to questions from the Appellant, he emphasised that he accepted that she did indeed have pain in various areas as she described and she was not imagining it. But the pain was not a result of the incident; it was caused by a long, progressive gradual deterioration in her multiple medical problems. These had not been caused by a simple fall in the hospital in 2014.
 - (iv) Whilst he reiterated that her physical ailments made it most unlikely that she would ever get back to a physical job such as being a carer, he noted her command of the documentation in the trial and considered that there was no reason why she should not be able to work in an office or at some form of clerical work.
25. In summary, he remained of the view that the injuries suffered as a result of the incident were soft tissue injuries, the symptoms from which could be expected to have cleared up within 10-12 weeks or, as a compromise, within 3-4 months. Her continued pain and limitations of movement were not due to the injuries sustained in the incident.
26. As already stated, expert psychiatric evidence was provided by Dr Belda instructed on behalf of the Appellant and Dr Courtney instructed on behalf of the Respondent.
27. Helpfully, they prepared a joint memorandum setting out their points of agreement and disagreement. They were agreed that, given the background as described in their respective reports, the Appellant was pre-disposed to the development of mental health problems and that she had suffered from recurrent depressive episodes in her adult life in response to a number of losses and other life stresses. In 2012, her diagnosis of cancer led to a further period of anxiety and depression.
28. Dr Belda, having noted that the Appellant reported symptoms of repetitive intrusive thoughts, hypervigilance, avoidance behaviour, insomnia, tiredness, reduced self-esteem and confidence, low mood, high emotional arousal and thoughts that life was not worth living since the incident, diagnosed post-traumatic stress disorder (PTSD).

29. In evidence, he accepted that, at the time he prepared his report of 1st August 2017 with his diagnosis of PTSD, he was not aware of the assault on the Appellant which occurred on 16th February 2014 and in respect of which she said she feared she was going to die. The Appellant had not told him about it at the time and he had not noticed it in the medical records.
30. He was pressed by Advocate Dawes on the first requirement set out in the generally accepted criteria for PTSD (ICD-10) namely “*Exposure to a stressful event or situation, either short or long-lasting, of exceptionally threatening or catastrophic nature, which is likely to cause pervasive distress in almost anyone.*” It was put to him that the incident on 29th June 2014 could not be said to be of this character; it was a simple fall leading to various minor soft tissue injuries. Indeed it was less serious than the assault in February 2014 such that, if the Appellant was indeed suffering from PTSD, it was more likely to have been caused by the February assault than the June incident.
31. Dr Belda’s response was that, given the Appellant’s pre-existing psychological vulnerability, the level of physical difficulties which she suffered as a result of the incident rendered the incident sufficiently traumatic to have caused PTSD. He accepted, however, that his conclusion therefore depended upon the attribution of her physical problems to the incident. If they were not attributable to the incident, then any PTSD would not have been caused by the incident.
32. Dr Courtney did not agree that the Appellant had suffered from PTSD. He did not consider the nature of the incident could be considered as “*exceptionally threatening or catastrophic in nature, which is likely to cause pervasive distress in almost anyone.*” In his opinion, the Appellant was suffering from a recurrent depressive disorder at the time of the incident. For example, in 2013 she was suffering from severe depression and anxiety having experienced recurrent mental health problems since she was a teenager, in particular in 1984, 1988, 2000, 2006, 2009 and 2012, due to her “*long term history of emotional neglect*”. The incident itself had had no significant impact on this condition, but the Appellant’s subsequent chronic problems with her physical health, mobility and loss of functioning had contributed to an exacerbation of her depression. Whether the exacerbation of her depression was caused by the incident therefore depended on the cause of the physical injuries she was experiencing. If these were caused by the incident, then it was correct to say that the incident was the cause of the exacerbation of her depressive symptoms; if, on the other hand, the incident was not the cause of those physical issues, then the incident could not be said to have caused the exacerbation of her depressive symptoms.

The judgment of the Royal Court

33. The findings of the Royal Court in relation to the Appellant’s physical injuries are set out at paras 16 – 18 of the Judgment. The Jurats specifically rejected the claim that the issues regarding the Appellant’s great toe of her right foot were related to the incident, that the carpal tunnel syndrome (from which she undoubtedly suffered) was caused by the incident or that she suffered from complex regional pain syndrome (CRPS) as a result of the incident, having accepted the evidence of Mr Coombs in this latter respect. They also rejected the suggestion that there was any shortening of her hip attributable to the incident.
34. As to the remaining injuries, the Jurats essentially accepted the evidence of Mr Coombs. Thus they found that the incident caused soft tissue injuries to the right ankle, right knee, right hip, right shoulder and left wrist, together with exacerbation of problems associated with her cervical spine. However, they accepted the evidence of Mr Coombs that these matters should have resolved within a reasonably short period and they accepted his suggested compromise period of 3-4 months. They specifically concluded that, apart from that soft tissue damage, all of the

physical health issues experienced by the Appellant in recent years would have been the same without the incident and would have commenced when they did, regardless of the incident.

35. As to the claim in respect of mental health, the Jurats rejected Dr Belda's evidence that the Appellant had suffered from PTSD; in particular they did not find the incident to be sufficiently traumatic to fall within the relevant definition. The Jurats did however find that the Appellant had suffered from depression in the past, was so suffering at the time of the incident and that her depression had been exacerbated by problems with her physical health since the incident. They accepted Dr Courtney's evidence that these were a consequence of the physical issues she was experiencing. Having found that the physical issues attributable to the incident were soft tissue injuries which should have resolved within 3-4 months, the Jurats found that the exacerbation of the Appellant's depressive illness for that same period did result from the incident.
36. Finally, as to employment, the Jurats found that the Appellant was not in good enough health, whether physically or mentally, to have re-commenced employment of any sort at the time of the incident. As to whether she would have been in employment by the time of the trial had the incident not happened, the Jurats found that she would not have been working in the caring profession and that, having regard to the evidence of both Mr Coombs and Dr Courtney, the Appellant would have had difficulty with any type of employment which required even the lowest levels of physical activity. They found on the balance of probabilities that she would not have been employed by the time of the trial even if the incident had not happened. They accepted that she might in time be able to undertake light clerical work but they found that her non-employment since the date of the incident was not a result of the incident.
37. As to quantum, the Court accepted the Defendant's figure for general damages (assuming a resolution time of 8 – 10 weeks) in the sum of £5,000 but, having found that the resolution time would be 3 – 4 months, the Jurats valued the physical injuries at £7,000. With regard to the exacerbation of the Appellant's psychiatric/psychological condition, they valued this at £4,000 making a total award for pain, suffering and loss of amenity of £11,000. The Court also awarded £436.58 in respect of medical bills and medication costs.

Grounds of appeal

38. The notice of appeal is very brief. However, taken together with the subsequent written material submitted by the Appellant, we would list the grounds of appeal under the following main headings:
 - (i) Conflict of interest.
 - (ii) The Respondent denied, altered or omitted the Appellant's evidence.
 - (iii) The Respondent provided false information.
 - (iv) The Respondent misled the Court.
 - (v) The Appellant received documentation at the last minute.
 - (vi) The Jurats' decision was contrary to the evidence.
39. We will consider each of these grounds in turn but before doing so, we must consider three applications lodged by the Appellant to file new evidence.

Applications for new evidence

40. The first application dated 13th November 2019 relates to a report dated 13th May 2019 written by Dr Douglas Wilson, her general practitioner (“Dr Wilson’s report”).
41. Technically, this does not seem to us to be an application for new evidence. The evidence was in existence before the trial and the Appellant applied for Dr Wilson’s report to be admitted at a pre-trial hearing before the Deputy Bailiff on 24th May 2019. That application was rejected by the Deputy Bailiff and at the trial, when informed of the Deputy Bailiff’s decision, the Lieutenant Bailiff did not reconsider it. Dr Wilson’s report was therefore not produced to the Royal Court.
42. As it seems to us, the Appellant’s real complaint is that the Deputy Bailiff was wrong to exclude Dr Wilson’s report and that, had it been admitted, it would have made a difference to the outcome of the trial. We think it most convenient to consider this issue when considering heading (vi) of the Grounds of Appeal as set out above.
43. The Appellant’s second application to file new evidence is dated 6th January 2019 [this must be an error for 2020] and relates to a document headed ‘Statement of Fact’, which is an undated witness statement by the Appellant concerning the events leading up to the incident and the injuries which she says she had sustained as a result. According to the Appellant’s application, the Statement of Fact was ‘concealed’ by the Respondent.
44. In fact, as the Appellant now accepts, the Statement of Fact was contained at divider 13 of the trial bundle and was therefore before the Royal Court. This application therefore falls away.
45. The third application is dated 30th March 2020 and relates to three categories of material: first, letters dated 31st May 2019, 13th September 2019 and 21st November 2019 from Dr Dyal, consultant psychologist in neuro-rehabilitation and pain management at the Princess Elizabeth Hospital together with a letter dated 24th September 2018 from Dr Wilson to Dr Murray, a consultant clinical psychologist at the Princess Elizabeth Hospital; secondly some very brief clinical notes concerning the Appellant between 6th October 2017 and 16th October 2018; and thirdly various manuscript notes from Mental Health Services from 1988-2000.
46. The test for the admission of further evidence before the Court of Appeal is well established, having first been articulated by this Court in Kirk –v- Blackwell [1986] GLJ 4/65. Before further evidence will be admitted:
 - (i) it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial;
 - (ii) the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; and
 - (iii) the evidence must be apparently credible, although it need not be incontrovertible.
47. Applying this test to the three categories of documents, we find as follows:
 - (i) In relation to the first category, the letter dated 24th September 2018 from Dr Wilson and the first letter from Dr Dyal dated 31st May 2018 pre-date the trial and it is not clear why such letters could not have been obtained with reasonable diligence for use at the trial. The remaining letters from Dr Dyal post-date the trial. More significantly, we are satisfied that none of the letters would have had an important influence on the result of the case. Essentially, they confirm what was already before the Royal Court, namely that the Appellant continued to suffer pain and restriction on her movement and was also suffering psychologically. A typical extract is from the letter dated 13th September 2019 from Dr Dyal which included the following:

“On clinical examination, I found Mrs Simon to be distressed and at times tearful. She was mobile with the aid of a stick held in the left hand and she limped heavily. She finds it hard to put weight on the left foot as it elevates her pain. She also found it difficult to sit normally; frequently lifting her left buttock in favour of the right side. She was wearing a soft splint over the left hand. VAS score in regard to the left foot was 8/10 with sharp shower-like feelings in the affected musculature. Mood was low and I assessed it to be within the moderately depressed range. Thoughts and their content revealed a strong sense of agitation and anger.

Mrs Simon has now been seen by almost all practitioners in the arena of pain management and has had a number of interventions, but none has brought any relief to her fortunes..”

There was plenty of evidence along these lines available to the Royal Court both from the Appellant herself and from the medical records and the expert reports. This additional material would therefore have made no difference. We therefore do not agree formally to admit it as evidence on this appeal.

(ii) In relation to the second category, these are very brief notes which on occasion indicate some concern as to the Appellant’s mental state. Again, no explanation has been given as to why they could not have been reasonably obtained prior to the trial but, more importantly, they add nothing to the information which was before the Court about the Appellant’s mental condition in 2017/18.

(iii) As to the notes from 1988 – 2000, the Appellant asserts that, by their lack of reference to any psychological or depressive issues, these show that she was not a person with severe pre-existing mental health problems. However, the Appellant’s medical records were available to the Royal Court and also to the psychiatric experts Dr Belda and Dr Courtney. They referred to many of these records in their respective reports and many of the matters they referred to were more recent than the year 2000. Again, regardless of whether or not these notes could have been obtained with reasonable diligence before the trial, we are quite satisfied that, even if they had been before the Royal Court, they would not have had an important influence on the result of the case.

48. Accordingly, whilst we have carefully considered the content of the new evidence which the Appellant seeks to have admitted, the test for the admission of new evidence is not satisfied and accordingly we do not agree formally to admit the three categories of evidence in the application of 30th March.

49. We turn next to consider the six grounds of appeal listed in para 38 above.

Ground (i) – conflict of interest

50. Although listed under the heading of conflict of interest, we think that the points made by the Appellant can more accurately be described as an allegation of apparent bias. The Appellant submits that, for a number of reasons, the Royal Court could not be perceived as being a fair and objective tribunal with the consequence that her Article 6 ECHR right to a fair trial was infringed.

51. The test for apparent bias is well established. It was authoritatively laid down by the House of Lords in Porter –v McGill [2002] 2 AC 357 at [103] in the following terms:

“The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”

This test is equally applicable within this jurisdiction.

52. The above test is consistent with Article 6 ECHR. As the speech of Lord Hope of Craighead in Porter makes clear at [103], the test which he articulated was a variation on what had been the previous test in order to bring it into line with the jurisprudence of the European Court of Human Rights in relation to Article 6 ECHR.
53. Assistance as to the approach of the hypothetical fair-minded and informed observer was given by Lord Hope in Helow –v- Home Secretary [2008] 1 WLR 2416 at paras 1 – 3:

“1. My Lords, the fair-minded and informed observer is a relative newcomer among the select group of personalities who inhabit our legal village and are available to be called upon when a problem arises that needs to be solved objectively. Like the reasonable man whose attributes have been explored so often in the context of the law of negligence, the fair-minded observer is a creature of fiction. Gender-neutral (as this is a case where the complainant and the person complained about are both women, I shall avoid using the word ‘he’), she has attributes which many of us might struggle to attain to.

2. The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby, J. observed in Johnson v. Johnson (2000) 201 CLR 488, 509, para. 53. Her approach must not be confused with that of the person who has brought the complaint. The ‘real possibility’ test ensures that there is this measure of detachment. The assumptions that the complainant makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.

3. Then there is the attribute that the observer is ‘informed.’ It makes the point that, before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment.”

In Prince Jefri Bolkiah v State of Brunei [2007] PC 62, Lord Bingham of Cornhill added this at [16]:

“... the observer must be taken to have a balanced approach, neither naïve or complacent nor unduly suspicious or cynical. The requirement that the observer be informed means that he does not come to the matter as a stranger or complete outsider; he must be taken to have a reasonable working grasp of how things are usually done.”

More recently Lord Sumption (dissenting on the facts) in Almazeedi v Penner [2018] UKPC 3 said this at [36]:

"The notional fair-minded and informed observer ... is not satisfied with a look-sniff impression. He is not credulous or naïve. But neither is he hyper-suspicious or apt to envisage the worst possible outcome. The many decisions in this field are generally characterised by robust common sense."

54. The Appellant submits that, as the Deputy Bailiff (who decided upon the admissibility of Dr Wilson's report) is a Crown employee and remunerated by the States, he cannot be perceived as independent in an action brought against the States. By implication, she would no doubt argue the same in relation to the Lieutenant Bailiff who is paid a fee by the States for time spent as Lieutenant Bailiff. The same could indeed be said of members of this Court, who are also paid by the States for time spent as a judge of this Court.
55. In our judgment, this is a hopeless submission. To the best of our knowledge, judges in every country are remunerated by the state and yet are called upon to resolve disputes between citizens and the state. In our judgment, the fair minded and informed observer would take account of the importance of the judicial oath and security of tenure of judges and would not conclude that there was a real possibility of bias simply because the judge was employed and remunerated by the state.
56. Next, she refers to the fact that the Lieutenant Bailiff was HM Procureur until 2016 and in that capacity was legal adviser to the States, including to the Respondent Committee. He could not therefore be perceived as independent and impartial in an action brought against the Respondent.
57. Again, we cannot accept this submission. It is commonplace in jurisdictions throughout the world for Law Officers subsequently to be appointed as judges. In our judgment, this fact of itself is not sufficient to give rise to a real possibility of bias. As the Court of Appeal of England and Wales made clear in Locabail Limited –v- Bayfield Properties Limited [2000] 1 All ER 65 at [25], an objection to a judge on the ground of apparent bias cannot, at any rate ordinarily, be soundly based on the judge's service or employment background or history or on previous receipt of instructions to act for or against any party engaged in a case before him. There is no suggestion that, when Procureur, the Lieutenant Bailiff advised the Respondent Committee in relation to this particular matter and accordingly there are, in our judgment, no grounds for the fair minded and informed observer to consider that there was a real possibility that the Lieutenant Bailiff would be biased simply because he had previously been HM Procureur.
58. Finally in relation to the Lieutenant Bailiff, the Appellant asserted in one of her written submissions to this Court that the Lieutenant Bailiff could not be seen as being impartial or independent because he "... continues to be involved in an advisory capacity with the States of Guernsey for the Scrutiny Management Committee by the drafting of the legislation ...". On reading this, and having ascertained that Advocate Dawes was not aware of the position, this Court requested the Lieutenant Bailiff to clarify the position. He replied that, since he had retired as HM Procureur, he had indeed helped the Law Officers with some legislation for the Scrutiny Management Committee. He also disclosed that he was currently instructed by the Education, Sport and Culture Committee to help in the development of a new education law and that he had done some other work for the Law Officers and the police. He was remunerated for all of this work at the same rate as he was paid for acting as Lieutenant Bailiff. He confirmed that he had not done any work for the Respondent Committee since his retirement as Procureur in 2016.
59. We have carefully considered whether this additional information would lead the fair minded and informed observer to conclude that there was a real possibility that the Lieutenant Bailiff would be biased when hearing the present dispute as to the quantum of the Appellant's claim against the Respondent. In our judgment, such observer would not do so.

60. It is well established that, when considering any question of apparent bias, the Court must focus closely on the particular facts and, in particular, whether what the judge has said or done elsewhere might give rise to an appearance of bias. Thus, in Davidson –v- Scottish Ministers [2004] UKHL 34, Lord Hope said this at [53]:

“53. Applied to our own constitutional arrangements, Pabla Ky –v- Finland teaches us that there is no fundamental objection to members of either House of Parliament serving, while still members of the House, as members of a court. Arguments based on the theory of separation of powers alone will not suffice. It all depends on what they say and do in Parliament and how that relates to the issue which they have to decide as members of that tribunal. The requirement which the Strasbourg Court stressed in para 30 of its judgment that the fear that the tribunal was not impartial must be justified objectively is an important safeguard against abuse of the objection. What is decisive is whether the fear is based on an objective appraisal ... This enables account to be taken of all the surrounding circumstances. The need for a proper understanding of the issues that are involved is another safeguard. This is because, as the court explained in paras 29 and 34 of its judgment in Pabla Ky, the objection has to be justified on the facts of the case, not by relying on a theoretical principle. There must be a sufficiently close relationship between the previous words or conduct and the issue which was before the tribunal to justify the conclusion that when it came to decide that issue the tribunal was not impartial or, as the common law puts it, there was a real possibility that it was biased....” [emphasis added]

61. There is no suggestion in this case that, since his retirement as Procureur in 2016, the Lieutenant Bailiff has advised the Respondent Committee in any respect. The fact that he has assisted the Scrutiny Management Committee with some legislation, that he is currently assisting the Education, Sport and Culture Committee in the development of a new education law and that he has done some other work for the Law Officers and the police would not lead the fair minded and informed observer to conclude that there was a real possibility that, when presiding over the Royal Court to determine the quantum of the Appellant’s claim against the Respondent (or its insurers), the Lieutenant Bailiff would be biased.
62. In this respect, the courts have repeatedly made clear that weight is to be placed upon the judicial oath to administer justice without fear or favour and a judge’s ability to carry out that oath by reason of his training and experience. Thus, in Helow, Lord Rodger of Earlsferry said at [23]:

“In assessing the position, the observer would take into account the fact that Lady Cosgrove was a professional judge. Even lay people acting as jurors are expected to be able to put aside any prejudices they may have. Judges have the advantage of years of relevant training and experience. Like jurors, they swear an oath to decide impartially. While these factors do not, of course, guarantee impartiality, they are undoubtedly relevant when considering whether there is a real possibility that the decision of a professional judge was biased.”

63. The final aspect on which the Appellant attacks the perceived independence and impartiality of the Royal Court relates to the position of the Jurats. She notes that they are appointed by the States of Deliberation. In fact, they are appointed by the States of Election, which consists of the Members of the States of Deliberation and the Bailiff, the Jurats, representatives of the Parish Douzaines and the Rectors of the Anglican Parish Churches. However, the point which she makes is the same, namely that the States of Deliberation plays an important role in the appointment of Jurats and that accordingly Jurats cannot be perceived as independent and impartial when determining claims against the States.

64. We cannot accept this submission. Again, in many countries around the world, judges are appointed by the state but thereafter have security of tenure and are perceived as impartial and independent even in relation to disputes between citizens and the state. This is equally true in relation to the Jurats. They are in fact appointed by a body which is wider than simply the members of the States of Deliberation.
65. In Snooks –v- United Kingdom [2002] JLR 475, the European Court of Human Rights recorded at paragraph 19 in relation to Jurats in Jersey:

“19. Jurats are ... elected by a special electoral college whose members include the Bailiff, the Jurats, advocates and solicitors of the Royal Court and members of Jersey’s legislature, the States Assembly. Jurats do not necessarily have a legal qualification but are usually individuals with a known history of sound judgment and integrity, which has been consistently demonstrated throughout a lengthy professional, business or civic life.”

66. There was no suggestion by the European Court of Human Rights in Snooks that the involvement of the members of the States of Jersey in the appointment of Jurats somehow rendered them not capable of being independent or impartial in relation to matters involving the States. In our judgment, the position is the same in Guernsey. The fact that members of the States of Deliberation participate in the States of Election which appoints Jurats would not lead the fair minded and informed observer to conclude that there was a real possibility that Jurats would be biased in favour of the States when hearing matters where the States is a party to the litigation. Again, a relevant factor is that Jurats take an oath of office whereby they agree to show favour to no-one and have security of tenure, in that a Jurat may only be called upon to resign if, in the opinion of a majority of the Bailiff and Jurats, he is permanently unable through physical or mental incapacity or for any other reason efficiently to carry out the duties of his office. The States of Election has no role to play in that process.
67. Finally, under the heading of conflict of interest, the Appellant asserts that she was employed by the law firm ‘Mourant’ until 2007, when she was unfairly dismissed. She says therefore that the Respondent’s advocates had a conflict of interest.
68. According to Advocate Dawes, the Appellant was in fact employed by Mourant du Feu & Jeune, a predecessor firm of the Respondent’s advocates Mourant Ozannes. He asserts that Mourant Ozannes is not in possession of any relevant confidential material relating to the Appellant by virtue of her employment by Mourant du Feu & Jeune between 2002 and 2008.
69. The Appellant has not produced any evidence that Mourant Ozannes are in possession of any information about her which could have potentially assisted the Respondent or otherwise given rise to a conflict of interest. There are therefore no grounds for upholding her submission on this aspect. Quite apart from this, the fact that the Respondent was represented by Mourant Ozannes has been known to her at all times and it was incumbent upon her to make an application to the Royal Court for the Respondent’s advocates to withdraw if she thought it was improper for them to act. No such application having been made, it is in any event now too late for her to do so before this Court.

Ground (ii) – the Respondent denied, altered or omitted the Appellant’s evidence

70. The Appellant has filed a number of written submissions and statements at different times during the appellate process in the course of which she has raised many points. Doing the best we can, we have considered the following complaints under the above heading.

(a) Letter dated 3rd October 2018 from Connie's Carers to the Appellant.

71. It appears that in about February 2019, the Appellant produced a black lever arch file with 22 tabs containing, amongst other things, extracts from her medical records and character references but excluding pleadings, expert reports and witness statements ("the black file").
72. At the pre-trial review on 24th May 2019, the Deputy Bailiff advised the Appellant that the black file was not in the proper format for a trial bundle. He ordered the parties to liaise regarding the trial bundle which was to be filed no later than 21st June.
73. It appears that the Respondent's advocates prepared a draft index which was sent to the Appellant on 12th June. The Appellant apparently requested various additions which were incorporated and a final index was sent. Although a trial bundle is normally prepared by a plaintiff, the Respondent had offered to make up the bundles in accordance with the index.
74. The Appellant lodged three copies of the black file which, she says, sat on the table in front of the Lieutenant Bailiff and Jurats during the trial but were not referred to in any way.
75. Against that background, she complains that a letter dated 3rd October 2018 from Connie's Carers (which was at Tab 3 of the black file) was omitted from the trial bundle. The Respondent's advocates accept that this was probably so. (It may have been handed up on 3rd July: pages 60A and 61D/E of the transcript, but we will assume it was not). The Respondent's advocates say that it was an accidental omission. They point out that the trial bundle contained documentation relevant to Connie's Carers at tabs 29, 30, 31 and 33. They also point out that the transcript shows (at 275E) that the Appellant identified during the trial that one of the letters was missing and could have extracted it from the black file which was in Court, but did not do so.
76. It is unfortunate that the letter was omitted but there is no evidence whatsoever that this was done deliberately, particularly as the Respondent had included all the other correspondence from Connie's Carers as requested by the Appellant. Furthermore, we are satisfied that, even if this letter had been drawn to the Court's attention, it would not have made any difference. There was no suggestion in the hearing before the Royal Court that the Appellant's service to Connie's Carers had been anything other than satisfactory. Furthermore, at 275F of the transcript, she specifically read from a letter dated 13th December 2015 from Connie's Carers, which was in the trial bundle, stating that the Appellant had undertaken her role as a carer with great responsibility and efficiently, including manual handling which involved heavier physical work, which she appeared to manage very capably.
77. The omitted letter dated 3rd October 2018 said this:

"Simone Simon worked for Connie's Carers from April 2010 until November 2012. During which time Simone has always proved to be very reliable as an employee, on occasions working exceptionally long hours to meet the needs of the client or to assist with my requests to cover sickness or emergency cover for clients. She was willing to work both day and/or night shifts, and because of her experience and her caring and compassionate manner I had no hesitation in being able to place her with any client.

I believe Simone thoroughly enjoyed her job and it was due to health circumstances that her employment ceased in November 2012. I have always said should the opportunity ever arise and Simone feels she is fit enough to return to work for Connie's Carers I would not hesitate in re-employing her."

78. This letter did not add anything significant to the material which was already before the Court and accordingly its omission has not made any difference to the outcome of the trial.

(b) Other documents in the black file not included in the trial bundle

79. It appears that all the documents from the black file were reproduced within the trial bundle with only the following exceptions (apart from the letter from Connie's Carers already referred to):

- (i) The document entitled 'Appellant's letters of concerns and arguments' – Tab 1 of the black file. This consisted of comments and submissions by the Appellant, particularly in relation to a number of letters from medical practitioners since the incident which made no mention of any pre-existing injuries and therefore, she submitted, supported her assertion that all her symptoms were the result of the incident. The Respondent's advocates assert that they did not include this document in the trial bundle as they understood that it had been superseded by the Appellant's skeleton argument. In our judgment, if the Respondent's advocates were going to omit any documents found in the black file, they should have specifically drawn the attention of the Appellant, as a litigant in person, to such omission and it was wrong not to do so in relation to this document. However, the document did not add anything of substance to the points which the Appellant made strongly both in her other documents before the Royal Court and in her oral submissions, evidence and cross-examination.
- (ii) A written statement of fact by a Mr Runkel – Tab 4 of the black file – which consisted of one sentence confirming that the Appellant was travelling to Rome to assist the administration staff of his business on a monthly basis prior to her undertaking cancer treatment in November 2012. We do not consider the omission of this document material. The Appellant did not call Mr Runkel as a witness and there appeared to be no issue as to her travel to Rome in 2012. The Appellant had not requested the inclusion of this letter in the index and no reference to the letter was made at trial.
- (iii) A letter and accounts dated 8th January 2019 from Dr Wilson – Tab 18 of the black file. It appears that this letter was omitted from the trial bundle in error and this was identified on day 2 of the hearing (page 81E-G of the transcript). Advocate Dawes handed up the missing letter to the Court at the beginning of day 4 of the hearing (page 1C of the transcript). We do not think therefore that any prejudice was caused by the omission of this letter.
- (iv) Character references - Tab 20 of the black file contained two short character references but at the pre-trial review, the Deputy Bailiff had indicated that he did not think they were necessary in this particular case. They were not included in the draft index of the trial bundle and the Appellant did not request their inclusion.

80. In summary, we do not see that the inclusion of the omitted documents could have made any difference to the outcome of the trial.

(c) Omission of the chart of inconsistencies

81. Before the trial, the Appellant produced a six page document which has been referred to as the 'chart of inconsistencies'. Each page was divided into two columns. In the left hand column was a summary or extract from a letter or note in the Appellant's medical records and on the right was a comment as to why the report of the relevant expert (mostly Mr Coombs but in two instances Dr Courtney) was alleged to be inconsistent with the summary or extract from the medical record. There were seven such entries in respect of Mr Coombs' report and two entries

in respect of Dr Courtney’s report. To assist in understanding the nature of the chart of inconsistencies we would quote the first entry simply as an example:

<i>“Plaintiff’s medical note and imaging evidence within Court file</i>	<i>Expert inconsistencies</i> <i>Mr Richard Coombs</i>
<i>Oncologist Dr Gomes letters dated 20/11/13 and 8/04/14 2014 confirms that I had made a good recovery from cancer</i>	<i>Very substantial constitutional problems prior to the accident in question – NO truth to it.”</i>

82. The Appellant complains in her unsworn affidavit prepared for this appeal that the Respondent concealed this evidence by omitting it from the trial bundle. As to that, the position seems to be as follows on the basis of the material produced to us.
83. The chart of inconsistencies was first supplied to Mourant Ozannes by an email from the Appellant dated 7th April 2019 indicating that she would be applying to the Court for permission to use it at trial. The email confirms that this is simply for their information.
84. The transcript of the hearing before the Deputy Bailiff on 24th May 2019 shows (at page 7) that at one point the Appellant referred to a chart in the following terms:

“... I was going to ask for in summing up at the end of trial, whether they would allow me to use a chart, bearing in mind at that time I will be so fatigued and so tired, it is really just a summing up of what my skeleton arguments are. I have copies today and I am not sure whether you permit this but basically this will be my skeleton arguments that will be provided to the Court if, obviously, everything is agreed on this document by Advocate Dawes.”

85. It seems clear from the transcript that a copy was not actually provided at the hearing and the Deputy Bailiff indicated that, if the chart was a form of roadmap of where she was heading, it might well form part of her opening and it would be helpful to provide her opening, whether it was that chart or something else, in advance of the hearing. It was ordered that the skeleton arguments should be exchanged on 17th June.
86. On 28th May, the Appellant wrote a long letter to Mourant Ozannes dealing with a number of matters including the following:

“I am attaching the argument document that you appeared to believe at the pre-trial hearing you did not have and the chart that I spoke about that will form part of my opening and closing statements at trial. They will also be my ‘Skeleton arguments’ ...”

The attached chart of inconsistencies was apparently a different version of the document sent on 7th April.

87. According to the affidavit of Katherine Raison, an associate of Mourant Ozannes, sworn for the purposes of this appeal in connection with the allegations of concealment, the Appellant sent a copy of her skeleton argument to Mourant Ozannes on 14th June. That skeleton argument was included within the trial bundle. According to Mourant Ozannes, it did not include the chart of inconsistencies. According to Mourant Ozannes, at no time did the Appellant request that any version of the chart of inconsistencies be included in the trial bundle and had she done so, either

when agreeing the index or after receipt of the trial bundle, it would have been included. The chart was also not included by the Appellant in the black file.

88. We have not been referred to any document in which the Appellant requested expressly or by necessary implication that the chart of inconsistencies should be included in the trial bundle. On the basis of the material before us, there is no evidence whatsoever to support the allegation that the chart of inconsistencies was concealed by Mourant Ozannes by means of deliberately or secretly omitting it from the trial bundle. Furthermore, whilst courts seek to make allowances for a litigant in person where possible, it is ultimately the responsibility of any litigant to ensure that the documents which he or she wishes to have placed before the court are indeed produced to the court. It was therefore the responsibility of the Appellant in this case to ensure that the chart of inconsistencies was before the Royal Court if she wished it to be included.

89. In any event, we accept the submission of the Respondent that inclusion of the document would not have made any difference to the outcome of the trial. The Appellant had the opportunity to cross-examine both Mr Coombs and Dr Courtney and took the opportunity to do so with determination and considerable skill. It was open to her to put all the alleged inconsistencies referred to in the chart of inconsistencies to the expert witness in question.

(d) Alteration of the evidence by producing blurry copies of photographs provided by the Appellant

90. The Appellant alleges that the clear photographs which she provided were transformed by the Respondent into blurry photographs for inclusion in the trial bundle. She submitted that this constituted tampering with the evidence.

91. The Respondent accepts that a number of the photographs had become blurred as a consequence of multiple copying in order to produce the necessary number of bundles for the parties and the Court. The photographs were taken on behalf of the Appellant and were of her and various parts of her body in order to show the injuries she had sustained.

92. On the morning of the first day of the trial, (page 9H of the transcript) the Appellant raised the issue of the photographs and said that she had real issues with the quality of the photographs in the trial bundle. She pointed out that she had the actual photographs with her. She had also included a number of photographs at Tab 2 of the black file. The actual photographs and the copies in the black file were therefore available at trial should the Appellant have wished to refer to them. She did ask the Court to look at the photographs in the course of her closing (Day 4: page 9F/G of the transcript) but chose to refer the Court to those in the trial bundle as opposed to the actual photographs or those in the black file.

93. Advocate Dawes referred to a comment by Mr Armstrong in his addendum report dated 21st November 2017 where at para 2.6 he refers to having been supplied with photographs taken by the Appellant following the incident but says that they are of poor quality and taken in poor light, such that he does not consider them to be of a quality to draw any sort of clinical conclusions from them. However, it is not clear from the evidence before us that these are necessarily the same photographs as were in the trial bundle (although they may have been) and therefore we do not consider that this point assists us.

94. However, the fact remains that the non-blurred photographs were apparently available to the Appellant at the trial (whether the actual photographs or those in the black file) and it was open to her to refer the Court to them rather than to those in the trial bundle if she considered this was necessary. She does not appear to have done so and in any event, having seen the photographs ourselves, we can well understand that they would carry little weight as compared with the medical evidence before the Court. In short, we do not think that this point assists the Appellant.

(e) The Respondent failed to produce statements from the Appellant's previous employers and the nurses at the hospital as to the Appellant's pre-accident health

95. We accept the submission of Advocate Dawes that this is not a valid ground of appeal. It was not incumbent upon the Respondent to adduce evidence as to the Appellant's pre-accident health, although clearly it was open to it to do so if it wished. It was also open to the Appellant to call such evidence. The Court had to determine the matter on the evidence which the parties chose to call.

Conclusion on ground (ii)

96. In summary, for the reasons we have given, we do not consider that any of the allegations of deliberate misconduct by the Respondent's advocates are made out; nor would inclusion of any of the omitted documents have had any effect on the decision of the Royal Court.

(iii) The Respondent provided incorrect or false information

(a) The Respondent provided incorrect evidence which it should have been aware was incorrect

97. The trial bundle included two letters apparently dated 9th August 2013 from Dr Smith, who was the Appellant's general practitioner at the time. The first (at 770 of the trial bundle) was to Dr Browne, a consultant psychiatrist at the Princess Elizabeth Hospital and the second (at 772) was a letter to Dr Petrides, an orthopaedic physician in Milton Keynes. Extracts from the letter to Dr Browne were included in the chronology prepared by the Respondent for the Royal Court.

98. During cross-examination of the Appellant on Day 1 of the trial, Advocate Dawes referred to the letter to Dr Browne and put to the Appellant that the letter showed that in 2013 she was depressed, had intractable neck pain and had sensory symptoms in her hands and arms. The Appellant disputed that the letter could be in 2013. She said she had not seen Dr Browne since she was much younger and that Dr Smith had been long retired. The Lieutenant Bailiff intervened to say that he thought Dr Browne had been retired for quite a long time. This took place just before the short adjournment and, immediately following it, Advocate Dawes informed the Court (pages 47G/H-60H of the transcript) that he had made enquiries of the Queens Road Medical Practice, who had confirmed that Dr Smith retired in December 2012. The Appellant intervened to say that she had left the address shown on the letter in 2002. It was accepted that there was uncertainty about the date and that it might be a typographical error for 2003. Advocate Dawes said that he might well not be able to rely upon the letter as being in 2013 as it might be 10 years earlier.

99. Since the trial, the Appellant has obtained a computer summary print out of her medical records which appears to show that the letter to Dr Browne was in fact dated 16th February 2001 and the letter to Dr Petrides (which was never referred to in evidence) was 2nd February 2001.

100. We cannot see that any criticism can be made of the Respondent's advocates in this respect. The letters were part of the Appellant's disclosure and were simply incorporated by the Respondent's advocates in the trial bundle and relied upon for the chronology. Whilst it is true that a close analysis of the letter to Dr Browne would have disclosed that it referred to the Appellant's previous address and that it enclosed a letter dated 17th June 1999 (which might be thought unusual for a letter written in 2013), it is hardly surprising that this was not picked up in the midst of the vast amount of medical documentation which was produced for the trial.

101. In any event, the error on the date was identified and there is no suggestion that the Royal Court placed any weight on the letters or incorrectly thought that they still related to 2013. We accordingly cannot accept this as a valid ground of appeal.

(b) The Respondent produced evidence which it knew to be false

102. The Appellant alleges in her undated affidavit referred to earlier that the Respondent provided false evidence to a court of law which he (sic) knew to be false. This is a reference to a letter in the trial bundle at pages 668-9 dated 11th October 2000 from Dr McClymont of the Medical Specialist Group in Guernsey to Dr Dolin, a consultant in pain management in Chichester. The Appellant's complaint is that the penultimate paragraph of the letter says that the Appellant sued the States of Guernsey for £271,898.15 in connection to an injury to her lower back when lifting a patient when she was employed as an enrolled nurse, whereas in fact she had only received £5,000 in respect of her claim.

103. We have to say that this ground does not assist the Appellant for a number of reasons:

- (i) The letter does not in fact assert that she received £271,898, only that she sued for this sum.
- (ii) We do not know whether that assertion is correct or not but there is no evidence whatsoever that the Respondent knew that the assertion was false.
- (iii) In any event, we have not been referred to any passage in the transcript where this letter was referred to and our own inspection of the transcript has not disclosed that it was. The matter of the Appellant having sued the States previously is touched upon on the first day at page 39E/F of the transcript when the Appellant asserts that she received £5,000. However, no mention is made of what sum she claimed and there is no reference to the letter.
- (iv) The matter is not referred to in the judgment and the question of whether she received £5,000 or £271,000 was not relevant to the issue which the Court had to decide.
- (v) The letter appears to have been included in the trial bundle simply as part of the Appellant's medical records.

104. In summary, there is nothing in this ground of appeal. It was an allegation of serious misconduct by the Respondent's advocates for which there was no evidence whatsoever.

(iv) The chronology prepared by the Respondent was misleading/inaccurate

105. The Appellant submits that the chronology was misleading. However, apart from a general submission that it includes some matters which she does not consider relevant, she has only pointed to one entry which she says is inaccurate (other than the date of the letter from Dr Smith to Dr Browne referred to at para 97 above). This is the entry on page 16 of the chronology which records the observations from the A&E notes on 29th June 2014, the date of the incident. The front page of the two pages from the A&E notes – the nursing entry at page 1191 of the trial bundle – records the Appellant as having walked into the A&E department, although the doctor's entry on the second page does not do so. The Appellant asserts that she did not walk into the department and the entry was therefore wrong.

106. However, no criticism can, in our judgment, be made of the chronology. It accurately records what the A&E notes state. No criticism can therefore be made of the Respondent or its advocates, save the fact that this 24 page chronology was only sent to the Appellant on Sunday 30th June 2019, the day prior to the trial (see paragraph 111 below). If there is an error, it was an error in the original note made by the nurse, which is then reflected in the chronology.

107. In any event, this is a very minor matter which could not possibly have affected the decision of the Royal Court. We therefore reject this ground of appeal.

(v) Late delivery of documents

108. The Appellant asserts that it was unfair and an abuse of the court process by both the Royal Court and the Respondent for the trial bundle to be delivered to a litigant in person only a week before the commencement of the trial, thereby giving her insufficient time to go through the trial bundle.

109. Delivery of the trial bundle had been dealt with by the Deputy Bailiff at the pre-trial review and he had ordered the trial bundle to be filed by 21st June. He said at the time “ ... *that way you have got your bundle which is what we will work from and you have got a whole week, two weekends in which to look at it ...*”. The Appellant did not argue against that date at the pre-trial review.

110. On 12th June 2019 Mourant Ozannes had sent the Appellant a draft trial bundle index for her review. On 13th June the Appellant responded: “*I do believe ... everything is covered*”. In fact, Mourant Ozannes delivered the trial bundle one day earlier than ordered, namely on Thursday 20th June, which was 11 days prior to the commencement of the trial. The Appellant acknowledged receipt the same day. The trial bundle was undoubtedly voluminous containing in total just over 1,300 pages. However, of these some 1037 pages consisted either of research articles etc. provided by the Appellant or her medical records which had formed part of her disclosure. They were accordingly not new to her nor were the various expert reports, her own evidence and the pleadings and orders of the Court. Effectively, the only substantive new document, with which she would not have been familiar, would have been the skeleton argument of the Respondent dated 17th June 2019 which consisted of some six pages. Whilst we have no doubt that the whole litigation would have been a stressful process for the Appellant, we cannot accept that delivery of the trial bundle 11 days before trial was an abuse of process or otherwise led to an unfair trial.

111. The second matter of which the Appellant complains is the delivery of the chronology only one day before the hearing. Advocate Dawes explained that he had requested the chronology to be prepared for his own assistance so as to be able more easily to assimilate the medical records and that this had only been completed the day before the trial, whereupon it had immediately been sent to the Appellant. We accept that this was so, but we can nevertheless well understand that the Appellant did not have time to consider the chronology prior to the trial. It would have been preferable for it to have been prepared and provided much earlier.

112. However, even after this length of time, she has pointed to no inaccuracy in or omission of important information from the chronology other than the matter referred to above. In those circumstances it cannot be said that the late delivery of the chronology led to unfairness or that earlier delivery might have affected the Court’s decision or enabled the Appellant to raise matters which she did not do because of the late delivery.

Ground (vi) The Jurats’ decision was contrary to the evidence

113. Before turning to this ground, we must consider the correct approach for this Court to adopt when faced with a challenge to a finding of fact by the Jurats in the Royal Court.

114. That approach was established as long ago as 1967 in the case of Guille –v- Mackay 14th June 1967. The headnote accurately summarises the judgment of Le Quesne JA on this point in the following terms:

“That it is proper for the Court of Appeal to approach the Jurats’ findings on a question of fact in the same way as the Court of Appeal in England would approach the findings of a Jury in an Appeal in a Civil Case which had been tried by a Judge and a Jury, i.e. that the Court would not interfere with the findings of fact made by the Jurats unless it was satisfied that there was no evidence before them upon which they could reasonably have arrived at those findings or that for any other reasons the findings of fact of the Jurats were perverse.”

115. Assistance as to what is meant by a finding being perverse was given in the Court of Appeal in Island Development Committee –v- Laine 15th December 2003, 53-203 by Hodge JA in the following terms at para 27:

“Another way of expressing the perversity test is that no reasonable body of Jurats could have reached the decision when instructed and assisted properly by the Bailiff.”

116. The above approach was adopted at a time when Jurats did not have to give reasons for their findings of fact in the same way as a jury does not. However, since the commencement of the Royal Court (Reform) (Guernsey) Law 2008 (“the 2008 Amendment”), Jurats are required to give reasons for their findings of fact. Advocate Dawes submits therefore that the rationale for the broad brush test adopted in Guille, namely that the Jurats were in much the same position as a jury, no longer has the same force and that the appropriate test to be applied now should be the same as the test on appeal from the findings of fact of a judge of the High Court in England and Wales to the Court of Appeal in that jurisdiction.

117. The test in that jurisdiction has sometimes been expressed as being that the Court of Appeal may only interfere with a finding of fact where satisfied that the finding of the judge below is ‘*plainly wrong*’. That is an expression which is fraught with potential misunderstanding and the position was authoritatively set out in the recent decision of the Supreme Court in Foxworth Investments Limited –v- Henderson [2014] UKSC 41. Lord Reed, in a judgment agreed by the other members of the court, considered the topic of when an appellate court may interfere with a finding of fact by a first instance court. We would quote two paragraphs from his judgment as follows:

“62. Given that the Extra Division correctly identified that an appellate court can interfere where it is satisfied that the trial judge has gone “plainly wrong”, and considered that that criterion was met in the present case, there may be some value in considering the meaning of that phrase. There is a risk that it may be misunderstood. The adverb “plainly” does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

...

67. It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.” [emphasis added in both cases]

118. We were referred to one case which has come before this Court since the enactment of the 2008 Amendment, namely Cyma Petroleum (CI) Limited –v- States of Guernsey, 4th February 2015, judgment 05/2015. That was in fact an appeal to the Court of Appeal from a decision of the Royal Court (Marshall LB sitting without Jurats) which was in turn an appeal against a judgment of the Court of Alderney. It does not appear from the judgment of Collas JA that the Court was invited to reconsider the test in Guille in the light of the 2008 Amendment and the Court specifically reaffirmed the test in Guille at para 13 of its judgment. However, it seems to us that the Court by implication approved the elaboration of the test in Guille which Marshall LB had stated in the Royal Court in the following terms:

“43... To interfere with the decision of the court below, the appellate court must be satisfied either that the lower court erred in law (i.e. legal principle), or that there was no sufficient evidence to support a material finding of fact. This is because the question whether or not there is sufficient evidence to support a finding of fact is, itself, a question of law. The application of this latter principle is often described as there being “no evidence” to support a finding of fact. However, to treat that literally is misleading, because the test is not that of “no” evidence but of “no sufficient evidence”. ...

44. As to what is sufficient evidence, the parties are again agreed that the test is described in Hawkins –v- Greenwood 2 GLJ 57, as being:

“... the court would not interfere with the findings of fact made by the court below unless it was satisfied that there was no evidence before the court upon which it could reasonably [original emphasis] have arrived at those findings of fact, or that it was for any other reasons the findings of fact of the court below were perverse.” (sic)

The point which I fully accept and adopt, is that the issue for the appellate court is whether the findings of fact made by the court below are conclusions to which that tribunal could reasonably have come on the basis of the evidence before it, whether or not the appellate court itself agrees with those conclusions or would have made the same findings. [emphasis added]

119. It seems to us that the approach as formulated in the emphasised passage from the judgment of Marshall LB is in reality on all fours with that articulated by Lord Reed in the emphasised passages from his judgment. For our part, we think that the underlined passage from the judgment of Marshall LB is an accurate statement of the approach which should be adopted by this Court when considering findings of fact by the Jurats since the enactment of the 2008 Amendment.

120. Turning to the facts of this case, we begin by considering the position in the light of the evidence which was before the Royal Court.

121. The case for the Respondent was clear. It relied upon the expert evidence of Mr Coombs to the effect that the soft tissue injuries suffered by the Appellant to her left wrist and hand, right knee, right ankle, right shoulder and right hip together with any aggravation of her issues with her cervical spine would have resolved within 8 – 10 weeks (or as a possible compromise 3 – 4 months after discussion with Mr Armstrong) and that any continuing pain and discomfort thereafter was due to underlying constitutional problems or to osteoarthritic changes in the region of the shoulder and the right knee. Although he was the expert instructed by the Appellant rather than the Respondent, the Respondent was also able to rely upon the report of Mr Armstrong (pursuant to Rule 16 of the Evidence in Civil Proceedings (Guernsey and Alderney) Rules 2011) which, subject to certain exceptions, was broadly to similar effect as Mr Coombs. As to

psychiatric evidence, the Respondent relied upon the evidence of Dr Courtney that the Appellant's psychological issues such as depression were caused by her physical ailments and were therefore only attributable to the incident to the extent that such physical ailments were attributable to the incident.

122. The Appellant's case, expressed forcefully in her written and oral submissions to the Royal Court and to this Court as well as in her cross-examination of Mr Coombs, was and remains that there was nothing in her medical records preceding the incident to suggest that she had injuries or was suffering from pain and discomfort related to any of the areas which now troubled her. She referred, for example, to the video of her dancing around a swimming pool in 2011. Prior to the incident, she had virtually recovered from the trauma of her cancer and was ready to return to her employment with Connie's Carers as a carer. There was nothing in the medical files to suggest that she would not have been able to do this; on the contrary, she submitted, the letter of 26th March 2014 from Dr Elliott (referred to at para 6(xv) above) confirmed that she was virtually ready to return to work. It was only immediately following the incident that she suffered pain and discomfort in the affected areas and this had continued ever since. There was therefore no basis upon which Mr Coombs (and for that matter Mr Armstrong) could properly conclude that, apart from the period of 3 – 4 months (or less), she would have suffered the pain and discomfort from which she was now suffering in any event. As to the psychiatric evidence, she was suffering the psychological symptoms described by Dr Belda, which were clearly consistent with PTSD and it was therefore plainly wrong for the Jurats to have preferred the evidence of Dr Courtney. The Royal Court should have found that the pain and discomfort from which she was suffering was caused by the incident and that, but for the incident, she would have returned to work as a carer at or about the time of the incident, so that she had suffered financial loss ever since.
123. In relation to Mr Coombs' evidence, she also relied upon the judgment of the Court of Appeal of England and Wales in the case of Goodman –v- Faber Prest Steel [2013] EWCA Civ 153 which, she submitted, was critical of the evidence of Mr Coombs as an expert witness in that case. She submitted that the Royal Court should not therefore place weight on his evidence. However, a careful reading of the judgment of the Court of Appeal in that case shows that Mr Coombs said in evidence that his opinion that the plaintiff's injuries were caused by the road traffic accident in question depended upon the truth of the plaintiff's evidence that his painful symptoms began immediately or shortly after the accident. The trial judge believed the plaintiff when he said that this was the case, but the Court of Appeal held that the judge had been wrong to do so because it was inconsistent with other evidence. However, we do not read the judgment as containing any criticism of Mr Coombs' evidence or expertise.
124. We remind ourselves that it is not for the members of this Court, as a Court of Appeal, to determine how we would have decided the case. We may only interfere if we conclude that the Jurats could not reasonably have come to the decision which they did on the basis of the evidence before them.
125. We have to say not only that it was it reasonably open for them to do so, but that it is hardly surprising that they came to the conclusion which they did on the basis of the evidence before them, including in particular the orthopaedic evidence. They only had one expert before them, namely Mr Coombs. He was cross-examined at some length by the Appellant but remained firmly of the view expressed in his report, namely that all the injuries would have cleared up within the period of (at most) 3 – 4 months and that her continuing symptoms were unrelated to the incident and would have occurred in any event. This was because of underlying arthritic changes and underlying constitutional issues. He gave reasons in his oral evidence as to why he was of this view.

126. There was little for the Jurats to set against his evidence, particularly given that Mr Armstrong was broadly in agreement with it (save as described at para 19(v) above). The only matters which could be set against it were the Appellant's evidence to the effect that she did not suffer from any of these symptoms prior to the incident, that there was nothing in the medical files pre-dating the incident which gave support to the pre-existence of any of the relevant injuries and that in fact she had been ready to return to work.
127. These were matters for the Jurats to weigh up but in our judgment it cannot be possibly said that, in the light of what was largely uncontested expert orthopaedic evidence before them, the Jurats reached a conclusion which was not reasonably open to them.
128. As to the psychiatric evidence, the Jurats had to determine whether they preferred the evidence of Dr Belda or Dr Courtney. In reality, although there was disagreement as to whether the Appellant was suffering PTSD, there was not otherwise very much between them. Both agreed that, whether it was PTSD or depression, the Appellant's psychological symptoms were as a result of the physical disabilities, pain and discomfort she was suffering. Both agreed that if those were not attributable to the incident, then her psychological problems could not be said to be attributable to the incident (see Day 3 transcript pages 12C-E and 14E/F-15D for Dr Belda's evidence on this point). Thus, once the Jurats had determined to accept the evidence of Mr Coombs that the physical consequences attributable to the accident only lasted for some 3 – 4 months, it followed inexorably, on the basis of the agreed psychiatric evidence, that the psychological damage attributable to the incident could only have lasted for the same period. In any event, it was a matter for the Jurats as to whose psychiatric evidence they preferred and it was perfectly open to them to prefer that of Dr Courtney. Their decision to do so cannot possibly be categorised as not being reasonable, particularly given the fact that Dr Belda had given his original diagnosis of PTSD in ignorance of the February 2014 assault, in which the Appellant feared she might be killed.
129. It follows that, on the basis of the evidence before the Royal Court, the decision of the Jurats was well within the band of reasonable decisions and this appeal would have to be dismissed.
130. However, the Appellant argues that the Court should have admitted Dr Wilson's report and that this would have '*destroyed the defence case*' (page 7 of her document entitled 'History of the claim'). We have therefore considered Dr Wilson's report carefully in order to assess whether, if it had been admitted, it might have made a difference to the Royal Court's decision.
131. The report is a four and a half page document. It begins by stating:

"I have been asked by Mrs Simon to write a report regarding her ongoing physical and mental health as a result of an accident which occurred whilst visiting her mother on Carey Ward at the Princess Elizabeth Hospital on 29th June 2014 ..."

That formulation of itself presupposes that her ongoing physical and mental health does result from the accident. Dr Wilson continues that the Appellant has only been under his care since 29th April 2015, 10 months after the incident occurred.

132. The paragraphs of the report fall into four broad categories. The first is where Dr Wilson is simply recording what the Appellant has told him, e.g. on pages 3-4:

"Mrs Simon has described many ways that her injuries have affected her lifestyle. Before the accident she had regular visits to Rome, where she described assisting her ex-partner set up his office. She enjoyed visiting the capital where she was there on a monthly basis. She enjoyed yearly holidays, socialising with friends, walks around the countryside"

and coastal routes, and being able to work. She was able to earn a good living, providing for her family and enjoy her life. The change has been quite devastating curtailing all these activities. She describes now how she is unable to undertake her housework, relying on her eldest daughter to assist her in helping her cleaning the house. She also requires help from her daughter with her personal hygiene on the days her symptoms are severe.”

133. The second category is where Dr Wilson is simply giving a helpful summary of some of the medical issues or treatments which the Appellant has had since the incident. For example on page 3:

“Mrs Simon has now been under the care of the Pain Management Team for some time. This consists of the Pain Management Nurse ... and Physiotherapist ... and the Neuropsychologist ... and this will continue for as long as the benefits from therapy from each of the team members. Mrs Simon had attended a Rheumatologist (Dr Benji Schreiber) in London which she self-funded to seek an independent opinion in regards her ongoing pain and suffering.”

134. The third category is where the report is essentially recording some treatment or event since the incident but could be said to suggest that the relevant symptom was caused by the incident. For example on page 2:

“Because of her injuries suffered at the time of the accident, over the years since, Mrs Simon has been referred to our local orthopaedic surgeons at the Medical Specialist Group, these have included Mr Vhadra, Mr Joshi and Mr Bradley.

She has required ongoing investigations which have included scans, again as a result of her injuries at the time of her accident. This especially relates to ongoing symptoms of pain of her right knee and hip.” [underlining supplied]

In other paragraphs he simply records that something has happened ‘since the accident’ which could be interpreted as a simple statement of fact but could also be interpreted as an inference that the accident was a contributing cause.

135. The fourth category is that upon which the Appellant relies most strongly. These are paragraphs where Dr Wilson appears to express a clear medical opinion. The two key paragraphs upon which the Appellant relies commence on page 1 and are as follows:

“Although Mrs Simon was not in employment at the time of the accident, there was not any underlying medical condition at that time that prevented her being in full-time employment. She had made a good recovery from both her treatment for breast cancer and an assault which occurred on 16th February 2014 (Mrs Simon worked for Connie’s Carers and was fully capable of returning to that position). In a letter from a colleague on 26th March 2014 which was addressed to the States Insurance Authority, it was stated that the symptoms from the assault would delay a return to work from her breast cancer treatment by several weeks.

Although Mrs Simon relies on her crutch for mobility, prior to her accident she did not have any condition or previous injuries that would require the need for a crutch to mobilise, nor the need for an ankle splint to support her ankle instability. She also at present requires the use of a hand and wrist support plus a knee support. Again these were not required prior to her injury.”

136. We will consider the significance of each of these categories shortly but before doing so we should record the circumstances in which the Deputy Bailiff came to refuse admission of Dr Wilson's report.
137. At a pre-trial review on 11th January 2019, the Appellant informed the Deputy Bailiff that she would not be relying upon Mr Armstrong as her orthopaedic expert. The Deputy Bailiff pointed out to her that in those circumstances the only evidence before the Court on issues that an orthopaedic expert could address would be that of Mr Coombs. He said that if she wanted to apply for permission to have a different orthopaedic expert, she would have to make an application and that would have to be done very quickly because the plan was for any orthopaedic experts to get together to file a joint memorandum by 8th March, which was only eight weeks away. He repeated that any such application would have to be brought very quickly.
138. The Appellant did not make any such application but on 16th May, she wrote to the Court enclosing a copy of Dr Wilson's report and asking that it be admitted. This was of course some four months after the pre-trial review and less than 7 weeks before trial and Dr Wilson was her treating general practitioner rather than an independent orthopaedic expert.
139. At the further pre-trial review on 24th May 2019, the Appellant sought leave to admit the report. Although not entirely clear, it seemed that she simply wished to admit the report rather than to call Dr Wilson to give evidence as he was not due to return to work until the day of the trial. She said she had not asked him to attend as a witness. The Deputy Bailiff said that if Dr Wilson did not come, she could seek to rely upon the report as hearsay evidence. The Appellant said that she was not particularly concerned about it, but she thought it might be relevant. She said that Dr Wilson had simply taken what was in the medical files and put them into the form of a letter.
140. Advocate Dawes opposed admission of Dr Wilson's report on the basis that it was not clear whether it was relied upon as factual or expert evidence. The Court had all the medical records and they could speak for themselves. The Deputy Bailiff decided that, without Dr Wilson being a witness directly in the case, the better way of dealing with what was in his report was not for the Court to see it in that form but for it to be used by the Appellant as an aide memoire when cross-examining. The original medical records were before the Court and they could be relied upon as necessary. By implication, he seems to have agreed with Advocate Dawes' submission that the precise status of the report was unclear and it would therefore be better to rely upon the evidence of the witnesses who would appear and the original medical records.
141. Against that background we return to the four categories of content in the report. As to the first category, namely the recording of history as reported by the Appellant, this clearly could add nothing to the Appellant's case. She was able to give direct evidence of her condition before the incident, what had occurred in relation to the incident and the pain and discomfort which she had subsequently suffered. Dr Wilson's summary of what she had told him since the incident could not add materially to that evidence.
142. As to the second category, namely the summary of symptoms which had arisen and of measures taken to address them, again Dr Wilson's report could add nothing to the material before the Court. The Court had all the original records together with the various expert reports. The fact that Dr Wilson had summarised some of the matters which had arisen since the incident provided the Royal Court with no new information and could not possibly affect the outcome of the trial.
143. The third category gives rise to the issue raised by Advocate Dawes with the Deputy Bailiff on 24th May. As shown in the example quoted at para 134 above, Dr Wilson included in his report certain phrases which could be taken to be expressing an opinion as to the cause of a particular injury, but it is in the form of a passing remark without any explanation. Without Dr Wilson

attending to explain what he meant, the Jurats could not properly have placed any weight on such a remark, particularly when set against the expert reports before the Court.

144. That leaves the fourth category, namely where Dr Wilson appears to have expressed a clear opinion. As already mentioned, the Appellant places particular importance on the paragraphs which we have quoted at para 135 above. However, Dr Wilson states at the beginning of his report that the Appellant had only been under his care since 29th April 2015. Accordingly he had no personal knowledge of her condition prior to the incident. In expressing any opinion as to her medical condition prior to the incident, he was reliant entirely on the medical records which existed prior to the incident and on what the Appellant told him. He was therefore in no better position than the experts such as Mr Coombs, Mr Armstrong and indeed the psychiatrists. They too were reliant upon the medical records which existed prior to the incident, on what the Appellant told them and on the medical evidence as to her condition since the incident.
145. In matters of causation and quantum in relation to personal injuries, courts invariably look to independent expert medical evidence for assistance. This is for two main reasons. First, it is important that the evidence should be independent. A treating general practitioner is likely to have a close relationship with his/her patient and is unlikely therefore to be perceived as sufficiently independent to bring an entirely objective approach to bear. Secondly, courts look for a witness who is an expert in the particular area under investigation and who has forensic experience of assessing the cause of particular injuries.
146. A treating general practitioner, such as Dr Wilson, is not in a position easily to meet these two criteria. If Dr Wilson's report had been admitted, the Jurats would therefore have been faced with, on the one hand, the evidence of an independent expert (Mr Coombs) who had given oral evidence supported by the written report of a second independent expert (Mr Armstrong) on the one hand and with the two paragraph opinion (with some other passing references elsewhere in the report under the third category) of the Appellant's general practitioner on the other, in circumstances where the general practitioner had no advantage by reason of being the treating physician, because he had not been her physician until 10 months after the incident.
147. In those circumstances, there is, in our judgment, no realistic possibility that Dr Wilson's report, even if admitted, would have affected the decision to which the Jurats came, namely to accept the evidence of Mr Coombs as broadly supported by Mr Armstrong. We find therefore that the Appellant suffered no material prejudice by reason of the exclusion of Dr Wilson's report.
148. In reaching that conclusion, we have not forgotten the Appellant's submission that Mr Coombs had conceded in his oral evidence that the Appellant's treating doctor was in a better position to give an opinion as to the cause of her injuries than he was, given that he had only examined her on one occasion several years after the incident. We have to say that the transcript of the evidence does not support that submission. The relevant extract from the Appellant's cross-examination of Mr Coombs is as follows at pages 46E/F-47H of the transcript (Day 2):

“Q. But with respect to myself, you saw me four years after the incident, correct?”

A. Yes

Q. And all you were able to focus on were the complaints on the day at that one time, correct?”

A. That is incorrect because I had five bundles, many hundreds of pages of clinical examinations carried out by treating clinicians, also the investigations and a vast catalogue of medical records prior to your accident.

Q. Okay, thank you. All you were able to focus on were the complaints of that day at that one time. Obviously, you've just said no, you didn't just –

A. I had one ... it was entirely appropriate that I had one examination of yourself, yes.

Q. Certainly, you were aware that Dr Wilson, the plaintiff's physician, has had the opportunity to evaluate the plaintiff on numerous times over the last four years. My physician, that is.

A. [Inaudible] he's ... and he's your ... is he your physician –

Q. He is.

A. – or your GP?

Q. No, he's ... well, he's been my ... we call them physicians, GPs, over here. I don't know what you call them over there.

A. Okay. No, no, so he's your general practitioner?

Q. Yes

A. Yes. No, he's examined you ... no, I mean he's responsible for providing clinical treatment, I agree.

Q. Thank you. Certainly, he has had ... he has more ... he has had more of an opportunity than you to evaluate the patient, correct?

A. He's ... absolutely. He's seen you on many occasions.

Q. Okay. Unlike you, he's actually rendered treatment.

A. Yes.

Q. Unlike you, he's made referrals to orthopaedic surgeons and various medical professionals for the plaintiff.

A. Absolutely right. Of course, he's your GP.

Q. Unlike you, he's actually undertaken x-rays, yes?

A. When you say he's undertaken them, he's –

Q. Well, he's referred me –

A. – referred you for imaging.

Q. – for x-rays, yes.

A. He's referred you for imaging, yes.

Q. Yes.

A. I mean one of the key things, Simone, is that you did have imaging after this accident and no fractures were identified and no serious problems that could be accident related.

Q. Okay. Unlike you, he has actually prescribed me medication, yes?

A. Absolutely right. He's prescribed. It's his job. Entirely appropriate.

Q. So therefore, wouldn't you agree that his continued examination over the course of four years, a four year period, puts him in a far better position than you to offer a medical opinion?

A. I would absolutely disagree that he can't ... he is not in a position to offer an orthopaedic expert opinion.

Q. So I mean, I'm sorry, but –

A. And –

Q. Therefore –

A. He's not an orthopaedic surgeon. He cannot offer an orthopaedic expert opinion. What he can do is provide you with clinical treatment as a GP."

149. The Appellant also claims Dr Courtney made a similar concession as Mr Coombs:

"Q. And you wouldn't agree that his continued examination over the course of four year[s] puts him in a better position than you were to offer, like, mental, medical help for me?

A. My job is not to provide help for you so I would imagine that your GP here was in a better position to guide you in regard to medication and other referrals, yes" (page 21A of the transcript for Day 3).

150. Accordingly we do not think that these exchanges support the Appellant's submission that greater weight should be given to Dr Wilson's report because it is by her treating general practitioner who will therefore be more familiar with her condition than an expert who examines her purely for the purposes of the legal proceedings.

151. We should add that we are not to be taken as accepting the Appellant's submission that the Deputy Bailiff was wrong to exclude the report. The Royal Court had ordered, as long ago as 26th January 2018, that expert evidence be limited to the fields of orthopaedics, psychiatry and pain management. It is clear from the transcript of the hearing on 11th January that the Deputy Bailiff carefully explained to the Appellant the consequences of not having an orthopaedic expert to set against the evidence of Mr Coombs (given her decision not to rely on the evidence of Mr Armstrong) and explained carefully to her that she would have to make an application for a replacement expert for Mr Armstrong as a matter of urgency. She did neither of these things and simply applied over four months later for Dr Wilson's report to be admitted. This was not a report from an independent medico-legal expert and did not deal with the matter as an independent expert (whose duty is to the court) would have done. Dr Wilson's primary duty when writing his report was to his patient, not the court. The report was for the most part a summary of the injuries, pain and discomfort which the Appellant had suffered since the incident and the various treatments which she had undergone coupled with some passing expressions of opinion, but with no reasoning to support that opinion. That is not to criticise Dr Wilson. He

had not been instructed as an expert and was therefore clearly not producing that sort of report. He was doing his best to summarise the position on behalf of his patient.

152. However, given the failure of the Appellant to comply with the clear direction from the Deputy Bailiff that any application for a replacement expert for Mr Armstrong should be made as a matter of urgency, the lateness of the application and the mixed nature of the report, we cannot possibly say that the Deputy Bailiff's exercise of his case management discretion to exclude the report was outside the band of reasonable decisions.

Quantum

153. The Appellant's approach in her appeal was wide-ranging and emphasised her strongly held conviction that the Royal Court simply had not properly and fully considered her evidence that her present physical condition was almost wholly attributable to the incident. Given that position, she did not offer subsidiary criticisms against the event that the Court was not with her on that primary approach. In particular, for example, she did not submit that, even if the Royal Court were correct in finding that only a proportion of her current physical complaints were causally connected to the accident, the ultimate quantification of £7,000 for her purely physical injuries and symptoms was inadequate. In the whole circumstances of this case, however, and given the somewhat telegraphic terms of the Judgment, we consider it important to give some guidance as to the proper approach of a court of first instance to a personal injury claim where a multiplicity of injuries is linked to a single incident.

154. We agree with the direction given by the Lieutenant Bailiff at paragraph 12 of the Judgment in the following terms:

“The Lieutenant Bailiff directed that in the assessment of general damages for pain, suffering and loss of amenity it is appropriate to follow the previous practice of the Royal Court in having regard to the “Guidelines for the assessment of general damages in personal injury cases” issued by the Judicial College (formerly the Judicial Studies Board) of (predominately) England and Wales (for example in Helmut –v- Simon: RC Judgment 4/2010, which was not appealed in this respect). He further directed, citing Kemp & Kemp on the Quantum of Damages at para 3.024, that in multiple injury cases the correct approach is to fix a figure for each injury [found to have been caused by the accident], then to stand back and compare their aggregate with what seems appropriate for the totality of the injury and consequential disability ...”

155. However the Judgment gives no indication that these directions were followed and, accordingly, there is no setting out of the detail of the Jurats' findings and reasoning which allows a party or an appellate court to identify whether there have been errors in respect of which an appeal might lie.

156. When a court engages in this exercise it must set out each step in the process:

- (i) the individual instances of pain and suffering found to have been caused by the accident,
- (ii) the appropriate figure for each instance by reference to the Judicial College Guidelines and why it is considered appropriate,
- (iii) the comparative exercise by reference to such of the authorities presented to the court as appear to them to be appropriate comparators by reason of a similar multiplicity of injuries, medical intervention and recovery time, and

- (iv) the determination of the appropriate discount to the total sum brought out by the arithmetical calculation regarding the individual instances which appears appropriate by reference to the authorities.

The approach overall, therefore, is not a merely mechanical arithmetical one; but it should be a systematic one which allows transparency as to why the final determination is in the sum specified. To do otherwise is to place no weight on the Judicial College Guidelines.

157. The importance of starting with the Judicial College Guidelines lies principally in two considerations. The first is that even a straightforward injury can have a wide variety of results and the Guidelines provide helpful sub-categories and co-relative ranges. This enables similar awards to be made for similar injuries even where there are fine nuances. The second is that, especially as regards multiple injuries arising from one incident, it may be a matter of mere good fortune to find in the reported decisions (however briefly recounted) a set of injuries and sequel of such similarity and from recent times that the global award can be seen, with any reasonable degree of certainty, to be immediately applicable. Indeed, it must be remembered that the comparative exercise may suggest that reported decisions have been reached without regard to the approach set out in *Kemp & Kemp* and cited by the Lieutenant Bailiff and the court of first instance may well have to consider the reported decisions with some care in carrying out the exercise. That said, the totality principle in a personal injuries context has regard to the fact that almost every injury will leave the plaintiff with a degree of pain and suffering and that, in cases of multiple injuries, some of that pain and suffering will coincide with the pain and suffering from another instance. Yet again, however, the total effect of a multiplicity of injuries may leave the plaintiff in a worse condition than a simple arithmetical addition of each. The matter will always be one of fact and degree.

158. Here, the Royal Court had available to it expert reports from orthopaedic surgeons instructed, respectively, by the Appellant and the Respondent; and it had the advantage of oral evidence from Mr Coombs for the Respondent. Each expert had analysed the Appellant's individual complaints with some care and precision. On occasion Mr Coombs was in agreement with his colleague; and on occasion not. Yet the Judgment does not reflect that care and precision, and the wording of paragraph 16 of the Judgment is wholly imprecise as to which instances of soft tissue damage the Royal Court found caused by the incident, and which conditions affecting the Appellant's body the Royal Court found could be attributed to the incident. Accordingly, although the Royal Court in paragraph 18 accepted the evidence of Mr Coombs that "*the vast bulk of the plaintiff's problems were constitutional and all would have been present even if the accident had not happened*", the reader is left wholly in the dark as to the residual physical, soft-tissue damage for which it was then incumbent upon the court to proceed to assess damages.

159. As we have stated, the Appellant did not raise as a ground of appeal or in her submissions to us an argument that, even if the Royal Court were not in error in finding that only a restricted proportion of her present conditions were attributable to the incident, the conclusion as to the level of the damages was one to which no reasonable court could have come and it follows that we cannot enter into an attempt to fathom the reasoning process behind the determination. However, we trust that, in any such cases in the future the Royal Court, having correctly identified the process to be adopted, will proceed to do so.

Conclusion

160. As Mr Coombs made clear in his oral evidence, there is no suggestion that the Appellant is not suffering the very considerable pain and other symptoms which she describes. She feels strongly that she was not in such a state prior to the incident and would have been able to return to work

as a carer. She is in no doubt that the fact that she now suffers from all these problems can only be attributable to the injuries which she suffered in the course of the incident.

161. However, a court can only determine a case on the basis of the evidence before it. On the basis of the expert medical evidence adduced at trial, both orthopaedic and psychiatric, together with the medical notes, it was clearly open to the Royal Court to come to the conclusion that it did; and in our judgment the admission in evidence of Dr Wilson's report would not have made any difference.

162. In these circumstances, the appeal must be dismissed.