



Neutral Citation Number: [2022] EWHC 90 (QB)

Claim No QB- 2017- 001637

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Thursday 20 January 2022

**Before:**

**ANTHONY METZER Q.C**  
**(SITTING AS A DEPUTY HIGH COURT JUDGE)**

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**Between:**

**NATASHA PALMER**

**Claimant**

**- and -**

**Defendants**

**(1) MR SEFERIF MANTAS**  
**(2) LIVERPOOL VICTORIA INSURANCE**  
**COMPANY LIMITED**

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**Marcus Grant of Temple Garden Chambers** (instructed by **Garden House Solicitors**) for the  
**Claimant**

**Charles Woodhouse of Old Square Chambers** (instructed by **Berrymans Lace Mawer LLP**  
**Solicitors**) for the **Second Defendant**

The First Defendant did not attend and was not represented

Hearing dates: 15 November 2021 (Reading Day); 16 November 2021, 17 November 2021, 18  
November 2021, 19 November 2021, 22 November 2021, 23 November 2021, 24 November  
2021, 25 November 2021, 26 November 2021, 29 November 2021 (Submissions preparation  
day) and 30 November 2021

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this  
Judgment and that copies of this version as handed down may be treated as authentic.

ANTHONY METZER QC

## **ANTHONY METZER QC SITTING AS A DEPUTY HIGH COURT JUDGE:**

### **Background**

1. The Claimant's claim arose out of a road traffic accident on 15 June 2014 when the First Defendant drove into the rear of the Claimant's stationary car on the M25 motorway. The First Defendant was not insured at the time and therefore the Second Defendant is liable to compensate the Claimant as the insurer of the vehicle pursuant to Section 151 of The Road Traffic Act 1998.
2. Liability was admitted and the trial was therefore in respect of causation and quantum only. The hearing lasted twelve court days and included live evidence not just from the Claimant and various other lay witnesses, but also eight expert witnesses in addition to other agreed and read expert evidence. The Second Defendant challenges the claim on several bases, foremost of which is the allegation of fundamental dishonesty by the Claimant, but secondly in respect of clinical causation and challenges the Claimant's Updated Schedule of Loss. That Updated Schedule seeks damages of £2.2 million, whereas the Second Defendant in respect of its primary case conceded only £5,407 in damages, which was amended at the conclusion of the trial to £71,150, and alternatively in respect of its secondary case to £206,081.
3. The background to the accident itself is largely accepted and can be essentially gleaned from the Claimant's first and second Witness Statements dated 11 April 2017 and 19 June 2018. The Claimant, who was born on 29 November 1987, and was therefore twenty-six years old on the date of the accident, was driving along the M25 near to the Chelmsford turn-off between 8.30 and 9.00 p.m. in the middle lane in an area where there was a fifty mile per hour speed restricted section of the motorway passing through roadworks. She was driving from her parents' home in Enfield to her home in Finsbury Park having stopped en-route at a friend's house to pick up a couple of other friends to take them home with her. There were cars in front of her and she saw a car swerve as if its driver had thought that the approaching hard shoulder was a junction. The car directly in front of her came to an abrupt stop and she therefore brought her car to an abrupt stop too, with her foot on the brake and both of her hands on the steering wheel. She was then subjected to a high-energy rear end shunting by the car behind her, driven by the Defendant at high speed, which the Claimant variously estimated as being between 50 and 70 miles per hour. She recalled seeing the Defendant's headlights approach in her rear-view mirror and feared that he was not going to slow down before her car was shunted from behind. She remembers hitting her head and knee on the steering wheel when she was first thrown forward and then was thrown backwards, and felt the seatbelt cut into her stomach as she was thrown forward a second time. The impact force caused considerable damage to her car, a Renault Clio, which had been an eighteenth birthday present, as this was shunted into the back of the car ahead of her and was written off owing to the extent of damage.
4. An important issue which arose at trial was the extent of the Claimant's memory post-accident. She recalls being able to get out of the car unaided and the fact that the airbag did not go off. She said she was shocked and felt her whole body shaking; she remembers people working on the road came to help her. She was able to move her car over onto the hard-shoulder and recalled that, before the workers approached her, she was asked if she was okay by a young couple who were standing on the side of the hard

shoulder between her car and the occupants of the car ahead, into which she had been shunted.

5. She then recalled the First Defendant walking over to her smelling strongly of alcohol and cigarettes. He asked, in broken English, to pay her money for the damage to the vehicle. She said he adopted an aggressive and frightening manner. The workers had suggested contacting the police and said they had seen the First Defendant throwing empty beer bottles from inside his car into the bushes on the side of the road; he was trying to persuade the Claimant not to call the police. She did not accept his offer of money for damage, the police were called, and the First Defendant was arrested. Ultimately, he was convicted of an offence of driving whilst under the influence of alcohol and was banned from driving for four years as part of his sentence. The Claimant described having islands of memory after the accident; she recalled a female police officer talking to her and asking if she had been drinking, which she denied, and that she stated that she did not need an ambulance. She remembered several police officers being present, and a man coming to tow her car away and telling her she needed to collect it the following day. She recalled the First Defendant being taken away in handcuffs, and states that her next memory was being at her friend Billy's house where she had stopped off en-route before the accident and saying to her that she could see "fireworks" whenever she shut her eyes. She recalls being in physical pain over her body and felt generally unwell. Her next memory is being at the doorstep of her parents' home in daylight and seeing her mother opening the door in her dressing gown with a look of panic and concern on her face. She has a vague recollection of vomiting, possibly at one of the hospitals she visited later, and then recalled sitting on the sofa in her parents' living room with her laptop open and feeling unwell but saying she needed to work and logging into her work emails. She believed that was several days after the accident.
6. The Claimant stated that her mother informed her of what took place post-accident, namely that once she got home, she was driven by her mother to Chase Farm Hospital Accident and Emergency and thereafter to Barnet General Hospital. At the first hospital, she was examined and x-rayed and there was concern because she had hit her head and was vomiting. She attended the Barnet General Hospital the following day complaining of pain in her neck, chest, back, ribs and abdomen together with headache and nausea and complained of left knee pain. Aside from the specific memories as set out, the Claimant maintained that she had a number of significant matters she has no recollection about, but now knows happened over the seventy-two hour period after the accident including the same as set out, the collision itself; what happened when she got out of the car; the Defendant's facial features; who called the police; calling the Vehicle Recovery vehicle or conversation with the recovery driver; sending her mother a text; the journey to Chase Farm Accident and Emergency and what took place at that and Barnet General Hospital; what happened when she got back to her parents' home from having been discharged from Barnet General Hospital; and sleeping thereafter. The Claimant took between seven and ten days off from work and believes that her recollection of the laptop on her sofa was the following Wednesday or Thursday after the accident.

#### **The Claimant's early life and pre-accident working life**

7. The Claimant was born and brought up in Enfield. Her father was a treasurer of a bank for much of her childhood and then changed career to work as a sales specialist for

Thomson Reuters. Her mother was a home worker. She has an elder brother who is a chef in London. She was educated privately at Palmer's Green High School and passed ten GCSEs with A to C grades. She then went to Southgate School to study three A Levels which she passed with B, C and D grades respectively. The Claimant then went to Salford University in Manchester to study media studies and whilst doing so worked on a part-time basis for the Pure Group. After one term, she realised that the degree course did not interest her and was unlikely to lead to a lucrative graduate career, so she decided to leave and progress with her working life. At that time, she was offered a hospitality job in Dubai by the Jeremiah Hotel Group, which she accepted and lived and worked there for six months before travelling for several months in Australia.

8. Upon her return to London, after being unemployed for a short while, she accepted a job offer which involved doing promotional work for a nightclub in Ibiza. She enjoyed her time there, but it was cut short by a tragic death of a close friend who was robbed and assaulted one night and left for dead in a ditch on the island. She and other friends were unable to find him and alerted the police. Following a huge search, he was found three days later, unconscious and dehydrated. He never recovered from a deep coma, dying some days later. The Claimant was traumatised by that event, returned to England, was prone to panic attacks, and was prescribed medication to help her sleep and defuse the panic attacks.
9. The Claimant took a considerable period to get over the shock and the bereavement, and states that she was still processing it when she obtained a job for the Ministry of Sound, a well-known nightclub in central London. The relevant GP notes entry on 28 September 2008 confirms that she was prescribed Zolpidem tablets for the panic attacks and bereavement reaction, which was altered to Escitalopram tablets on 7 October 2008.
10. On 6 April 2009, the Claimant commenced employment at the Ministry of Sound as a club promotions assistant on a salary of £18,000 gross per annum. It seems clear that she did well working at the Ministry of Sound as a letter dated 22 February 2010 confirmed that "Due to your outstanding performance ... we have decided to award you an increase of £2,000. Therefore, your salary shall increase to £20,000 per annum effective 1 February 2010". She was subsequently promoted to the role of club coordinator and press manager on a salary of £25,000 gross per annum on 1 July 2010. As the Claimant made clear in her witness statements and confirmed in her GP records, she was still taking Escitalopram which is an anti-depressant.
11. On 15 December 2011, the Claimant was further promoted to club promotions manager on a salary of £25,000, rising to £28,000 on successful completion of three months' probation. Within that new role, the Claimant was responsible for managing ten people across the club's Tech and Design teams. She describes having low moods in 2010/2011 and GP notes confirmed that she was prescribed Mirtazapine, another anti-depressant in January, February and August 2011. On 19 November 2012, the Claimant received a letter from her employer informing her of a discretionary bonus payment of £1500 reflecting her achievements and that of her department as a whole.
12. On 24 August 2012, the Claimant received a letter from the human resources manager in relation to an investigation that took place on 23 August 2012 concerning to an allegation of inappropriate conduct, in that it was alleged that an inappropriate email had been sent to a colleague the previous week. It was agreed that no further action

would be taken but the Claimant was reminded about the areas of concern which resulted in an email response which was deemed inappropriate, including to junior members of staff, and the Claimant was told to deal with that in a professional and appropriate manner.

13. The following week, on 29 August 2012, the Claimant resigned from the Ministry of Sound. She ceased employed there on 28 September 2012. On 14 January 2013, the Claimant began working at the Hippodrome Casino Limited as a marketing executive in hospitality and entertainment on a salary of £35,000 gross per annum. The Claimant maintained that she did well, reporting directly to the managing director at the Hippodrome Casino. Her normal working hours were 9.00 a.m. to 6.00 p.m., although she frequently and willingly worked longer hours because she loved the job. There were however some difficulties at the Hippodrome Casino. On 25 April 2013, the Claimant sent an email to the head of human resources, indicating that she had difficulties with another employee who she considered was becoming a regular frustration and was affecting her day-to-day role. She received a response which suggested the matter had been dealt with. There was then an email from a colleague to the head of marketing on 19 July 2013 complaining about an incident where the Claimant was alleged to have spoken to him in a “sharp and snappy manner”. There was a disciplinary meeting on 30 October 2013 resulting in a letter dated 1 November 2013 concerning an allegation that the Claimant tried to enter the Hippodrome Casino whilst under the influence of drink. When refused entry, it was stated that she attempted to push past security and then, when this failed, she became loud and discourteous. It was explained at the hearing that there was no restriction of her drinking as part of her job role, but the Claimant agreed to manage the amount she drank and her conduct whilst drinking. She was given a formal warning that any other alcohol-related misconduct or similar within twelve months would be likely to lead to her dismissal. The Claimant was working at the Hippodrome Casino on the date of the accident.
14. In another potentially relevant incident pre-accident, the Claimant spoke to her mother about an assault on 13 June 2005 when she was at school. She said that she was stalked by two school colleagues and assaulted by them; some of her hair was pulled out and she suffered pain in her left ankle. She was seen at Chase Farm Hospital and the GP notes of 13 July 2005 confirm that there was no treatment. She saw a physiotherapist privately and suffered a ligamentous injury. She was still in pain, had given up dancing and was agoraphobic for a while and submitted a medical report to the CICA for compensation.
15. Also on 5 November 2013, an urgent call centre incident report was made in the Claimant’s name after she had an accident the previous Friday night, which can conveniently be referred to as the Halloween party accident. The Claimant was walking downstairs and was pushed, she landed on her face and believes she lost consciousness at the time. She had no recollection of the events, although was aware of pain in her face and neck at the time. Following the incident, she felt unwell, in that she was suffering from a headache and an inability to concentrate. She was examined, which revealed swelling to the bridge of the nose, and she was diagnosed with a head injury syndrome. On 11 November 2013 at 8.10 p.m., the Claimant attended Chase Farm Hospital Accident and Emergency Department as a result of that accident and described a loss of consciousness, vomiting and persisting headache. She also presented with a one- week history of clear fluid from the right ear and hearing loss. Examination

showed a deviation to the left of her eye, but no brain or skull injury was found on examination. On 29 May 2014 when attending her GP, she was suffering with upper back pain and tension headaches since the fall, as well as tense upper back muscles and a limited range of movement in all directions. That was around three weeks before the date of the accident.

### **The Evidence**

16. There was a voluminous amount of evidence for the trial. The Claimant attended on twenty-two Medico-legal examinations for the five-year period after the accident. She was examined by her own core experts on two occasions and the Defendant's experts each examined her once. The lead, but not only, experts were within the field of neuropsychiatry, neurology, pain experts and neuropsychologists. In addition, there were orthopaedic surgeons and vestibular physicians, from whom I did not hear live evidence as there was a substantial area of agreement on the medicine between the orthopaedic and spinal surgeons and the audio-vestibular physicians. The live experts called by the Claimant were Dr Agrawal, Consultant Neuropsychiatrist, Dr Munglani, Consultant in Pain Medicine, Dr Allder, Consultant Neurologist and Dr Murphy, Clinical Neuropsychologist. In addition, there were medical reports of Dr Lester, General Practitioner, Mr Hekster, Consultant Psychologist, Mr Willis Owen, Consultant Orthopaedic Surgeon, Mr O'Dowd, Consultant Spinal Surgeon and Dr Surenthiran, Consultant Neuro-Otologist. On behalf of the Defendant, I heard live evidence from Professor Schapira, Consultant Neurologist, Dr Jacobson, Neuropsychiatrist, Dr Torrens, Neuropsychologist and Dr Miller, Consultant in Pain Management. I was also provided with Expert Evidence Reports from Mr Earnshaw, Consultant Orthopaedic Surgeon, Mr Foy, Consultant Spinal Surgeon and Dr Raglan, Consultant in Audio Vestibular Medicine. I also heard live evidence from the Claimant who provided six witness statements dated 11 April 2018, 19 June 2018, 5 June 2019, 12 December 2019, 17 March 2020 and 13 October 2021. I also heard live evidence from her mother, Sharon Palmer, who provided witness statements dated 5 June 2019 and 13 October 2021, her father, Lee Palmer, who provided two witness statements dated 6 June 2019 and 13 October 2021, her partner, David Clark, who provided two witness statements dated 9 December 2019 and 13 October 2021 as well as other live lay-witnesses, namely Daniel Measor, Theresa Semackor, Michelle Stangroom, Rebecca Howells and James Alford. I also was provided with agreed statements from Ryan McGuire, Jane Harris, Raju Watts, Susan Maxwell, Gemma Basari, Loretta Askwith and Hayley Killengrey. I also had joint reports of Mr Willis Owen and Mr Earnshaw, Mr O'Dowd and Mr Foy, Dr Agrawal and Dr Jacobson, Dr Munglani and Dr Miller, and Dr Allder and Professor Schapira, as well as a substantial amount of medical literature articles and papers in relation to the joint report of Dr Allder and Professor Schapira. This is in addition to the joint reports of Dr Surenthiran and Dr Raglan, and Dr Murphy and Dr Torrens. There were also two witness statements of Saira Parveen, served on behalf of the Second Defendant, relating primarily to the Claimant's social media posts which were attached to her witness statements.

### **Summary of the Evidence**

17. Inevitably, in a lengthy trial in which all lay and expert witnesses adopted their evidence to stand in chief, it will not be possible or sensible to recite that evidence in full. I shall adopt the approach of referring to a selective summary of the evidence which I consider to be of particular significance. In so doing, I would wish to record my considerable

gratitude to both Counsel for extremely cogent and comprehensive submissions both in opening and in closing, as well as the comprehensive, helpfully marked chronologies, and the Claimant's Updated Schedule of Loss and Defendant's Counter Schedule of Loss, which I found to be of invaluable assistance. In addition, I was further assisted by focussed and clear cross-examination and oral submissions at the conclusion of the evidence. That assistance has meant that I am now able to deal with this Judgment more concisely than would otherwise have been the case, although for a case with this amount of contested evidence and the huge disparity in evaluation of the quantum of the claim by the parties, as well as consideration of the issue of fundamental dishonesty, means that necessarily the Judgment must be of some length. Before consideration of the evidence which is in dispute, I would wish to recite the ambit of agreement helpfully agreed between the parties, both at the outset of the trial and where it had narrowed, at its conclusion.

18. The parties' experts agree that the Claimant was more vulnerable to the consequences of the high energy rear-end collision being a traumatic event than an average 26-year-old female of ordinary fortitude, primarily by reason of the agreed history in her GP's notes, and the non-contentious evidence provided by the Claimant and, to a lesser extent, her mother.
19. In respect of the Halloween party incident, which resulted in the Claimant falling on some stairs, she sustained a "probable mild traumatic brain injury"; had a history of suffering depression from time-to-time; was constitutionally hypermobile of which she was asymptomatic pre-accident; had a pre-existing inner ear balance organ deficit which again was asymptomatic pre-accident; had continuing symptoms of neck-ache from the incident which were continuing on the date of the accident and had a history of occasional headaches in 2008, 2012 and 2014.
20. It was further agreed that there were no ongoing neurocognitive or neuropsychiatric problems at the time of the accident and that the Claimant was active, generally well, working in a full-time job which it was generally accepted she was both working hard and performing well (save as set out above) and had a considerable range of extra-curricular activities, including sporting and social and, but for the accident, the Claimant would have been capable of continuing full-time work, independent living and continued participation in her hobbies and other activities.
21. Many different symptoms manifested after the accident, which it was accepted were caused or materially contributed by it which were physical, neurological, neurocognitive and neuropsychiatric in origin. They are fully set out in the joint statement of Dr Surenthiran and Dr Raglan dated 28 February 2020 at paragraph 4, and may be summarised as tinnitus, sound sensitivity, hearing difficulties, dizziness and migrainous headaches associated with increased sensitivity to light and sound. It was not agreed that there were any associated balance problems.
22. The parties further agreed that the Claimant was suffering from chronic pain and/or Somatic Symptom Disorder with predominant persistent pain; a generalised anxiety disorder and specific phobic anxiety; recurrent periods of clinically significant depression amounting to a major depressive episode which fluctuated depending on her other symptoms, in particular the migrainous headaches; Post-Traumatic Stress Disorder from which she had recovered by about two and a half years after the accident but which had reoccurred recently; decompensation of the Claimant's pre-existing

asymptomatic left-sided inner ear balance; organ weakness and soft tissue injuries to her left knee, hips and spinal column which, but for the issues of psychiatric and chronic pain medicine, would have been expected to generate orthopaedic symptoms for a finite period only. It was agreed between the neuropsychologists that the Claimant has become sensitised by physical and cognitive symptoms, and that poor psychological adjustment post-injury has given rise to a cluster of persisting problems.

23. Save for Dr Miller, whose evidence I shall specifically address below, the parties were largely in agreement in respect of the severity of the migraine headaches that the Claimant had experienced since the accident and that she did not previously suffer from them before the accident.
24. In addition, there was significant but incomplete agreement in respect of recommended future treatment for the Claimant, including that there be a well-coordinated multi-disciplinary community-based treatment; a clear and firm treatment plan aimed at reducing the Claimant's clear dependency on her mother's input by increasing her independence; and a programme of vestibular rehabilitation. It was also noted that the Claimant is presently having extensive treatment from the National Migraine Centre in respect of her ongoing migraines. By the end of the trial, Professor Schapira, the Second Defendant's expert, agreed that the headaches suffered by the Claimant were related to the whiplash injury caused by the accident, which he considered to be "multi-factorial and a consequence of pre-disposition, muscle contraction, musculoskeletal problems, events precipitated by the accident, the psychological and psychiatric features as described, and probably a constitutional pre-disposition to migraine .... exacerbated by stress and anxiety made worse by her hyper-mobility". It was also agreed that, as the Claimant had made a good recovery from the mild traumatic brain injury at the Halloween party event, subject to the continuing headaches, there were no other risk factors that would have led the Claimant to develop spontaneous neurological symptoms in the absence of trauma.
25. Although the parties did not agree as to whether the Claimant had sustained a probable further mild traumatic brain injury during the accident or a symptomatic possible traumatic brain injury, the neurologists did agree that the Claimant developed post-traumatic headaches/ migraines by February 2016 at the latest. The parties agreed that the Claimant did not suffer any migraines before the accident.
26. In addition, there is considerable but not complete agreement between the neurologists about the prognosis of the Claimant's post-traumatic migrainous headaches. In respect of the other symptoms, the Claimant's neuropsychiatrist and neuropsychologist considered that over the course of the two to three years post-settlement, there is a reasonable chance the Claimant will recover sufficient function to contemplate part-time work. The Second Defendant's expert neuropsychiatrist and neuropsychologist consider that is achievable over a shorter time frame of twelve to eighteen months and consider that the Claimant ought to be able to return to full-time work, which the Second Defendant contends would be an equivalent salary to what she was earning at the time of the accident, referred to further below.

**The Parties' Cases in respect of the areas of disagreement on the medicine**

27. The Claimant's case in respect of the neuropsychiatry stemming from the opinion of Dr Agrawal is that the Claimant suffered a significant traumatic brain injury which he

described as a “probable mild to moderate TBI” (under the Russell criteria) or a mild traumatic brain injury based on the Mayo classification. He described the overlap injury between neurology and neuropsychiatry as post-concussion syndrome or mild neurocognitive disorder with behavioural disturbance. The neuropsychologists did agree that part of the Claimant’s mental illness was characterised by what is described as “catastrophic thinking”, which would mean she would focus on the negative when undergoing treatment which was in fact successful.

28. The Claimant’s expert neurologist, Dr Alder, considered that the Claimant sustained a probable traumatic brain injury which was part of an overall presentation with other symptoms. With respect to the issue of whether the Claimant was able to provide continuous memory over the 24-hour period post-accident, he noted that the Claimant did not remember events which one would have expected her otherwise to do so had she not suffered post-traumatic amnesia. He noted the Claimant’s symptoms of the firework display as “scintillating scotoma”, blurred vision, nausea, vomiting and headaches in the first twenty-four hours after the accident, followed by other symptoms, which would appear to be outside purely psychiatric or audio vestibular pathology. He concluded that, because he considered she had suffered symptoms beyond twenty-four hours, the Claimant had sustained a moderate-severe traumatic brain injury by the Mayo classification. However, while this is a relevant part of the Claimant’s case, Dr Alder also confirmed that whether the traumatic brain disorder could be characterised as “mild probable” or “moderate/severe” would be of limited relevance as it was the final outcome which is most critical. It was therefore the Claimant’s case that even if she suffered a mild traumatic brain injury, she was within the small minority of patients who can suffer long and lasting symptoms.
29. In respect of the issue as to whether the Claimant suffered any significant brain injury, Professor Schapira considered that she had not and, although it was acknowledged that the Claimant had suffered soft tissue and psychological injuries in the accident, they were not significantly disabling. He considered that the Claimant therefore remained capable of full-time work, could carry out a significant level of sporting activities and could travel and did not accept that the Claimant had suffered the full extent of symptoms that were claimed post-accident. Relevantly, particularly on the question of fundamental dishonesty referred to and analysed below, it is the Second Defendant’s case that the Claimant appeared to have suffered a significant health deterioration in early 2017, the time when her claim was issued and her first statement was signed and dated, which resulted in her stopping work and considerably increasing the amount of care and assistance she received. Causation in respect of the Claimant’s ongoing symptoms was denied at the outset of the trial on the basis that they arose from a combination of a pre-existing psychiatric vulnerability, osteoarthritic issues and pre-existing headaches unrelated to the accident, although the Second Defendant’s position had altered by the end of the trial in respect of the latter. At the conclusion of the evidence, the Second Defendant accepted that the Claimant had been suffering migraines from 2016 which Dr Jacobson accepted meant that she was currently probably unable to work as a result, but that her failure to return to work after an accepted period of ill-health from early 2017 was unjustified.

### **The Law on Fundamental Dishonesty**

30. There was no dispute between the parties as to the applicable law. Section 57 of the Criminal Justice and Courts Act 2015 provides:

*“Personal Injury claims; cases of Fundamental Dishonesty:*

*This Section applies where, in proceedings on a claim for damages in respect of personal injury (“The primary claim”) – (a). The Court finds that the Claimant is entitled to damages in respect of the claim, but (b) on an application by the Defendant for the dismissal of the claim under this section, the Court satisfied on the balance of probabilities that the Claimant has been fundamentally dishonest in relation to the primary claim or a related claim.*

*The Court must dismiss the primary claim unless it is satisfied that the Claimant would suffer substantial injustice if the claim were dismissed.*

*The duty under sub-section (2) includes the dismissal of any element of the primary claim in respect of which the Claimant has not been dishonest.*

*The Court’s order dismissing the claim must record the amount of damages that the Court would have awarded to the Claimant in respect of the primary claim but for the dismissal of the claim.*

*When assessing costs in the proceedings, a Court which dismisses a claim under this section must deduct the amount recorded in accordance with sub-section (4) from the amount which it would otherwise order the Claimant to pay in respect of costs incurred by the Defendant... ”*

31. The test for dishonesty is that set out at Paragraphs 62 and 74 of the Judgment of Lord Hughes in **Ivey v Genting Casinos Limited T/A Crockfords Club [2016] UKSC 67.**

*“Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant’s mental state will be characterised as dishonest, it is irrelevant that the defendant judges by different standards”.*

*“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) referring to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to fact is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no*

requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

The burden of proving that a Claimant (and/or any other witness) has been dishonest lies upon the party alleging it: see Robins V National Trust [1927] AC 515 as is clear from Section 57 (1)(b) the standard of proof is the balance of probability but an allegation of dishonesty being a serious allegation requires appropriately cogent evidence to persuade the Court: Re H [1996] AC563.

32. In London Organising Committee of the Olympic and Para Olympic Games (in liquidation) v Sinfield [2018] EWHC 51, Julian Knowles J held:

“In my judgment, a Claimant should be found to be fundamentally dishonest within the meaning of Section 57(1)(b) if the Defendant proves on a balance of probabilities that the Claimant has acted dishonestly in relation to the primary claim and/or a related claim (as defined in Section 57(a)) and that he has thus substantially affected the presentation of his case, either in respect of liability or quantum, in a way which potentially adversely affected the Defendant in a significant way, judging the context of the particular facts and circumstances of the litigation. Dishonesty is to be judged according to the test set out by the Supreme Court in Ivey v Genting Casinos Limited (T/A Crockfords Club)”. There is therefore a twofold test, namely whether the Defendant has firstly established on the balance of probabilities that the Claimant’s conduct in respect of the litigation was dishonest, and secondly whether it was “fundamental”.

33. On the facts of this case, whereas the Second Defendant does need to establish both limbs - the question of fundamentality being described by Mr Justice Knowles at Paragraph 63 as “intending to convey the same idea by using the expression ‘substantially affects’ was ‘intending to convey the same idea as the expression ‘going to the root’ or ‘going to the heart’ of the claim’”, - the parties were largely in agreement that, if the Second Defendant was able to establish that the Claimant was dishonest requiring the appropriate cogent evidence (see also Teare J in UK Insurance v Gentry [2018] EWHC 37 at paragraphs 21 to 22), it would not be at all difficult for the Second Defendant to establish the necessary second element.
34. The Second Defendant’s case was that the Claimant had deliberately acted in a fundamentally dishonest way to maximise the level of compensation recoverable in the claim: McDaid v Walsall Metropolitan Borough Council (unreported) 9 May 2018.
35. The Second Defendant therefore maintained that, by virtue of the application of Section 57 of the Criminal Justice and Courts Act 2015, the Claimant’s claim should be struck out. The parties agreed that in any event, by virtue of Section 57 (4), the Court must nevertheless quantify the Claimant’s claim and record the level of damages that would have been awarded absent the finding of fundamental dishonesty even if such a finding were made.

36. For the purposes of determining this primary issue I shall focus upon the Claimant's evidence and where it is of assistance, those of her witnesses and refer to expert evidence from both sides where it assists on this question.
37. The Claimant adopted her six witness statements and three Schedules of Loss including the finalised Updated Schedule of Loss. I have already referred to the largely uncontentious evidence she provided above. In respect of her working history, were it not for the accident, the Claimant maintained that she would have remained at the Hippodrome at least for the short to medium term. Prior to the accident, she had been head-hunted by the Empire Casino and was offered a salary of £50,000 gross per annum after meeting the team seeking to recruit her, but rejected the offer, partly because the focus was on sports betting as opposed to hospitality where her strengths lay. She maintained that, although she was earning £37,000 gross per annum at the date of the accident, she took a different job at Conversocial where she was paid £45,000 gross per annum and that she would otherwise have been expected to earn at least £50,000 gross by the time of her first statement. She maintained that by the age of thirty-five, she would have expected her salary to have been increased to £70,000 gross per annum. She claimed she would have expected to attain a marketing director role with increasing number of years of experience and that the ceiling of her earning potential would be £125,000 gross per annum as a chief marketing officer. She intended to work through to retirement age, which is at present 68, although she considered would be likely to be increased to 70 soon.
38. After the accident, she returned to work at the Hippodrome 7-10 days later. She was then aware of pain, including intrusive headaches, but did not know she had suffered any significant head or psychiatric injury. She was permitted to work from home one day a week and would leave early from work about twice a week, particularly when her headaches were intrusive.
39. The Claimant stated that she barely continued with residing in her home in Finsbury Park and spent an increasingly large amount of time at her parents' address. She handed in her notice at the Hippodrome on 17 October 2014 having decided on a whim to travel to India which she booked four days previously. She left the Hippodrome on 17 January 2015 and spent several weeks in India where she also did work as a consultant on a TV marketing campaign.
40. The Claimant returned to London in February 2015 and started working full-time for the same company, Casino Floor, where she worked for seven months until October 2015, after which she was unemployed until she obtained a job working as a marketing manager for a company called Conversocial in January 2016. Her starting salary was £40,000 gross per annum. She stated that she had a helpful boss there who she informed that she continued to struggle with the effects of the accident and described herself as having good and bad days. Her first day of work was 12 January 2016 and, although she was struggling with symptoms in the office, her boss permitted her to work from home on the days when she felt bad. Although she was subsequently promoted to marketing manager and she continued to work there through to April 2017, from January that year she was feeling depressed and tearful, and her contract of service was finally terminated on the ground of redundancy in April, when she realised that she could not continue to work. Her last day of work was 11 May 2017, since when she has not had full-time work, although between August and November 2017 she worked on an ad-hoc basis as a receptionist on a temping basis through an agency. She has not

been employed since November 2017 and has been receiving employment support allowance since January 2018.

41. The Claimant described her symptoms including spinal and bilateral knee pain, headaches, mental fatigue, impaired hearing in her left ear, impaired memory, impaired balance, reduced tolerance for alcohol, impaired concentration and reduced ability to multi-task, word retrieval difficulties, impaired ability to make decisions, heightened anger and irritation, impulsive spending, obsessive behaviour pattern and her psychological symptoms in her second and third witness statements dated 19 June 2018 and 7 June 2019. In her fourth witness statement dated 12 December 2019, she sought to address concerns raised by the Second Defendant in respect of her social media posts to which I shall refer more fully below in the context of her cross-examination about the content of some of those posts.
42. In her fourth witness statement, the Claimant sought to deal with the Second Defendant's pleading of fundamental dishonesty raised against her just three weeks before the original trial date of May 2020 as set out in the Second Defendant's counter schedule. She maintained that she was honest and provided detailed accounts of her symptoms and level of function to each of the experts on the twenty-two occasions she was assessed between December 2014 and June 2019. She also described being open with the experts, she referred to how she would distinguish between good and bad days and made reference to a capability for work questionnaire dated 10 March 2018, as well as a case management report of Mrs Tavengwa dated 14 June 2018, to which further reference is made below, and provided a table in respect of each of the experts that she saw, setting out what history she gave and what she was asked and not asked.
43. The Claimant provided a final witness statement giving an update about her symptoms and the extent to which she was dependent upon her partner and parents, particularly following her second pregnancy and birth of her second daughter. She concluded by stating that she was feeling so much guilt as she is not able to work and every aspect of her life is still impacted by the crash nearly seven and a half years later, for which she is still undergoing treatment.
44. In cross-examination, the Claimant agreed she was working between November 2014 and January 2016 and was not trying to give any misleading impression of not working or not doing sports or exercise. She agreed she did not initially refer to her impaired balance; that was not her focus in the early stages and that was why it did not appear in her first witness statement. She expressly denied that the reason she did not mention it then was that she was not suffering from impaired balance. She was taken to the pain management course in 2019 and agreed that it was an error on her part in that she should have made clear what she was not capable of was reflective of a bad day. She denied that she attempted to mislead in relation to the statement that she was not running and stated that she wanted to make clear that she had not fully returned to running having tried but not being able to do so. She maintained that on many occasions that she tried to get back to various sporting activities, including running and cycling, but had really struggled with them even when she had had a personal trainer. When asked questions directly from various medico-legal experts, she answered in the present tense, reflective of how she was at that time. She stated that she is very competitive and would try to return to pre-accident sporting activities and tried to cycle but that caused her knee to flare up and she stopped. She accepted that she did not give full details as to when she was cycling or the extent of her running, in particular the 10k Bear Grylls run, which

she maintained she did not run but did at a gentle jog or walk but maintained that she answered all the questions asked of her and was not asked about aspects of her present sporting activities. In respect of the capacity for work questionnaire, she agreed that she had made a mistake in relation to a 50-mile cycling as she was not good at estimating distances.

45. In respect of Dr Miller, she stated that she and her mother raised a complaint against him because he was very rude to them, had laughed at them, and made a gesture indicating 'goodbye'. She maintained that she gave a truthful account to Mrs Tavengwa at the Case Management hearing and agreed that the answers she gave reflected a bad day, for example, as to whether she fell twice a week, and agreed she should have clarified with some of the experts the difference between her good days and bad days. She specifically denied she was disabled and when asked questions about seeing Dr Lester in November 2014 and not mentioning her memory problems, she stated (and later repeated on occasions) that she thought she was going mad, and she did not know why. At the time she saw Dr Lester, she had no intention to sue anyone. It was put to her that if she was suffering symptoms at the early medical appointments, she would have said so and she stated that she did not know the underlying cause of some of her symptoms and, in particular, she did not realise that her memory and migraines could be related to the accident having previously experienced headaches stating, "There was so much going on".
46. The Claimant denied that she wanted to change job and work in a completely different capacity when she resigned from the Hippodrome. She stated she did not want to refer to her symptoms in a resignation letter as she was "saving face".
47. In summary, the Claimant repeatedly denied that she had intended to mislead anyone. In respect of the social media posts, which would include holiday photographs, she stated they did not present a complete picture as she would tend to put a positive gloss on how she was doing as she wished to obtain more 'likes', but she also indicated there were times where she referred to her injuries and attempts to deal with them. She described her social media posts as a snapshot of what you want people to see, the positive and exciting side of your life, not the day-to-day difficulties. Although she did go to India in January 2015, she spent a considerable amount of time in a hotel room and was not able to involve herself as fully as she would have liked. She referred to all the various holidays which she undertook, but not with the full sense of enjoyment that such holidays could be expected to provide. She took courses in holistic and Shamanic treatments and denied that she had any intention to run any health and fitness business. The cards which she purchased were bought on an impulse. She described trying to be positive as far as she was able given her physical and psychological symptoms.
48. The Claimant was taken through her GP notes and could not remember whether she told her GP about her loss of balance and, in respect of migrainous headaches, she could not say when she first discussed that, as she was unaware what a migraine was previously. She denied she was able to function in a normal way from early 2017 and that, as her statements progressed, she was deteriorating and increasingly adding symptoms, and maintained that she was actually getting better as she indicated to the medical legal experts when they saw her again. She specifically denied deliberately under-playing the extent of her injury or hiding her holidays from the experts. She agreed she had a personal trainer as she wished to try to exercise and, in respect of a skiing holiday on which she went with her parents, she agreed that she skied in the

mornings and would then return to her apartment and that she skied only on the gentle slopes. She wanted to get back into fitness again as she thought she needed to change her mind-set as it would affect her mental health. In respect of the 10K Bear Grylls course, she did it with her partner who had to wait for her, and it took three hours, forty minutes. Although she agreed it would be accurate to describe it as a 10K race, she indicated that she took a considerably longer time. In respect of her social activities as well as holidays, she denied that she was being dishonest about the extent of those activities and in respect of her sporting activities, specifically denied trying to deceive anybody and stated that she had never tried to launch a new business.

49. In re-examination, she was taken to her second witness statement in which she referred to her balance problems and her migraine headaches and gave evidence about the number of hours assistance she received from her mother. She confirmed that the Waddell tests were all negative and confirmed that the symptoms were not consistent as she would have good and bad days. She referred to the regular migraines, which would often be very bad, and described coming from a hard-working family and said she did not wish to accept there was something wrong with her which would give the impression that she was struggling. She concluded by saying that she was angry and upset by the Second Defendant's allegations and asked rhetorically why she would exaggerate. She stated that she had a good job and life and was always independent. She had always been competitive, had been a sports captain, had been in competitions and had skied. She considered herself to be competitive with others and with herself and described how frustrated she felt by her ongoing symptoms and guilt towards her family, particularly her mother and her children.
50. I heard live evidence from a number of lay witnesses called by the Claimant attesting to the holidays she went on and the symptoms that she complained of, as well as to her work, which she generally performed well although she was increasingly describing symptoms and pain to those around her. There was other agreed evidence in relation to her work record and life activities before and since the accident. Live evidence was given by the Claimant's mother, Mrs Sharon Palmer, who provided two witness statements dated 5 June 2019 and 13 October 2021. At an early stage in cross-examination after clarification was sought by Mr Grant, Mr Woodhouse, having taken instructions, confirmed that there was no suggestion that the Claimant had conspired with her mother or any member of her family in respect of the extent of her symptoms and difficulties. In summary in her statements, Mrs Palmer described the Claimant pre-accident in which she was very sporty and active, and she had a good work ethic. She described the Claimant's work history and she said she was somebody who always had a lot of friends and was very sociable and independent.
51. Mrs Palmer described the day following the accident when she saw a text message from the Claimant referring to the accident and then heard the doorbell at the same time. She described seeing the Claimant looking vacant, very upset and dishevelled. She was disorientated, although she confirmed she had been in a car accident and had an encounter with the First Defendant, but she did not make much sense and was crying. Mrs Palmer became really concerned when the Claimant vomited and then she took her to the hospital, although she reluctantly agreed to see the car first as the Claimant had been pressing the request. She described taking the Claimant both to Chase Farm and Barnet Hospitals and described her symptoms in which she was in a lot of pain and complained of headaches and feeling sick.

52. Mrs Palmer then described the changes to the Claimant since the accident including her mood, her increasing dependence upon her and dealing with the Claimant's anger which she felt was often directed at her. She found taking care of the Claimant's needs to be physically exhausting including taking her to many appointments. She described the difficulties with the Claimant's memory, speech and language issues, her moods, her regular migraines which required her to wear sunglasses when outdoors, her anxiety when in a car, the difficulties she would have following instructions or directions, and the extent to which she had to assist the Claimant to understand the medical reports which she could easily have understood previously but which would now contribute to the Claimant's fatigue. She described the extent to which she was taking on extra care for the Claimant, including looking after her children, doing the laundry, cooking, and food shopping. In respect of the covert surveillance, Mrs Palmer stated that, having viewed it, she did not see anything that was different to what she and her husband had described in their statements, and she believed that this showed a record of a sedate life, to be compared with someone who had previously had so much energy before the accident.
53. In cross-examination, Mrs Palmer was taken to the medical records and agreed that, before the accident, the Claimant had suffered from low mood related to problems at work in the past. She was asked about the time the Claimant was assaulted on her way home from school. She did not recall the Halloween party incident in particular detail and did not recall that the Claimant had lost consciousness. She did not know whether she attended the hospital with the Claimant, although she rather doubted it as she tended to take the Claimant to most hospital appointments and had no recollection of doing so.
54. In respect of the day after the accident, she confirmed the Claimant had vomited at the hospital and had also been sick at home before they went. She confirmed that the Claimant's memory became much worse after the accident and that the migraines began after the accident and became increasingly worse with time. Her previous headaches had changed into migraines in which she was light-sensitive and suffering from nausea. The restrictions in the Claimant's life got worse, but Mrs Palmer stated that none of her symptoms were a new problem which did not occur after the accident and had nothing to do with it. She described the Claimant's whole body as seeming to shut down, particularly once she stopped working and became more dependent. She said that her memory difficulties had always been significant since the accident. She agreed that she did not mention anything about the Claimant's memory at her first medical legal appointments as at that time she was worried about the Claimant's neck and back. She thought they were just headaches, but they became worse. She described the Claimant as strong-willed; she stated that she was very concerned about her muscular and skeletal problems and believed she could cope with the other things. When she saw doctors at appointments dealing with those issues, she did not refer to the migraines because she didn't consider that was for those appointments. She agreed that she would have asked the Claimant why she didn't raise some of the issues including the headaches and the memory and balance issues, but she stated the Claimant did not like to think about it or admit those things and tended to be somebody who would keep them inside as opposed to letting them out. She was asked questions about the holidays that they went on with her after the accident and described that she did not ski well and stayed only on the gentle slopes and, when asked why she did the 10K Bear Grylls, she described the Claimant as very determined and a person who would try everything. She denied that

the Claimant had given an exaggerated account and that things were omitted; that was not down to the Claimant trying to exaggerate her symptoms.

55. The Claimant's partner David Clark and her father Lee Palmer were also called live, and they dealt with questions concerning the Claimant's ongoing symptoms, including her anxiety in a car, her forgetfulness and holidays that they went on with her, which the Claimant would not carry out to the full extent and would often complain of discomfort and pain and say that she needed to rest. They confirmed that the Claimant did not do the 10K Bear Grylls event in full, omitting obstacles and taking a long time over it. The Claimant's father confirmed much of what his wife had said about the Claimant's background, pre-accident history and character, and the effects post-accident upon her work, her concentration, her increased impulsivity, her forgetfulness and the various physical and psychological symptoms, including the migraines and the effects upon her level of activity both physical and psychologically.

**The Medico-legal Experts' Evidence in Respect of the question of the Claimant's conscious exaggeration**

56. At the outset of the trial, I asked for the assistance of the parties by requesting that the experts all be asked questions in respect of the issue of conscious and unconscious exaggeration by the Claimant, provided it was within their expertise. Some of the expert witnesses had in any event provided such an opinion in their written reports. Both sides indicated their preparedness to deal with those matters when the witnesses were called and there was no objection to the proposed course. Clearly, the matter of the Claimant's credibility is ultimately a decision for the Court, but how the Claimant presented to each of the experts, and once they were provided with the surveillance evidence and social media material by the Second Defendant, whether that changed or influenced their opinion in respect of the symptoms reported by the Claimant, would clearly be of considerable assistance in respect of that important issue. Helpfully, Mr Grant in his closing submissions has set out in tabular form the summary clinical assessment and observations by each expert. I am also assisted by a table at Appendix 2 to the Claimant's fourth statement summarising the observations from the various medical legal experts at all the medico-legal examinations the Claimant attended between later in 2014 and the summer of 2019. Those summaries confirm that, save for Dr Miller (see below), the experts did not consider the Claimant presented with clear signs of exaggeration or embellishment. Mr Willis-Owen opined "On examination, there was no evidence of exaggerated responses or abnormal pain perception"; Dr Allder raised no concerns about the Claimant's neurological presentation; Dr Munglani formed "The overall impression was that the Claimant came across as somebody who was not exaggerating her symptoms and genuinely felt an increased presence of pain in my view". Mr O'Dowd stated that the Claimant "Did not display any inappropriate exaggerated behaviour responses to assessment... the [Claimant] comes across as a reliable historian and has managed to continue working through most of the time since the index accident. She has returned to some of her sporting activities, and I believe her description to date of restriction of occupational, recreational and domestic activities is reasonable and as a result of a combination of the injuries sustained". Dr Surenthiran expressed no concern about the Claimant's credibility and confirmed that was his view in the joint statement having reviewed the social media evidence and considered there was objective scientific evidence to corroborate her reports of impaired balance. Dr Murphy had no difficulties accepting that the Claimant was

engaging fully with the various neuropsychological tests employed and a similar view was formed by Dr Agrawal. Dr Raglan found similarly to Dr Surenthiran, and Mr Earnshaw considered there was “no obvious exaggeration or inappropriate responses”. Dr Jacobson stated that the Claimant and her mother “presented as sincere and genuine at interview”. He considered the question of unreliability as a historian, which he distinguished from her credibility, and opined that her “discrepancies suggest unreliability, which is common in the histories of those with somatoform/conversation/dissociative conditions”. He considered that those discrepancies were likely to reflect “Unconscious exaggeration” and found no evidence that she had consciously exaggerated and when completing his report stated that he “was left with the impression that the [Claimant] was an honest, transparent and cooperative patient”. Mr Foy expressed no concerns about the Claimant’s credibility when carrying out his physical examination and Professor Schapira stated that he found the Claimant to be “a credible and reliable patient on examination”. Dr Torrens was in a slightly different category in that when she examined the Claimant, she “had no reason to suspect that either the Claimant or her mother had given anything other than the best and truthful answers to all questions” and confirmed that the Claimant was “entirely open with her” and that she did not consider the Claimant dishonestly exaggerated her case to her, although upon examination of the Claimant’s medical reports and other evidence afterwards, she did consider that the Claimant had exaggerated her case. In respect of Dr Jacobson, he formed the view having considered all the evidence, including hearing the evidence from the Claimant from the witness box that it was something of a “Curate’s egg”, namely a mixture of conscious and unconscious exaggeration.

57. By contradistinction, Dr Miller admitted in evidence that he formed the view from the outset that the Claimant was not telling the truth, and that view was fortified when he subsequently considered further evidence including the social media and the GP records. As I have indicated, I shall refer specifically to the evidence of Dr Miller and Dr Torrens further below.
58. It is important to observe how the Second Defendant’s case of fundamental dishonesty arose. The Second Defendant’s counter-schedule was not served until 5 March 2020, only eighteen days before the original trial was listed to commence on 23 March 2020. That trial was vacated owing to the first Covid 19 lockdown. The pleading alleging fundamental dishonesty maintained that the Claimant’s injuries “were not and are not significantly disabling as evidenced by the Claimant’s ability to return to work quickly and continue to work for in excess of two and a half years after the accident...” The initial valuation in the counter-schedule was just £5,407 by way of general damages primarily for physical injuries.
59. I consider it instructive to note how the Second Defendant’s covert surveillance evidence progressed. It was not until 16 October 2019, considerably after all the experts had examined the Claimant and served their reports, that the Second Defendant served two statements from Mrs Parveen, exhibiting in excess of seven hundred pages of social media posts loaded by the Claimant on her Instagram account. The Second Defendant had first commissioned this evidence back in June 2016. The disclosure was not provided at the time of serving lists of documents or exchanging witness evidence and no reason was provided as to why this was the situation. Although the Second Defendant did not provide a Statement of Case summarising the relevance from the

posts, the Claimant and some of her family responded to those posts with further detailed witness statements.

60. In respect of the surveillance evidence, which I have viewed, the Second Defendant did not place reliance upon that material back in March 2020 when pleading its claim of fundamental dishonesty. It was disclosed (immediately) upon express request by the Claimant that there be full disclosure of all unused material capable of undermining the Second Defendant's case. Mr Woodhouse very properly conceded at the conclusion of the Second Defendant's case that, at best, the surveillance evidence is "neutral" and he did not place any reliance upon any of the seventeen days of surveillance evidence obtained between 2017 and 2019 as demonstrating a substantial disparity between what the Claimant and her witnesses maintained about her lifestyle and what was disclosed on that evidence, whereas the Claimant maintained it was corroborated evidence of her restrictive lifestyle in which she is primarily seen driving between her and her parents' home and was usually accompanied when she left those premises. She was seen attending three of the medical legal appointments with the Second Defendant's expert, although there was no surveillance evidence on days following those appointments during which time the Claimant maintained she needed to rest after those substantial examinations and retelling of the incident and symptoms.
61. In respect of the social media evidence, the Claimant, some of her lay witnesses, and some of the experts commented upon what is usually contained by self-description on social media. In summary form, as indicated for example by Dr Murphy, it appears to be uncontentious evidence that people, including the Claimant, would tend to post positive and upbeat messages and images. In Dr Murphy's view "These posts are not incompatible with [the Claimant's] experience of troubling symptoms". It is undoubtedly clear that some of the images portrayed on the Claimant's social media call for an explanation as they appear to depart from how the Claimant summarised the extent of her restricted lifestyle both in her earlier witness statements and in the interviews with the numerous medical legal experts.
62. In determining how much reliance to place upon those social media posts, I consider it is necessary to express a level of caution. Mr Woodhouse, in his closing submissions, rightly acknowledged both that there is a degree of exaggeration implicit in the Claimant's diagnosis of somatoform symptom disorder ("SSD") and that "social media tends to paint a glossy picture of the poster's life". I agree with the proposition that the Claimant's social media posts cannot all simply be dismissed as 'not real' or untrue, as they undoubtedly show where the Claimant is in respect of a particular place or the fact that she participated in some capacity in an activity to which she refers.
63. As indicated above, the Claimant provided an explanation both in further written evidence and her oral evidence in relation to the areas of claimed exaggeration, including her pre-accident employment and psychiatric health; her pre-accident mild traumatic brain injury at the Halloween party; her post-accident employment; extent of exercise; travel and socialising; her career plans; the deterioration in her health from 2017; the claim that she did not suffer the onset of neurocognitive symptoms at the time of the accident and that they only became present from the time of her claim in 2017 and the extent of her ongoing level of disability.
64. In reaching a decision on this central issue, I have considered how the Claimant presented; the evidence of her lay witnesses; the surveillance evidence; how she

presented to each of the medical legal experts and other professionals, both medical and otherwise as set out in the reports; my view of the extent of assistance gleaned from each of the experts as well as the social media evidence when fully understood in context.

65. As far as the experts were concerned, I placed particular reliance upon the Consultant Neuropsychiatrists who it was agreed would be best placed to ascertain conscious processing in the mind. Neither Dr Agrawal nor Dr Jacobson had any concern about the way the Claimant presented to them when carrying out their thorough investigations and I was impressed by the quality of both of their reports and their oral evidence. Dr Agrawal confirmed that he and Dr Jacobson had very significant agreement that “There was no significant evidence of conscious exaggeration”. He considered that inconsistencies in the Claimant’s account from the sources of evidence are “explicable by an unconscious exaggeration on her part... combined with a number of other factors including her emotional state and some of the catastrophic thinking which can borderline on a more conscious process”. Dr Jacobson considered that the Claimant’s presentation in the witness box was “genuine”. He accepted that the Claimant’s migraines were entirely genuine and, given that he could not provide a neuropsychiatric explanation for what he described as the large disparity between what she told the experts and what is in the social media, summarised the “Curate’s egg” referred to above and concluded that there was a measure of deliberation exaggeration of the Claimant’s disability, if the social media evidence was accepted as valid in respect of the Claimant’s pain-related ability of disability. I have referred to the summary of other experts’ report on the question of conscious exaggeration, but also note that Professor Schapira’s personal opinion was the Claimant “was not consciously trying to mislead” Dr Allder, who did not see a significant disparity between the Claimant’s reported function and observed function suggesting anything other than unconscious exaggeration and described that what he would wish to see if someone was deliberately consciously exaggerating would need “something very compelling”, which he did not observe. Dr Murphy described the Claimant as “a traumatised woman who tries to do her best and that one needed to consider the ‘context of the social media’ in respect to what the Claimant could do which was largely affected by whether she was ‘feeling safe’”. She also interestingly observed that the Claimant may have lost her identity as she feels “she has lost her independence and she is not the person she was”. It was therefore important to the Claimant’s identity to be seen by friends or others as doing normal things. Dr Torrens believed that the Claimant and her mother had done their best to give truthful answers to all questions when she saw them and agreed with Dr Murphy that the Claimant was left with a “brittle and easily-disrupted working memory”. She did however consider that what she has seen since seeing the Claimant contained “an element of exaggeration” and that she has “potentially dishonestly represented the situation” and gave an example in relation to a trip back from Paris to which I shall return further.

**My findings in relation to the issue of fundamental dishonesty**

66. I have no difficulty in concluding that I found the Claimant to be an honest, helpful, impressive and dignified witness in her own case. Although I find there were some differences between what she maintained in her witness statements and what she said to various professionals, I consider that it is explicable in large part by the inevitable differences in recollection whenever she was asked to recite the history and symptoms

(if she was wholly consistent every time, that would itself tend to be suspicious) and also explicable by her character by which she (and her mother too) would not tend to volunteer information over and above the questions asked, as she is someone with a reserved nature. I also consider that her SSD has contributed to a level of unconscious exaggeration: see further below. In fact, I find the Claimant has given a very largely consistent narrative to all the experts who have seen her in respect of her symptoms, and I accept her evidence that she did not initially believe that some of the symptoms, in particular the migrainous headaches, were connected to her accident in the early years after the crash. I consider that the substantial number of symptoms the Claimant now has arose from the outset of the accident and were caused or substantially contributed by it.

67. In deference to the Second Defendant's submissions in respect of the allegations of fundamental dishonesty on the part of the Claimant, I shall deal briefly with the specific matters asserted. In respect of the failure to refer in her first statement to part-time work for Casino Floor in 2015, I do not find that this was a dishonest omission, as the context in relation to work before and after that period concerned her resignation from the Hippodrome Casino and then her subsequent role at Conversocial from January 2016. In her Preliminary Schedule of Loss of October 2017, the Claimant referred to her time at Casino Floor. It was a preliminary witness statement which was not intended to be disclosed but because it was referred to in Dr Allder's report, the Claimant served it in December 2018 upon request. I find that the fact that the Claimant did not make mention of her ability to engage in sport or exercise in that first (preliminary) statement was not dishonest, as it was primarily drafted for the purpose of providing details of cognitive and behavioural symptoms prior to Dr Allder's assessment which was to take place shortly thereafter.
68. Although I find that the Claimant was in error when she stated "The first time I tried to go out was in May or June 2015" in that first statement, I do not find that it was dishonest on her part. I consider the explanation to be down to her accepted brittle memory. The error also needs to be seen in the context of subsequent witness statements in which she addresses her ability to socialise, albeit in a more diminished way than pre-accident, and I find that the Claimant did not intend at any stage to mislead in relation to when she was first able to socialise post-accident. That is clearly demonstrated in her completed pain questionnaire for Dr Munglani. It appears to be a feature of most, if not all, of the medical legal experts that they did not focus upon the Claimant's ability to socialise post-accident in any substantive way.
69. In respect of impaired balance, I find that that is a symptom which was not only caused by the accident but that she was not dishonest when failing to mention it in her first statement as this was not an essential concern on her part at that time as it was intermittent, exacerbated by fatigue and migraines, and the Claimant's focus was on other more pressing symptoms at the time. It is instructive to note that she did make specific reference to it when in discussion with Dr Allder a week later. There were also clinical findings from both Dr Surenthiran and Dr Raglan corroborating the Claimant's claim of impaired balance. Although the Claimant conceded in cross-examination her description of walking "like a drunk" to Dr Jacobson amounted to a "hyperbole" – the only time she admitted doing so during his assessment – Dr Jacobson in my view significantly, attributed that to anxiety rather than an intention to deceive and agreed that balance "is not an uncommon symptom in migraine".

70. With respect to the Claimant's assertion in her second statement that she had not returned to running, I do not find that she was being dishonest. The focus of that statement was on headaches and cognitive, behavioural and psychological symptoms, and I note that it was not served until June 2019 with the Claimant's third statement in which she set out in detail post-accident levels of physical activity including jogging and other attempts at exercise. Lee Palmer confirmed in his evidence that by that time, he was accompanying her to the gym which would include the Claimant exercising with gentle jogging on a treadmill and using weights. It is important to note that the Claimant stated that when she referred to running, pre-accident she was training for a marathon. I do not find there is a gross disparity in the Claimant's evidence in relation to the extent of post-accident running, particularly when the social media evidence (in particular the Bear Grylls 10K event) is considered in context, considering the Claimant's and Mr Clark's evidence in relation to that event, specifically concerning the Claimant's extent of participation. That requires taking into account the Claimant's and Mr Clark's evidence to how long it took her to complete and how she completed it, describing it as more "a gentle jog" and that she only did "several of the obstacles", and also taking into account the evidence of Lee Palmer and the fact that she disclosed this 10K race to Mr O'Dowd, as well as recognising the unchallenged evidence that Claimant is a competitive person who would not wish to reject all challenges post-accident and attempts to return (as far as she could) to something like the levels of exercise which she had previously enjoyed. I also considered Dr Jacobson's view that this evidence placed the Bear Grylls event in a difference context. I therefore accept the Claimant's evidence in relation to what she maintained about the Bear Grylls race.
71. I do not find that the Claimant not disclosing the full extent of her travelling in her earlier witness statements was dishonest by omission. She referred to some of her travel in those statements and to some of the experts. Her and her father's witness statements were disclosed prior to the Second Defendant disclosing the social media material. The Claimant has clearly posted extensively about her holidays on social media and if the Second Defendant's case was to be made out, namely that she was dishonest from early 2017, I find she would not have chosen to disclose voluminous amounts of material about her travels, particularly as it was accessible to the general public. The question of the Claimant's ability to travel on holiday was not apparently a focus of any of the medical legal experts as the Claimant had never indicated that she was housebound. In general terms, the holidays that she did undertake were relaxing – even when she skied in Breckenridge in February 2016, she took part in mornings of gentle skiing in contrast to the much more intensive skiing she undertook pre-accident and, where they were not simply about relaxing, she was attending a retreat in India to learn about gentle massage and was with her partner, family or friends. I also consider the oral and agreed written evidence about the manner and extent to which the Claimant was able to enjoy her holidays and the difficulties with her symptoms she described to them.
72. More generally, I reject the Second Defendant's assertion that the Claimant was actively withholding her level of functioning between 2014 and 2019 when the medical legal assessments were completed. As I have indicated above, I consider that the Claimant, although clearly articulate, intelligent and straightforward had chosen to respond by answering questions from the medical legal experts which I consider to be reasonable and not deceitful in any way. Indeed, acting otherwise by seeking to take charge of those interviews might have been perceived as controlling and tending to dictate the findings that the experts would subsequently make. I accept the evidence

from her family that she is reserved and tends to keep her emotions in check, save for the one incident with Dr Miller, and that she considered that approach was both respectful and appropriate. The extent that the Claimant expressed distress during those assessments and indeed in her evidence before the Court, I find was genuine and not artificially constructed. I find that the reporting of her pain and dysfunction was also honest and reflected her state of mind at the time when she was being examined. It is clear from the evidence of many of the experts, in particular Drs Munglani and Agrawal that there were times she was suffering from chronic pain. SSD with predominant pain needs to be understood as a condition which fluctuates. Although Dr Jacobson considered the Claimant “uses language loosely”, he put that down to personality and educational and considered she was not being deceitful. Dr Murphy and Dr Torrens agreed (as summarised above) that the Claimant was suffering from “very brittle” memory which I find is a substantial reason for the Claimant not volunteering further information about the progression of her symptoms in the context of not being asked specifically, which I do consider was not indicative of a deceitful and consciously withholding character on her part. In respect of the suggestion the Claimant lied about cycling arising from Dr Munglani recording the Claimant was “absolutely incapable” of riding a bike and that the Claimant “does not ride a bike”, I accept the evidence from the Claimant corroborated by Dr Munglani that she was asked questions and answered in the present tense, and she was not lying or seeking to deceive him or indeed any of the other experts. Other experts confirmed that she was not cycling at present and social media confirmed that she had cycled fifty miles over three days in August 2015. I have already indicated that entries on social media need to be considered in appropriate context. Being disclosed publicly, they need not be indicative of dishonesty and in the context of this case, I do not find it they were, as the Claimant specifically referred to use of a bicycle post-accident in her second and third witness statements served before the social media evidence was disclosed when her integrity was not apparently an issue.

73. Arguably, the highest point of the Second Defendant’s case on fundamental dishonesty arose from the disparity between Mrs Tavengwa’s record of the Claimant’s presentation in May 2018 and how the Claimant presented to all the experts and on the surveillance evidence. I agree that the description of the Claimant’s dysfunction noted in the record is at variance with all other descriptions. Mrs Tavengwa’s assessment report is of course hearsay and has not been verified as being accurate by the Claimant, who commissioned her to obtain practical case management. In oral submissions, Mr Woodhouse suggested that it was not open to the Defendant to call Mrs Tavengwa to prove the accuracy of its contents but respectfully I do not agree. Either party could have chosen to call Mrs Tavengwa as there is of course no property in a witness and although there is no suggestion from either party that Mrs Tavengwa’s record was not accurate, it is simply impossible to be wholly sure one way or the other about it, particularly as the Claimant herself was unable to verify its accuracy. It is therefore important to consider her record with a degree of caution. I find that the Claimant’s absence of memory may well be explicable by her psychological state at the time. The observations suggest she became very tired and questions had to be repeated, her mother had to assist and she broke down several times. Aside from arguably in the presence of Dr Torrens where the Claimant was also visibly distressed, I do not place too much reliance upon the Claimant providing somewhat coherent details to Mrs Tavengwa, who was clearly unable to successfully calm the Claimant down. I consider the unchallenged evidence of Sharon Palmer that Mrs Tavengwa had asked the Claimant for a description of her symptoms on her worst day, which I find gives a valid

explanation as to her description of level of dysfunction. Dr Jacobson helpfully agreed that “after thirty minutes [the Claimant] was effectively shutting down” and I find that, although it is markedly different to what the Claimant said in her witness statements and to all the medical legal experts, it does not support the contention of fundamental dishonesty on the Claimant’s part, particularly bearing in mind that it was not part of the Claimant’s pleaded case, it was disclosed in accordance with the Claimant’s disclosure obligations, and the Defendant did not take the opportunity, as it could, to seek to call Mrs Tavengwa.

74. Similarly, I do not find how the Claimant completed the DWP Capability for Work questionnaire indicated dishonesty in respect of her answers, which I find was explicable by the Claimant describing how she felt at the time, particularly in relation to the answer about the walking of fifty metres. It needs to be understood that this questionnaire was merely a screening document before an assessment with a healthcare professional; it was significantly not suggested she exaggerated her history to that person.
75. Finally, and more generally, I do not find that the Claimant deliberately under-reported her pre-accident medical history. She served a substantial preliminary Schedule of Loss and I do not find that she deliberately withheld the information about her attendance at hospital following the Halloween party, of which I find she had no recollection at that time.
76. In all the circumstances, I find applying the relevant law from Section 57 of the Criminal Justice and Courts Act 2015 and the appropriate burden and standard of proof that the Second Defendant has failed to establish that the Claimant was fundamentally dishonest. For the reasons set out above, I do not consider she was dishonest with any of the medical legal experts, with her family and friends, with her GP and all other professionals that she involved herself with from early 2017 and in respect of her Preliminary (and subsequent) Schedules of Loss and her claim generally. I do not accept the Second Defendant’s assertion that she was dishonest in respect of her witness statements as to the level of her disability with the purpose of maximising the level of compensation recoverable in the claim. I note in conclusion on this issue that a substantial part of the Second Defendant’s case is essentially that the Claimant was dishonest by omission, i.e., chose only to answer questions asked by the medical legal experts and omitted to disclose her true level of function. I have already set out why I do not consider that as a fair approach to expect of the Claimant when being asked about the history and symptoms by all the medical legal experts. I am fortified in my view that that is a particularly difficult submission for the Second Defendant given that I was not provided with any reported authorities where a finding of fundamental dishonesty has been made in a personal injury claim because a Claimant had failed to volunteer information not asked of her during a medical legal assessment.
77. For all those reasons, I reject the Second Defendant’s primary submission on fundamental dishonesty. I now turn to the assessment of quantum.

#### **An assessment of the Medico-legal Experts**

78. I wish to record my considerable gratitude to most of the experts called on behalf of both parties. Many of the issues concerning the Claimant’s symptoms and the complicated inter-play between the physical, neurological and psychological

consequences of the accident required sophisticated and at times cutting-edge expert evidence. The assistance obtained from six of the medical legal experts called live was of an extremely high standard and where appropriate, suitable concessions were made by those experts on behalf of the party calling them in accordance with their duties under Part 35 of the CPR.

79. It is however necessary to make specific reference to two experts called by the Second Defendant in more detail, as my findings in relation to how they gave their evidence is of significance in determining the extent of the Claimant's symptoms and why I preferred one expert over another within their relevant fields. I turn first to Dr Torrens. At the outset I wish to make clear that I found her to be a helpful witness who gave genuine and honest answers and who, it is important to observe, felt sympathetic towards the Claimant and accepted that she was genuine in describing her symptoms when she saw her and her mother for examination. However, I do agree with the criticism of her by Dr Murphy that her first report was "littered with judgemental and rather scathing comments". The references to the Claimant being "self-pitying" and "histrionic" (which she conceded in oral evidence is a term that she would not have used to describe a man), and the raising of "possible Social Services risk assessment" required to ensure the Claimant's unborn child was properly safeguarded, were unnecessary and inappropriate. I do accept what Dr Torrens says that she likes to use straightforward language, and the references in the report including what she described as an unhealthy over-reliance upon her mother was said out of genuine concern, but I do find that the way she expressed herself when criticising the Claimant, as previously and similarly observed about a different Claimant by Master Davison in Mustard v Flower and Direct Line HQ17P00164 1 November 2019 (unreported at Paragraph 3) went beyond language which is appropriate for an expert to employ and suggests a level of unconscious bias, even where there is a lack of belief in the Claimant's case, which she undoubtedly did find (and was entitled to do so), once she considered the Claimant's medical records and the social media evidence. I consider that Dr Torrens placed an over-reliance upon a single occasion in January 2011 in the medical records, in which the Claimant apparently drank a copious amount of wine, about which the Claimant was not able to respond, and where post-accident the Claimant had alcohol intolerance as one of her symptoms. I was surprised at the conclusion of her evidence that Dr Torrens relied upon a particular example of the Claimant failing to volunteer the fact that she may have been tired because she had been to Paris for the weekend shortly before her appointment as being an example of potential dishonesty. All the strident language she used may not necessarily be indicative of unconscious bias in circumstances where there were expressed criticisms of the Claimant. However, I find the over-reliance upon a small detail in the medical records and what the Claimant volunteered to her is concerning. When noting the absence of balance from Dr Torrens in her analysis of the Claimant's personnel record which demonstrated many positive aspects of her work record and the views of her colleagues, and also noting that it was not until she gave oral evidence did she confirm that she deferred to Dr Jacobson's analysis about the Claimant's pre-accident health and that she was presently very unwell and incapable of work, means that I found it difficult to safely rely upon her expertise where it differed from Dr Murphy because of what I perceived to be unconscious bias, as although I have found there was no intentionality in relation to the adverse conclusions and observations Dr Torrens made about the Claimant, where there were differences between her evidence and that of Dr Murphy, I preferred the evidence of the latter.

80. I turn now to the evidence of Dr Miller. I note at the outset the powerful observation made by Mr Woodhouse that adverse criticism of him may have “career-damaging effect”. I have absolutely no desire to do that and I hope the criticism which I consider it is necessary to make can be limited to the findings in this case. Wisely in my view, Mr Woodhouse accepted that he could place no reliance upon Dr Miller’s evidence and candidly accepted that in respect of the pain experts, Dr Munglani who was called on behalf of the Claimant “was more impressive than Dr Miller”, though he did make submissions in relation to whether there was satisfactory oral evidence from the former expert too. He also acknowledged in his closing written submissions that “the suggestion in the Claimant’s opening statement that Dr Miller did not believe the Claimant from the outset is probably reasonable. Dr Miller’s evidence may have been better if he had simply accepted that proposition”. In his oral evidence, Dr Miller effectively accepted that proposition. Although the Second Defendant did not place any reliance upon Dr Miller’s evidence at the conclusion of the trial, his evidence was clearly relied upon by the Second Defendant when the report was served. The duty of medico-legal experts under CPR 35 and the relevant practice direction cannot be over-emphasised. It is essential that they understand that their duty is to assist the Court by providing their objective, unbiased opinion upon consideration of all material facts, including those which might detract from their opinion and are not in their best interests of the party who has instructed them see Liverpool Victoria Insurance Company Limited v Zafar [2019] EWCA Civ392. Whilst it is clearly open to an expert to disbelieve a Claimant presenting with symptoms in the context of their overall medical records and any other evidence then or subsequently available to the expert, there needs necessarily to be a strict and close adherence to their Part 35 duty which should not be departed from, either intentionally or recklessly. It is imperative that the Court can safely rely upon the expertise of the experts within their field in accordance with that duty.
81. In the course of his reports and oral evidence, Dr Miller accepted he was “over-zealous in his use of language from the outset ... and when I re-read my reports in preparation, I winced and thought I could have been a little bit more reflective and kinder and provided a little bit more range of opinion”. He agreed that he had been “probably slightly unfair” to describe the Claimant in a report commenting on surveillance evidence as being “more or less housebound”. The Claimant had never asserted that, and it was never a part of the Second Defendant’s case in any event. I have already indicated that the Second Defendant did not seek to rely upon the surveillance evidence at all in asserting the primary case of fundamental dishonesty. When confronted with this characterisation of the Claimant in cross-examination, Dr Miller sought to amend his assertion to “She was more housebound than most people of the Claimant’s age”, which conveys a completely different meaning.
82. Dr Miller made what I consider to be an unfair attack on Dr Allder, who had properly considered the pre-accident GP and hospital records regarding the Claimant’s previous trauma and head injury which Dr Miller, to his credit, accepted, stating “This is my fault, I apologise to the Court”. He further criticised Dr Allder by stating that he “Opined that all of [the Claimant’s] ongoing complaints were resultant from the brain injury”, which was incorrect and which he ought to have been aware of, as parts of Dr Allder’s report were joined into his own report. Again, Dr Miller conceded an error and made an apology to the Court. Candidly, and again to his credit, he accepted “What I said about Dr Allder’s report and how I reviewed it was simply not good enough”. He

also admitted he made an error in the joint pain statement with Dr Munglani, where he erroneously stated that “Dr Munglani appears to have predicated his opinion and prognosis around the severe traumatic diffuse axonal injury and the brain injury opinion of Dr Allder” whereas in fact Dr Munglani had advanced that opinion and prognosis with three alternatives which the brain injury was only one. He agreed in evidence that Dr Munglani’s opinion “Was more complex”.

83. As Dr Miller did not believe the Claimant from the outset, he did not consider the alternative case in respect of pain management, and it was only in oral evidence that he agreed with Dr Munglani’s diagnosis that set out at paragraph 237 that the Claimant had “Somatic System Disorder with predominant pain”. He therefore agreed there may have been amplification of the processing of the physical pain.
84. Dr Miller’s approach to his reports is not to consider any of the Claimant’s clinical records ahead of the assessment. Counsel disagreed as to whether this was common practice and I make no findings in respect of this method. What it does mean is that having taken a relatively short medical history from the Claimant in respect of her recollection and then reviewing the record and raising concerns about her honesty, there was no opportunity for the Claimant to comment on the contents of those records. Dr Miller agreed it was unlikely that she would have reviewed them before she saw him. His evident disbelief of the Claimant was reflected in his third report by using the words “Purporting to have chronic pain”. There was no reference in Dr Miller’s review of the social media (and surveillance evidence) of anything supportive of the Claimant’s case, and there was an unfortunate, unchallenged assertion that the Claimant had made a complaint about Dr Miller’s manner towards her, which she considered affected her ability to answer his questions and pointed out numerous factual inaccuracies in relation to her account. A small point of detail but indicative of such error is a reference of Dr Miller’s that the Claimant attended the examination alone, whereas she in fact attended with her mother (as she did with other medical legal experts), which the Second Defendant through Mr Woodhouse accepted was an error on Dr Miller’s part.
85. Overall, for the reasons set out above, I was troubled by the extent of departure of Dr Miller from his Part 35 duty, and I considered that it lacked the appropriate necessary balance, probably as a result of his initial views of the Claimant’s credibility. In the circumstances, on matters of variance where his opinion departed from Dr Munglani’s, I preferred the latter expert’s evidence. Mr Woodhouse did not seek to contend otherwise.

#### **Ascertaining the Claimant’s injury caused by the accident**

86. I have set out above the ambit of agreement on the physical and psychological injuries caused by the accident both before and at the conclusion of the trial and need not refer to that further until determining the question of quantum.
87. One of the principal areas of disagreement between the parties is whether the Claimant sustained a significant traumatic brain injury (“TBI”) and, if so, the severity. The question of severity is of limited assistance, in that it is largely academic, as both Dr Agrawal and Professor Schapira agreed that classification bears only a limited relationship to outcome.

88. Dr Agrawal considered that there was a “probably mild to moderate TBI” based on the Russell Criteria or a mTBI based on the Mayo classification. Dr Alder suggested that the Claimant suffered a moderate-severe (definite) TBI based on the Mayo classification as he considered the Claimant’s post-traumatic amnesia lasted over twenty-four hours. Dr Jacobson considered the head injury fulfilled the criteria for a “symptomatic possible TBI” and “possibly though improbably” a “mild probable TBI” on the Mayo classification and considered that the concussive head injury suffered by the Claimant was no more than a “symptomatic possible TBI” although he accepted “possibly, though improbably” a “mild probable TBI” on the Mayo classification. There was an important question as to whether the cognitive, behavioural, and psychological symptoms of the Claimant’s in the aftermath were caused by a brain injury, or a combined brain and psychiatry injury, or whether some or all of those symptoms merged later which would suggest they were purely psychiatric injuries unconnected to the accident.
89. I found the latter question in respect of severity on the assumption that the Claimant had suffered a TBI easier to resolve. It was only Dr Alder who suggested that the Claimant suffered a moderate-severe (definite) TBI of the six neurological experts who gave live evidence before me. Although I found Dr Alder’s evidence generally to be of considerable and detailed assistance, the aspects of which I shall refer to below, I was not persuaded by his evidence on severity, although I acknowledge that from the history he ascertained, I could see how he formed the view that the Claimant was suffering symptoms for more than twenty-four hours. I note that the traditional markers of TBI, namely no or momentary loss of consciousness, no external signs of head injury, a Glasgow Coma Score of 15, and no neuro-radiological findings which are suggestive of the Claimant suffering a less serious TBI. Dr Alder accepted that it was in the minority (25%) of victims of TBI might present with Post-Traumatic Amnesia with no disorientation, although I do find that the Claimant’s presentation was unusual, taking in account that she did have some detailed memory and although I shall address the thesis advanced by the Claimant of the neuro-metabolic cascade below, I conclude that if the Claimant suffered a TBI, it was not at the higher level of moderate severity. However, as I have indicated above, that is only of limited assistance in relation to the question of outcome.
90. In determining the inter-relationship between the variety and constellation of symptoms, it is important to note that the neuropsychologists agreed that part of the Claimant’s mental illness is characterised by “catastrophic thinking” that resulted in her dwelling on the negative outcomes, for which she underwent successful treatment. Also, significantly, although there were differences between Dr Agrawal and Dr Jacobson in respect of the appropriate classification to describe the overlap injury between neurology and neuropsychiatry and this can impact on the recommended treatment pathway and prognosis, they agreed that the Claimant’s ongoing pain represents an SSD, and that she suffered PTSD with an initial full recovery of around 2.5-3 years and that she is now suffering again from psychiatric injury. The question of the constellation of the Claimant’s symptoms and whether it was all part of concussion caused by the accident was difficult to determine. I was recommended to read a paper by Professor David Sharp entitled “Concussion is Confusing Us All”, upon which the Claimant placed reliance; I read this and found it to be extremely illuminating.

91. The paper suggested the use of the term ‘Concussion’ should be ‘retired’ and there was an explanation of the breakdown for the Mayo classification system. In respect of mild TBI, which is often considered relatively harmless, 90% of head injuries come within that category and although neurological dysfunction is often short-lived, long-term effects can be surprisingly common. There is a reference to a constellation of symptoms including headaches, dizziness, fatigue, irritability, reduced concentration, sleep disturbance, memory impairment, anxiety, sensitivity to noise and light, blurred vision and depression, and a significant minority of up to a third report symptoms persisting beyond six months. The Claimant had several factors which unfortunately increased the likelihood of persistent symptoms. She had pre-existing psychological problems, is female and had a previous head injury. Interestingly, a significant factor in perpetuating symptoms is “involvement in a compensation claim”. Psychiatric symptoms were regarded as common after TBI. Pre-existing mental health disorders increased the risk of developing a psychiatric disorder after injury and depression is particularly common as is anxiety; even PTSD is also possible. The head injuries often produce a headache, and experimental mild TBI shows similar biochemical changes as that seen in migraines, suggesting a possible pathogenic mechanism to explain the high incidence of post-traumatic headaches. It is surprisingly common for headaches to persist for many months after mild TBI and in a particular study of more than two hundred patients, there was a one-year accumulative incidence of 91% with migraine present in 50% of participants. Migrainous type headaches sometimes occurred newly. Dizziness affected up to 80% of patients in the first few days following a head injury and a fifth of patients were still symptomatic five years later. Sleep disturbance was also very common after TBI, and the conclusion was that it was important to recognise that mild TBI is not always a benign condition and patients failed to recover from what may appear to be innocuous injuries. Significantly in the context of this case, in seeking to end descriptions of concussion and Post-Concussive Syndrome, in arriving at such a diagnosis, which is described as a “lazy diagnostic approach”, patients with migrainous headaches may be labelled as having concussion and denied more accurate diagnosis and treatment.
92. In the present case, the Claimant maintained that her focus after the accident was on her physical symptoms. In Sharon Palmer’s witness statement referring to the Claimant’s headaches, she stated “the hospital has told us with concussion she could get headaches”. I find that this is illustrative of the essential theme identified in the Sharp paper, namely that the hospital believed the headaches were all part of a concussion which it was presumed would resolve speedily. Mrs Palmer attributed the Claimant’s clumsiness after the accident (which was new) not simply to the Claimant’s musculoskeletal problems but also “the light sensitivity and impaired balance to the migraines”. I have already referred to how the Claimant sought to deal with her symptoms, her general approach to life and her working life, and her attempts to return to pre-accident levels which unfortunately were largely unsuccessful. The focus by the Claimant on her physical symptoms is consistent with her belief expressed to both Drs Jacobson and Torrens that she thought “she was going mad”. The other lay witness evidence supports the Claimant’s account of the extent of her pain and discomfort, increasing migrainous headaches, and the difficulties she was having coping with work until she chose to resign. I do not accept the Defendant’s assertion that the Claimant continued to function well and largely normally until migraines developed in early 2016. Having considered the experts’ evidence with care and the fact there were areas of amnesia in the Claimant’s memory for a period of up to twenty-four hours after the

accident, albeit that she does have some detailed memory, I prefer the evidence adduced on behalf of the Claimant that she suffered from a neuro-metabolic cascade, and a mild to moderate TBI together with other psychiatric injuries directly caused by the accident and that the cluster of cognitive and behavioural symptoms arose from it, and there was not a delayed presentation of them. I note that the Second Defendant did not provide an alternative mechanism which would have suggested a reason, once the fundamental dishonesty had been resolved in the Claimant's favour.

93. In finding that the Claimant has suffered a brain injury caused by the collision, I note that the neurological experts agree the mechanism of injury which can cause a brain injury as opined by Professor Schapira, which was not challenged: the suggestion that acceleration or deceleration mechanism injuries create rotational forces that are maximal within the long axonal tract deep within the midline structures of the mid brain, the fornix and the corpus callosum. I was assisted by the evidence of Dr Allder in respect of the mechanism of the injury where he identified the 'cone of vulnerability'. In addition, the neurological experts agree that before brain injury could be excluded in the Claimant's case, a retrospective post-traumatic amnesia history, applying the 'Rivermead Protocol' needed to be administered, which had not been carried out by Mr Hekster, which meant that his clinical history of events could not be used as a post-traumatic amnesia history.
94. I considered the Second Defendant's description from Professor Schapira and Dr Jacobson of the Claimant's "fine-grained, detailed memories immediately after the accident", but on balance I consider that the Claimant had suffered post-traumatic amnesia in the first twenty-four hours post-accident as claimed. She undoubtedly had a number of instances of impact memory loss in a period of around thirty minutes after impact, her previous memory being only of the impact of the headlights of the First Defendant's vehicle approaching.
95. I find that there was a break in the Claimant's consciousness amounting to post-traumatic amnesia for an unknown but relatively short period of less than twenty-four hours. Importantly, the experts agreed that once there has been a loss of consciousness for a short period, which could even be seconds or a minute, that is sufficient to amount to a short period of post-traumatic amnesia. This was confirmed by Professor Schapira, and Drs Jacobson and Torrens referred to a very short period. In the joint statement, Dr Jacobson described "nil to seconds, possibly a minute". Dr Murphy described it as a period of "a couple of minutes".
96. In the circumstances, I find that the Claimant suffered a mild traumatic brain injury in accordance with the middle criterion, namely B2 of the Mayo criteria, namely a post-traumatic anterograde amnesia momentarily to less than twenty-four hours.
97. This agreed position by the experts upon application of the Mayo criteria is consistent with the recent decisions in respect of mild TBI in Stansfield v BBC [2021] EWHC 2638 and Long v Elegant Resorts Limited [2021] EWHC 1330. There were similarities in the present case to both those Claimants, who suffered from episodic post-traumatic migraine, and there were also overlapping symptoms from mild TBI, chronic pain and neuropsychiatric diagnoses. Those Claimants had enduring symptoms on the interaction of the various injuries, and it was noted there was also normal neuroradiology with CT and MRI scans which again was the position in the present claim.

98. HHJ Pierce QC stated in Long at Paragraph 146:

*“In my Judgment, so long as genuine PTA is found to have a reason, neither the length of the PTA nor the lack of other symptoms excludes the possibility of a diagnosis of mTBI... the Mayo classification makes clear that the accepted thinking (which was not disputed by any of the Defendant’s experts) is that even momentarily PTA, so long as genuine, is a sufficient symptom to justify the diagnosis of mTBI”.*

99. Relevant academic papers were referred to by the experts, including in their joint neurological statement, and significantly, they accept that there is “a small proportion of patients who suffer mild traumatic brain injury who have a poor outcome for various reasons and that is a significant concern in the medical profession and that this patient cohort invariably have overlapping injuries outside the field of neurology and that mild Traumatic Brain Injury is the most challenging area of brain injury for the medical profession”. Having found that the Claimant suffered from amnesia for a short period after the collision, I consider that that was explicable by the mild PTA that she suffered, which was the preferred view of Drs Allder, Agrawal and Murphy, whose evidence I prefer over the Second Defendant’s experts expressed primarily through Dr Jacobson, and initially Professor Schapira before he gave oral evidence when he described dissociative/fear-like symptoms. The analysis is best explained by Dr Allder’s reference to a neurometabolic cascade, which can explain delayed onset of some important neurogenic symptoms including nausea, vomiting and headaches. Dr Murphy essentially rejected the dissociative symptom explanation stating that: “Psychogenic amnesia is very rare... I am reading more about the neuro-physiological consequence of a high-speed impact. I think it more consistent with the evolution of this neurometabolic cascade that comes on after a high-speed impact”. The Claimant’s experts did not agree with Dr Jacobson that the fact that the Claimant had in his words “fine-grained details”, that would be consistent with a diagnosis of a PTA, which was rejected by both Drs Agrawal and Murphy and was not expressly put to Dr Allder. Further, the evidence of Drs Allder and Murphy that it is possible for the Claimant to have suffered both a mild TBI and Post-Traumatic Stress Disorder was not challenged. In the circumstances, I find that the Claimant did suffer a mild traumatic brain injury which meant that unfortunately she had a poor outcome in respect of the initial head injury. That would have been the position had she not suffered that injury.

100. In respect of the Claimant’s chronic pain, I have already indicated that I prefer the evidence of Dr Munglani over Dr Miller and I find that the Claimant suffered chronic pain as a complication of her mild traumatic brain injury and that unfortunately the Claimant does fall within the minority of those suffering that type of injury for which there are ongoing symptoms and difficulties with the Claimant’s functioning, which I shall address further when making reference to the Claimant’s future treatment and prognosis.

101. In respect of the neuropsychology, the joint statements demonstrate that Dr Torrens’ views became closer to those of Dr Murphy and then narrowed further once she gave oral evidence. For the reasons set out above, to the extent that there remained a difference between the experts, I preferred the evidence of Dr Murphy over that of Dr Torrens for the reasons set out above, and I therefore find in summary that the Claimant suffered a mild TBI which, due to the development of SSD, the symptoms did not

resolve when otherwise they would have been expected to within a relatively short period after the accident; migrainous headaches which have been continuing and worsening, and which amount to the most severe symptom that the Claimant is presently suffering from; PTSD, which initially resolved after a period of around 2.5 - 3 years but unfortunately has reoccurred. I also find that the Claimant became unable to continue with her work in 2017 and was forced to give it up as a result of her continuing symptoms.

102. **Future treatment and prognosis**

The Claimant's case in relation to recommended further treatment is set out at Paragraphs 29 to 34 of her Updated Schedule of Loss and her prognosis, residual earning capacity and disabled status is set out at Paragraphs 29 to 32. The Defendant's position is set out in general terms under the General Damages table, both in its Counter-Schedule of Loss and Closing Submissions in respect of both of its primary case (which I have rejected) and its secondary case on the basis that the case of fundamental dishonesty is dismissed. It seems clear that the Claimant would now benefit from a coordinated, multi-disciplinary treatment involving a neurologist, chronic pain specialist, audio vestibular physician, neuropsychologist and neuropsychiatrist with overall case coordination. The treatment programme would need to be led by a clinical psychologist, which would seek to reduce her substantial dependency upon those around her, primarily her mother, and increase her level of independence. It is clear that the ongoing migraines will require further treatment than that received from the National Migraine Centre. By the conclusion of the trial, it was clear and accepted that the migraines were attributable to the accident and that they had no substantial overlap between the whiplash injuries caused by the accident and the triggering of the mild TBI. In continuing to treat the Claimant, there was recognition that she has particularly vulnerability primarily in relation to relapses in her mental health as reflected in the recent return of PTSD, which is likely to have to make the prognosis less good than would otherwise be the position. Necessarily, there will need to be a guarded prognosis in relation to the Claimant's prospects of ever returning to work full-time, but there was at least a level of optimism in relation to her prospects of a considerably improved position through focussed multi-disciplinary treatment.

**Quantum**

**Pain, suffering and loss of amenity**

103. In respect of the Claimant's brain damage, I place it within Section (A) (c) (iii) which has a range of £36,740 to £77,410. For her psychiatric damage, I place it within the moderately severe category of Section (A) (b) which has a range of £16,270 to £46,780. For her Post-Traumatic Stress Disorder, I place it within Section (B) (c) moderate award which has a range of £6,980 to £19,750 and in respect of her chronic pain, I consider it is best categorised within Chapter 8 (b)(ii) in the range of £17,970 to £32,840, all of which need to have a 10% uplift applied, but importantly, a deduction needs to be made to represent the multiple injury nature of the Claimant's claim, specifically taking into account that the first three of those identified injuries are psychiatric in nature. I consider the appropriate award to be the sum of **£65,000**, analogous to the award made in the Stansfield case, bearing in mind that the Claimant is around eighteen years younger than that Claimant. Interest upon general damages will therefore be the sum of **£5,200**.

## Past Losses

### Earnings

104. I have concluded that the Claimant's decision to stop work was caused directly by the accident which resulted in a marked deterioration in her health by 2017. The Second Defendant accepted that the Claimant's net annual earnings were £33,881 per annum when she left Conversocial, and there is therefore a concession in respect of the period between the date when she left on 11 May 2017 to 4 October 2019, the date of birth of her first daughter, Arabella, which equates to £81,879 less credit for 3 months in the sum of £2,890, equating to £78,989. The Claimant maintains that had it not been for the accident, she would have had a salary increase to at least £50,000 gross per annum equating to £37,538 by the date of completion of the Updated Schedule of Loss in March 2020 when the Claimant was aged thirty-two. Of course, there is now a further period of some 21 months since the accident which is around 7.4 years in total. There is clearly a level of uncertainty as to how the Claimant's career path would have progressed, and the Claimant accepts a discount of 15% reflecting the chance that she may not have achieved the promotions and salary increases claimed.
105. In the circumstances, I consider that it was realistic that she would be expected to be earning at least £50,000 gross per annum equating to £37,538 net. As set out at Paragraph 51 of the Claimant's Updated Schedule of Loss, the Claimant, in my view realistically, recognises the fact that she has had two children over the period of 7.4 years since the accident and would have been likely to have taken advantage of maternity pay, as well as some contraction in her earning power caused by the Covid pandemic. The Claimant has therefore deducted two years off her past loss of earnings claim and has chosen a figure mid-way between the £28,441 net which she was earning at the date of the accident and £37,664, namely £33,052.50 which I consider is realistically what she would have been earning by the date of trial, which equates to a sum of £178,806. Deducting what the Claimant has earned since the accident, namely the sum of £83,403 would result in a sum of £95,403. I was initially attracted by the Second Defendant's assertion that any past loss of earnings should be deducted by 15% to allow for the saving in travel and other costs of work: see Eagle v Chambers (2) [2004] EWCA Civ 1033, but given the Claimant's realistic deduction of a period of two years in respect of her past loss of earnings claim, I consider it would not be appropriate to make an additional discount for those savings and accordingly I consider the past loss of earnings claim to be the sum of **£95,403**.

### Past Care and Assistance and Loss of Services

106. The Claimant has set out the past care part of her claim at Paragraph 78 to 85 of her Updated Schedule of Loss. It is accepted that it is necessarily a rough and ready estimate, which comprises 10 hours per week over the period between the accident and when she gave up work in November 2017, and 25 hours per week since then. The Claimant has relied heavily upon her family, in particular her mother, since the accident and in particular since she gave up work. Given that she is still suffering with serious migraines, that has impacted substantially on her ability to care for her young daughters. The Second Defendant conceded that there would need to be some limited care for a period of 6 weeks after the accident but maintained that the level of care of 25 hours per week since she gave up work is inconsistent with the level of activity indicated in her social media posts and on surveillance. Having rejected the Second Defendant's

case in relation to conscious exaggeration, I do not consider the Claimant's estimate to be unrealistic or unreasonable. The parties agree that any award for gratuitous provision of care should be subject to a 25% discount, and I therefore award the sum claimed by the Claimant of **£58,304** as set out at Paragraph 85 of the Updated Schedule of Loss.

### **Miscellaneous out of pocket expenses**

107. The Claimant claims the sum of £38,718 as particularised in the spreadsheet exhibited at Appendix 1. The Second Defendant concedes the sum of £19,218 but denies that the other claims as set out at Paragraph 4 of table of its Closing Submissions. Although there was no cross-examination upon the detail of Appendix 1, I consider some of the items as not being directly attributable to the accident, but given the level of chronic pain, I shall exclude only the dental treatment (£55), books (£56), East of Eden (£125), Sustenance (£85), Croatia (£190), PI Trust (£600) and Case Management (£7,996), which I do not understand as being separately recoverable on top of the Pain Management Programme which I shall allow. I therefore exclude the sum of £9,107 and award the Claimant the sum of **£29,611**.
108. The total sum in respect of past expenses is therefore **£183,318**.
109. Interest on past losses is claimed at half the special rate account from the date of the accident to the date of trial which is 1.49% which results in the sum of **£2,731**.

### **Future Losses**

#### **Future Loss of Earnings**

110. The Claimant submitted that it is appropriate to use a multiplier and multiplicand approach and suggests at Paragraph 55 of the Updated Schedule of Loss that the Claimant would have worked to the age of 70 over the next 36 years and claims an earnings multiplier of 36.68 under Table 14 multiplied by 0.84 under Table C Level 2 equating to 30.18 years and sets out a calculation using variable multipliers applying a 15% discount.
111. The Second Defendant denies that the Claimant should be awarded Loss of Earnings on a multiplier/ multiplicand basis as it is contended that would lead to an unrealistic result relying upon Billett v Ministry of Defence [2015] EWCA Civ 772 and Murphy v Ministry of Defence [2016] EWHC 03 (QB).
112. In Aderemi v London and South Eastern Railway Ltd [2013] ICR 591, Langstaff J stated at Paragraph 14:

*“Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a Claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a Tribunal has then to assess whether that is or is not substantial. Here, however, it has to bear in mind the definitions of substantial which is contained in Section 212(1) of the Act. It means more than minor or trivial. In other words, the Act itself*

*does not create a spectrum running smoothly from those matters which are clearly or substantially effect to those matters which are clearly trivial but provides for verification: Unless a matter can be classified as within the heading “trivial” or “insubstantial”, it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other.”*

113. In Billet, reliance was placed upon that citation at Paragraphs 86 and 87 in respect of the definition of what constitutes a “substantial adverse effect” on a person’s “ability to carry out normal day-to-day activities” to determine whether the Claimant suffers a disability within the definition set out in the Ogden Tables. In Murphy, HHJ Coe QC, sitting as a Judge of the High Court found that the Claimant had suffered a modest disability within the definition as set out above at Paragraph 211 that “a sufficient adjustment to the disabled multiplier is too contrived an exercise ...” and relying upon Billet made “use of the tables without significant adjustment produces an unrealistic figure for the Claimant”.
114. On the facts of the Murphy case, HHJ Judge Coe QC found that a Smith v Manchester award would fit the facts better. However, in respect of that Claimant, he was in work and had been since he left the army, his employment was secure and he was handicapped on the labour market, but it was a limited handicap and meant simply that he was more limited in his choice of employment.
115. Mr Grant referred me to Inglis v Ministry of Defence [2019] EWHC 1153 where Peter Marquand, sitting as a Deputy High Court Judge, considered whether the award should be on the basis of Smith v Manchester referring to Billet and the earlier decision of Connor v Bradman [2007] EWHC 2789 before reaching the following conclusions at Paragraphs 213 to 214:

*“I derive the following principle from the authorities. The multiplier / multiplicand method is the convention method of calculating future loss of earnings and should normally be used. However, where a Claimant has a handicap in the labour market a Smith v Manchester award will be appropriate where there are many uncertainties which mean the multiplier/multiplicand method cannot be used and the matter is one for a broad judgment. Such a circumstance will be where the Claimant has a disability within the meaning of the Ogden Tables, but it is one with a minimal impact on the Claimant’s ability to carry out his employment. In such a case, any adjustment to the Reduction Factors (RF) would be a matter of broad judgment.*

*The RF may be adjusted where evidence is available, and the broad judgment is not required. The RFs are averages based on population data and may be adjusted upwards or downwards from the starting point derived from Tables A to D, if there is evidence to point to such changes for the particular Claimant.”*

116. In respect of the present case, I find that the Claimant is disabled and, given the extent of her present disabilities, I do not find this is analogous to the position of the Claimants

in Billet and Murphy, in which they were able to continue with their chosen careers with virtually no hindrance from their disabilities and where the decision to award damages for Future Loss of Earnings on a multiplier/multiplicand basis would have resulted in a disproportionately large award. At Paragraph 96 of Billet, there is reference to the trial Judge confirming that the Claimant was able to pursue “His chosen career as a lorry driver with virtually no hindrance from his disability. He secured employment with Framptons within one week of leaving the army”. As indicated above, a similar finding was made in Murphy in respect of the Claimant’s continuing army career, in which there was a finding at Paragraph 207 that his disability was “modest only”. In the present case, as was held in Inglis at Paragraph 215, that not only is the Claimant disabled within the definition of the Ogden Tables, but her disability has a particular impact on her ability to carry out her day-to-day work. I therefore determine that this is not a case which it would be appropriate to make a Smith v Manchester award as I do not consider the Claimant would recover a disproportionate award for future loss of earnings. I therefore do so on the conventional multiplier/multiplicand basis with appropriate adjustment for the RF.

117. I determine that the appropriate multiplier for Future Loss of Earnings to a pension age of 68 under Table 12 is 34.67. Although the Claimant has claimed that the retirement age by the time she would have retired would be raised to 70, I consider that the multiplier should be on the basis of the present retirement age for a female as set out at Table 12. She is presently 34 years old.
118. Under Table C for Loss of Earnings to pensions under 60 if the Claimant was not disabled, the earnings discount factor would be 0.84, to take into account contingencies other than mortality, whereas under Table D it would be 0.42 for a disabled female. I note the flexibility referred to in Connor v Bradman in recognising a situation where the Claimant does come within the definition of disabled; this recognises there is an inherent flexibility as to the extent of her disability and it is undoubtedly the position that she can realistically expect to make at least a partial recovery, albeit accepting the concern as to the extent of her recovery. I note the Second Defendant considers she will make a full recovery with the multidisciplinary treatment, whereas the Claimant maintains it would be at most partial recovery.
119. I consider that that flexibility takes into account that there will undoubtedly be recovery by the Claimant through the multidisciplinary intensive treatment, but that she still has vulnerability to psychiatric relapse and the risk of further migraines. I consider the appropriate discount factor to take this into account to be a figure mid-point between those under Tables C and D, namely 0.58. The earnings multiplier is therefore  $34.67 \times 0.84$  which equates to 29.12 years.
120. The Claimant has suggested three variable multiplicands to reflect her different likely earnings at different ages. It is broken down to 3 years from her present age at her projected £37,604.64 net per annum, an increase as set out at Paragraph 52 of the Updated Schedule of Loss when she would expect to become a marketing manager within the next 3 years for a period of 5 years to £49,293 net per annum and thereafter a further increase to the sum of £76,193 net per annum as a chief marketing officer for what is claimed to be 28 years to a projected retirement age of 70 years old.
121. The Claimant makes an allowance of a 15% discount in respect of her not achieving promotion on the career ladder at the timeframe with all the salary levels stipulated and

recognises that she would be likely within around 2 years to be able to work part-time. She concedes a notional residual earning capacity of 24 hours per week at £15 per hour combined with an Ogden 8 multiplier which again was claimed to the age of 70 of 34.51 years in accordance with Table 14 which equates to 32.52 years under Table 12 for a retirement age of 68. A further discount by Table D discount factor of 0.28 is made which is 9.66 years equating to £158,366, as set out at Paragraph 96 of the Claimant's Updated Schedule of Loss.

122. As far as the variable multipliers are concerned, I accept the first two periods of loss of earnings claimed, comprising the next 3 years at the net annual earnings of £37,664 and the following 5 years in which she would have received an increase to £49,293 net per annum. In respect of the following 26 years (to the age of 68), I would expect the period for which she would be earning that salary for a further 8 years until she is the age of 50 and then award her a period of increased salary as a chief marketing officer for 18 years at £76,193 net per annum. There is clearly a level of uncertainty whether and at what time she would be appointed as a chief marketing officer although as that appears to be the next level of promotion, I do consider it realistic that, given her overall generally impressive work record, she would achieve that promotion. I award that sum but for a lesser period which I consider avoids the risk of the Claimant being over-compensated under this head.
123. In the circumstances, I consider the Claimant should receive a Loss of Earnings for 3 years at her presumed salary of £37,664 per annum which when applied with the percentage of the Table 36 term certain multiplier for a period of 34 years and uses the relevant percentage of discounted multiplier for those three years which is 2.48 equating to £93,407; for the next 13 years at £49,293 for 10.92 years equating to £538,280 and for the next 18 years at £76,193 for 15.72 years equating to £806,884 which totals £1,829,441 following a deduction of 15% which provides a net sum of **£1,555,025**. Making a deduction for likely residual earning capacity, recognising that the Claimant is likely to work for 24 hours per week, although I consider it should be at £20 per hour (not £15 per hour as claimed at Paragraph 96 of the Claimant's Updated Schedule of Loss) equalling £20,637 net per year with an Ogden 8 multiplier to the age of 68 years of 32.52, combined with a Connor v Bradman reduction factor applying to residual earning capacity of 0.76 {(Table C, Unemployed, level 20 plus a discount factor of 0.28 (Table D, Unemployed, level 2)/2} equates to 16.91 years, which equates to £348,972, which results in an award in the sum of **£1,206,053**.

### **Future Treatment Costs**

The Claimant claims the sum of £43,214 as set at Paragraph 86 (a small error has crept into the summary claim at Paragraph 103) whereas the Second Defendant concedes the sum of £10,140. There is an element of speculation in relation to the claim under this head as to the number of sessions the Claimant will receive although I consider the Second Defendant's estimation to be too low. Applying a necessary estimation, I award the Claimant the sum of **£35,000** under this head.

### **Future Care and Loss of Services**

124. The Claimant sets out her claim under Paragraphs 87 to 90 of the Updated Schedule of Loss and claims gratuitous care and domestic assistance for 5 hours per week for 58.04 years, as well as the sum of £1,500 representing DIY, home maintenance, painting and

decorating for 41.60 years equating to the sum of £213,304. The Second Defendant conceded only the sum of £50 per week for a period of 1 year pending further treatment equating to £2,600.

125. I consider the claim of 5 hours per week for 58.04 years to be reasonable equating to the sum of £150,904. As far as DIY, home maintenance and painting and decorating is concerned, I award half the sum, namely £31,200 totalling the sum of **£182,104** under this head.

126. The total award for the Claimant is therefore **£1,679,406**.

**Anthony Metzger QC**

**Sitting as a Deputy Judge of the High Court**