Appeal Reference: B2/2017/1649/A

CLAIM NO. HQ13X03449

ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MR JUSTICE WILLIAM DAVIS
BEFORE:
LORD JUSTICE RUPERT JACKSON, LORD JUSTICE HAMBLEN AND LORD JUSTICE LEWISON
BETWEEN:

JR

(A PROTECTED PARTY BY HIS MOTHER AND LITIGATION FRIEND JAR)

Claimant

Appellant

-and-

SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST

Defendant

Respondent

APPROVAL ADVICE

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1. Introduction

1.1. This advice is written for the assistance of the Court, for the purposes of approving a settlement of the Appeal.

1.2. The proposed compromise is, in summary, that:

1.2.1. The Respondent will pay £800,000 (eight hundred thousand pounds) in respect of the capital cost of accommodation that can be adapted for the Appellant's needs.

1.2.2. The Respondent's cross-appeal will be dismissed.

1.2.3. The Respondent will pay the Appellant's costs of the appeal and cross appeal.

1.3. The Appellant is referred to as JR. He was born on 14 November 1992 at the Jessop's Hospital in Sheffield. He was catastrophically injured during the course of his birth when he was delivered by a negligent breech extraction.

1.4. He suffers from cerebral palsy with severe physical and significant cognitive impairments. He requires a high level of care and accommodation which can be adapted for his needs.

2. Capacity

2.1. JR is a Protected Party and brings his claim through his Mother and Litigation Friend. His affairs will be managed under Order of the Court of Protection. He has a professional Deputy.

2.2. A 'Protected Party' is defined at CPR 21.1(2), p.670 of the current Civil Practice/WhiteBook.

2.3. Approval from the Court is required, in accordance with CPR 21.10, in order to make any settlement valid. The Practice Direction at 21PD.6 refers to the practice on a settlement approval. This Advice is provided in accordance with the requirements of 21PD 6.4.

2.4. An advice of this sort is often marked as confidential because it refers to matters which would otherwise be protected by legal professional privilege or litigation privilege. Those considerations do not arise in the present circumstances. The appeal relates to the single issue of whether the Appellant is entitled to an award of damages in relation to the increased capital cost of purchasing a property which can be adapted for his needs and if so how such a sum should be calculated.

3. Background

3.1. The trial judge found that the cost of purchasing a suitable property would be

£900,000. However he considered himself bound by *Roberts v. Johnstone* to calculate the multiplicand (used in the formula which takes its name from that case) by reference to the discount rate in force at the time of trial (-0.75%). This resulted in a nil award for accommodation.

3.2. If this represents the law then it gives rise to the unpalatable result that severely injured claimants will receive nothing in relation to what would otherwise have been, in most cases, the largest single capital item of their claim. If it is not the correct approach then those advising claimants nevertheless have no clear yardstick by which to assess the amount which is properly recoverable.

3.3. We contended before the judge that the method of calculating damages for future accommodation set out within *Roberts v. Johnstone* had finally become unworkable having already produced the outcome in many cases (even where calculated on a 2.5% basis) that claimants have been left without sufficient funds to purchase property. We proposed that the judge should award the full increased capital cost.

3.4. We conceded in our closing submissions that in calculating the quantum of his accommodation claim, it was necessary for the Claimant to give credit for expenses that he would have incurred in any event if not injured (as is the case in relation to additional property running costs or claims for a larger adapted vehicle).

3.5. Those expenses will usually include the value of the home that he would have bought but for the injury (*Thomas v. Brighton Health Authority* [1996] PIQR 30; *Biesheuval v. Birrell* [1999] PIQR Q40; *Lynham v. The Morecambe Bay Hospitals NHS Trust* [2002] EWHC 823 (QB)); the cost of renting accommodation (*Evans v. Pontypridd Roofing Ltd* [2001] EWCA Civ 1657); or a combination of the two. Thus a deduction of this sort has become a conventional part of the exercise of identifying the overall additional capital sum to which the claimant is entitled as part of the *Roberts v Johnstone* calculation.

3.6. The exercise requires a degree of speculation but a common approach is to assume that the uninjured Claimant would have co-habited with at least one other person and would probably have rented from about the age of 18 until

approximately age 30. He would then have purchased a property, probably on a joint basis with a spouse or partner.

3.7. Assuming rental costs of no less than £80.00 per week (£4,160 per annum) from trial to age 30 (5.56 years) results in a multiplier of 5.68 and a total deduction for rent of no less than £23,129.60. If the Claimant should give credit for rent from the age of 18 to age-30, the multiplier increases to 12.56 and, the total deduction increases to £52,249.60.

3.8. It would be optimistic to assume that the Claimant would have bought a property for less than £100,000 - £150,000 on a joint basis with a spouse or partner. It follows that he should give credit for a further £50,000 - £75,000, being half the purchase price of the property that he would have bought in any event.

3.9. The exercise can be undertaken variously but a reduction of £100,000 from the purchase price of the property adequately reflects, in our view, a combination of the rent that the Claimant would have been likely to pay during the relevant period and the purchase price of the property that he would have bought in any event.

3.10. It follows that where the full capital cost of purchasing a suitable property was found to be £900,000 damages of £800,000 represent the entire additional cost to which the claimant would have been entitled if the appeal had been allowed. In addition there is a principled rather than arbitrary basis on which to seek the approval of the court that is to say that the settlement sum has been arrived at by deducting from the capital cost of purchase the sums which the claimant would, in any event, have expended on meeting his accommodation needs and purchasing a property .

3.11. <u>Submission</u>

3.11.1. In all the circumstances of this case, we consider that it would be in JR's best interests to accept the settlement sum. The proposed settlement has the approval of JR's mother as his Litigation Friend. We respectfully recommend it and the order which embodies it to the Court.

Derek Sweeting QC

Richard Baker

23 October 2017