Neutral Citation Number: [2020] EWHC 3341 (QB)

Case No: QB-2018-005267

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 December 2020

Before :

HHJ COE QC
Sitting as a Judge of the High Court

- -

Between :

CARL DUFFY	**Claimant**
- and -	
CENTRAAL BEHEER ACHMEA	**Defendant**

- -
- -

Mr M Chapman QC (instructed by **Irwin Mitchell**) for the **Claimant**
Mr M Dignum QC (instructed by **BLM**) for the **Defendants**

Hearing dates: 19th November 2020

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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.

HER HONOUR JUDGE COE

Covid-19 protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00am on 3rd December 2020.

HER HONOUR JUDGE COE QC :

1. The claimant applies for a further interim payment in this case in which he was injured when he was a pedestrian hit by a car crossing a square in Amsterdam where he was on holiday with his wife on 2 January 2016. The claimant suffered severe injuries to his right foot in particular and despite significant treatment he is left with ongoing disability in terms of chronic pain, persistent stiffness and swelling, degenerative disease of the midfoot and limited mobility. He has also been diagnosed with post-traumatic stress disorder and depression.

2. Liability has been conceded and there is a full admission in the Defence. There is no question of contributory negligence.

3. The claimant was born on 2 January 1967. He was 49 at the time of the accident and is now 53 years old. He is employed full-time at the Environment Agency. He was able to return to work and currently works two days in the office and three days at home, but can no longer be out and about looking at flood defences because he cannot walk on rough or slippery ground.

4. Mr Duffy was on sick leave for four months and then had a phased return to work over a period of two months returning to full-time work on his full basic pay after seven months. He is not able to earn as much as he could before the accident.

5. Such is the extent of his ongoing disability that Mr Duffy is planning to undergo an elective below knee amputation. He has been considering this for some time. It seems that he has now, with the benefit of advice and counselling, made the decision and is likely to undergo the surgery perhaps as early as January 2021. The possibility of below knee amputation was raised in the Schedule of Damages prepared for an earlier interim payment application which schedule is dated 3 December 2019 ("the 2019 schedule"). The current application is made on the basis of details set out in the Immediate Needs Report of a case manager, Elizabeth Edwards.

6. For the purposes of the interim payment application the defendants accept that Mr Duffy will undergo the below knee amputation and that I should consider the application on the basis that the surgery will take place and will take place soon. The defendants however do not bind themselves to accepting the reasonableness of the claimant's decision at trial.

7. It also seems unlikely, as both parties agree, that this matter will come to trial before the end of 2021.

8. In terms of the applicable law there is little if any dispute between the parties and so I can take this shortly. The claim is brought in the English Court against a Dutch motor insurer and it is agreed that the law of the Netherlands applies to this claim in tort. The claimant, as a result of Dutch law has a direct right of action against the insurer and, following the decision in FBTO v Odenbreit [2007] C 463-06, the jurisdiction of the English Court is not an issue. The law of the Netherlands applies (pursuant to Article 41(1) of the Rome II Regulation on applicable law in tort (Regulation 864/2007)). Dutch law will govern limitation, breach of duty and causation as well as the existence of, the nature of and the assessment of damages to which the claimant might be entitled. Matters of procedure and evidence are nonetheless reserved to the forum court (see

Article 15 (c) of the Rome II Regulation and Article 1(3)). This is an application for an interim payment which is a procedural application and thus governed by English law. However, when it comes to any assessment of the damages to which the claimant might be entitled on which to base the interim payment decision, Dutch law has to be applied.

9. The court has the benefit of a report from Miss Miranda Walburg a Dutch-qualified Attorney at Law dated 13 November 2020. In his skeleton argument, counsel for the claimant has helpfully summarised the key elements relating to the assessment of damages as follows: -

*a. As indicated above, the principle of full compensation (restitutio in integrum) is the central principle of Dutch law (para 3.1 [**760**]);*

*b. Judicial discretion is exercised so that an estimate of the damages required to place the Claimant (so far as possible) in the situation in which he would have found himself if the accident had not happened (para 3.2 [**761**]);*

*c. Causation is required and is dealt with in a manner that does not differ markedly (in Dutch law) from the English law approach (para 3.3 [**761**]);*

*d. Non-pecuniary or general damages are awarded in Dutch law and are likely, in the present case, to lie in the range of €45,000 to €55,000 (c. £40,352 - £49,319 as at 17.11.20) (para 5 [**767**] and see also the case law comparables at [**769**]);*

e. As to the heads of past and future financial losses and expenses for which the Claimant contends/will contend –

*(i) Gratuitous personal care provided by a third party (para 4.2 [**762**]);*

*(ii) Domestic assistance (gardening and home care etc) (para 4.3 [**763**]);*

*(iii) Housing adaptations (para 4.4 [**764**]);*

*(iv) Therapeutic interventions ("Treatment costs are eligible for reimbursement if the treatment makes a beneficial contribution to the healing process, leads to a reduction of complaints or contributes to maintaining the best possible physical condition. According to the established case law, it is decisive whether the person involved acted reasonably in the given circumstances – including his personal circumstances – by undergoing the treatment in question and further whether the costs are reasonable to their extent. In such cases, therefore, the burden of proof on the victim of the usefulness of the treatment should not be excessive." (para 4.5 [**764**]);*

*(v) Equipment (para 4.6 [**765**]);*

*(vi) Cost of vehicle adaptations, together with running costs and insurance (para 4.7 [**765**]);*

*(vii) Net loss of earning capacity ("bonuses, allowances and stand by payments included"), including any recovery time spent on "sabbatical" (para 4.8 [**765**]);*

*(viii) Case management costs (para 4.9 [**766**]).*"

10. In relation to dealing with the application itself the law is set out clearly in the case of *Eeles* v *Cobham Hire Services Ltd* [2009] EWCA Civ 204 helpfully summarised by Popplewell, J. in *Smith* v *Bailey* [2014] EWHC 2569: -

> "19. *It is convenient to set out the principles which I take to be established by* ***Eeles*** *and the previous authorities which it sought to summarise:*
>
> *"(1) CPR r. 25.7(4) places a cap on the maximum amount which it is open to the Court to order by way of interim payment, being no more than a reasonable proportion of the likely amount of the final judgment (para 30). "*
>
> *(2) In determining the likely amount of the final judgment, the Court should make its assessment on a conservative basis; having done so, the reasonable proportion awarded may be a high proportion of that figure (paras 37, 43).*
>
> *(3) This reflects the objective of an award of an interim payment, which is to ensure that the claimant is not kept out of money to which he is entitled, whilst avoiding any risk of an overpayment (para 43).*
>
> *(4) The likely amount of a final judgment is that which will be awarded as a capital sum, not the capitalised value of a periodical payment order ("PPO") (para 31).*
>
> *(5) The Court must be careful not to fetter the discretion of the trial judge to deal with future losses by way of periodical payments rather than a capital award (para 32).*
>
> *(6) The Court must also be careful not to establish a status quo in the claimant's way of life which might have the effect of inhibiting the trial judge's freedom of decision, a danger described in* ***Campbell v Mylchreest*** *as creating "an unlevel playing field" (paras 4, 39).*
>
> *(7) Accordingly the first stage is to make the assessment in relation to heads of loss which the trial judge is bound to award as a capital sum (para 36, 43), leaving out of account heads of future loss which the trial judge might wish to deal with by a PPO. These are, strictly speaking (para 43):*
>
> *(a) general damages for pain, suffering and loss of amenity;*
>
> *(b) past losses (taken at the predicted date of the trial rather than the interim*
>
> *payment hearing);*

(c) interest on these sums.

(8) For this part of the process the Court need not normally have regard to what the claimant intends to do with the money. If he is of full age and capacity, he may spend it as he will; if not, expenditure will be controlled by the Court of Protection (para 44). Nevertheless, if the use to which the interim payment is to be put would or might have the effect of inhibiting the trial judge's freedom of decision by creating an unlevel playing field, that remains a relevant consideration (para 4). It is not, however, a conclusive consideration: it is a factor in the discretion, and may be outweighed by the consideration that the Claimant is free to spend his damages awarded at trial as he wishes, and the amount here being considered is simply payment at the earliest reasonable opportunity of damages to which the Claimant is entitled: ***Campbell v Mylchreest*** *[1999] PIQR Q17.*

(9) The Court may in addition include elements of future loss in its assessment of the likely amount of the final judgment if but only if (a) it has a high degree of confidence that the trial judge will award them by way of a capital sum, and (b) there is a real need for the interim payment requested in advance of trial (para 38, 45).

(10) Accommodation costs are "usually" to be included within the assessment at stage one because it is "very common indeed" for accommodation costs to be awarded as a lump sum, even including those elements which relate to future running costs (paras 36, 43)."

11. Again it is agreed between counsel that this case falls squarely within what is described as a *Cobham* v *Eeles* Stage 1 case and so the reason why the interim payment is being sought (although the reason is clear in this case) apart from the matters of the "level playing field" argument logically forms no part of a Stage I assessment. I do not need to consider it. The defendants accept (whilst preserving their position) that Mr Duffy will undergo the below knee amputation, and the claimant puts the claim forward on the basis of seeking funding for amputation surgery together with post-surgery loss and damage. Any "unlevel playing field" or similar argument is limited to the claim for the purchase of a new vehicle and the extent to which the claimant seeks an interim payment based on an assessment of loss which extends beyond the likely trial date such as would constitute future losses.

12. Against this background, therefore, in straightforward terms the court's task is to make a conservative assessment by reference to the principles of compensation applicable in the Netherlands which does not fetter the discretion of the trial judge to deal with future losses by way of periodical payments rather than a capital award or which establishes a status quo in the claimant's way of life which might have the effect of inhibiting the trial judge's freedom of decision. The assessment is made in relation to heads of loss which the trial judge is bound to award as a capital sum leaving out of account heads of future loss which may be dealt with by a PPO. The assessment thus comprises damages for pain, suffering and loss of amenity (plus interest thereon) and special

damages up to the date of trial (plus interest thereon). I should then award an interim payment which would represent a proportion of that figure (which may well be a high proportion) having deducted any interim payments previously received.

13. On this latter point it seems that the parties are unable accurately to identify the amounts which Mr Duffy has received by way of interim payments. The defendants believed the figure to be £95,105.16. The claimant's skeleton argument refers to a figure of £120,210.37. The defendants suggest that I should take the higher figure, adopting a cautious approach. I agree. If that is what the claimant has in fact received then I must properly deduct it. If there is any doubt I should err on the side of caution in the absence of an established figure.

14. A particular difficulty in this case is that the defendants' figures set out in the written submissions are formulated in the context of the 2019 schedule to which I have already referred. The claimant's submissions are based on the Immediate Needs Assessment of Elizabeth Edwards which is not currently incorporated into an updated schedule. The figures and the methods of calculation are by no means the same. Therefore, any meaningful valuation table in accordance with the practice recommended in *Grainger* v *Cooper* [2015] EWHC 1132 is not properly achievable given that one would not be comparing like with like.

15. I am therefore forced to reach my assessment doing the best I can considering the differing calculations against the background of the evidence which is in the bundle I have.

16. The parties are very far apart. The claim is for a further interim payment in the sum of £400,000. The assessment figure calculated in the claimant's skeleton argument is £345,202.79 based on the report of Miss Edwards. The defendants contend in the written submissions for a figure which could not be more than £69,000 and in oral submissions (in particular in light of the higher earlier interim payment) suggests the figure could not be higher than £58,500.

17. In order to reach the level of sum claimed following on Miss Edwards' report there are some heads of loss which I find should be considered in terms of recoverability in principle rather than only in terms of quantum.

18. There is a large volume of expert evidence (some 600 pages) in different disciplines and for each side. I only intend to refer to it where necessary.

19. As set out above, I take into account the important evidence of Miranda Walburg.

20. Doing the best I can, it seems likely this trial will be at the end of 2021 and I have therefore worked on the basis it will be 14 months away.

21. Turning to the heads of loss therefore: -

(i) <u>Pain, suffering and loss of amenity</u>

In accordance with the evidence of Miss Walburg (and the examples she cites) it seems that the bracket for pain, suffering and loss of amenity would be 45,000 – 55,000 euros

which is £40,352 - £49,319. The mid-point is £44,777. The defendants accept it is appropriate to take a mid-point and I therefore allow the (rounded-up) figure of **£45,000.**

(ii) Interest on general damages

Miss Walburg states the "statutory interest is payable on general damages from the date of the accident, but does not say what the rate is. Applying English law (2% per annum from the date of service of the proceedings, say 11th July 2018, which is, say, 30 months) would give a figure of £2,250. I allow a conservative **£2,000** under this head.

(iii) Claimant's loss of earnings

Mr Duffy did not lose his basic pay when off work initially but claims a loss of standby payments and flood warning overtime up to 31 March 2020 in the 2019 schedule, claimed at £8,148.46 and ongoing at £166.09 per month. I consider that this should be allowed for a further nine months up until he approaches amputation surgery, on a conservative basis. 9 x £166.09 = £1,494.81.
The situation with regard to his company car is unclear and I cannot consequently deal with the reference to additional tax liability. I make no allowance in that regard.

By the 2019 schedule the claimant alleges an inability to work for 18 months following amputation surgery and claims £41,880.02 for the period between 1 April 2020 and 31 July 2021. Miss Edwards refers to the claimant taking "a sabbatical" for a period of 20 months which is two months pre-amputation and 18 months post-amputation. This is said to be to allow him to prepare for and then rehabilitate from the below knee amputation. Assessing the likely claim for loss of earnings between now and trial, allowing for the amputation surgery, it does not seem to me that I could properly feel confident that an award of such a length of time would be made. The defendants would clearly argue it is unreasonable. They argue it is not consistent with the medical evidence. It is apparent that Miss Edwards herself sets out that *"Costs would ordinarily be provided on a 6 months basis to account for progress and challenges with goals…in practice, costs may be changeable dependent upon progress and therapist recommendations as the rehabilitation process develops".*

Moreover the 20 months is calculated to allow a period of pre-operative sabbatical to allow Mr Duffy to prepare in particular in respect of weight loss goals. The information given to me is that Mr Duffy will undergo the surgery as soon as he can and I cannot therefore be confident that such a period of sabbatical will in fact occur. I have to proceed on the assumption that surgery in December/January would not be being contemplated if Mr Duffy remained significantly overweight. It seems likely that Mr Duffy on the balance of probabilities will be able to return to work part-time much sooner than by 18 months. Since I have to take a cautious approach it seems sensible to me to look at the evidence from the defendants' expert, Dr Kolli whose evidence is summarised in the defendants' written submissions *"Dr Kolli is D's amputation rehabilitation expert and his report appears at p. 559. He predicts that C will achieve SIGAM E within the first 6 months following his amputation and SIGAM F within a further 12 months thereafter (para. 10.5, p. 577). He would expect him to return to his job within 4 months of the operation and be able to perform his current duties of 3 days a week at home and 2 on the road. Around 6 – 8 months after his amputation, Mr Kolli thinks that C should be able to do 5*

days a week in the office".
I make my assessment therefore on the premise that Mr Duffy will return to work part-time after four months and full-time after six months.
I therefore allow the basic loss of earnings at the rate claimed from January 2021 for four months and thereafter at half rate for two months and throughout that six month period I additionally allow the standby and flood warning overtime payments. Therefore, by reference to the 2019 schedule (which includes overtime): 4 x £2,023.16 = £8,092.64 plus £2,023.16 (2 months at half pay) plus the £8,148.46 and £1,494.81 above gives a total of **£19,759.07**.
It does not seem to me that I can properly take into account what the position with regard to overtime/standby payments may be after the claimant returns to work full-time post-amputation and I make no allowance in that regard.

(iv) Mrs Duffy's loss of earnings

Mrs Duffy's loss of earnings are claimed in the 2019 schedule on the basis of one week in the sum of **£278.80**. The defendants do not dispute this and I allow that sum.
The claimant's skeleton does not claim any further loss of earnings for Mrs Duffy and neither does the 2019 schedule. Although I note that Miss Edwards refers to Mrs Duffy providing six hours a day care initially. The sum claimed on behalf of the claimant in terms of loss of earnings is £49,988 based on Miss Edwards' report (page 420). That figure in fact also includes items of vocational rehabilitation which do not appear to have been evidenced but in any event, but there is no claim identified under "Cost of sabbatical" relating to Mrs Duffy and therefore I make no additional allowance under this head.

(v) Care and assistance

The figure put forward in the claimant's skeleton argument taken from Miss Edwards' report at pages 405 to 406 is £36,015 based on pre-operative care and support as well as post-operative domestic assistance including shopping, cooking, laundering and light cleaning to reduce the load on Mrs Duffy. The report identifies that any care delivered by Mrs Duffy "will be costed as formal agency care". There is an estimate of six hours each day for the first 26 weeks, 14 hours per week for the period 6 to 12 months post operatively and seven hours per week for the period 12 to 18 months. There is 78 weeks at 4 hours a week for a cleaning agency, 78 weeks of online shopping delivery cost, 20 months of window cleaning, 20 months of gardening support and 20 hours of handyman service.
In terms of number of hours and duration, the defendants, in my view, properly raise objection. By the 2019 schedule the claimant claims care at an undiscounted rate to 31 July 2020 totalling £82,540. Of course, this assumes amputation in April 2020. It includes shopping, housework and pet care. In the 2019 schedule services (e.g. gardening cleaner, car maintenance and window-cleaning) but also DIY and decorating are separated out which is not the case in Miss Edwards' report. On the premise that the surgery goes well and the recovery is good and Mr Duffy returns to work along the timeframe identified above the amount of care claimed seems to me to be high and for a very long period of time and again I could not be confident that it would succeed. It is clear that Mr Duffy will require some additional support in the early months. It seems to me that a more cautious approach would be to allow a lesser sum, looking at the claimant's progress to date and his likely progress post amputation (see for example Dr

Kolli at page 582).

The defendants take the point that any award for services should reflect that the care will be gratuitous (other than cleaner, window cleaner etc) so that the commercial sums claimed should be discounted as per the English approach. The claimant suggests that Dutch law does not make reference to any discount. Miss Walburg sets out the position with regard to personal care at paragraph 4.2 page 762. Compensation can be awarded for personal care and support provided by family and friends. This will not apply if the use of professional help is not "normal and customary". Evidence would be required from occupational care experts. I note that the compensation is limited to the cost of professional help. I am not sure how properly to interpret the phrase "the Supreme Court explained that in cases where injuries have been inflicted and efforts made by third parties to nurse and care for the injured party, the compensation is abstracted from the circumstance that no actual costs or payments are made". It seems to me likely to mean that even though gratuitous care is exactly that, gratuitous, an award can be made in respect of its value and this paragraph does seem to suggest that the award will be made on the basis of the cost of professional help. Miss Edwards has quoted for agency care at a rate of £18 per hour. I do not know what an appropriate rate would be established as being. I do not know what arguments there would be as to the interpretation of Dutch law. The defendants propose an hourly rate of £7.50. While conscious that I do not wish to over inflate this claim but looking at Miss Walburg's report it seems to me appropriate to take a figure of £10 per hour at this stage for care.

I think it is better to separate out personal care from services. I intend to allow the following for personal care: for the four months post-January 2016, 4 hours per day at £10 per hour which equals (122 x £40) £4,880 ; for the four years and eight months thereafter, 2 hours per day which equals (1703 x £20) £34,060; for the four months from January 2021, 4 hours per day at £10 per hour which equals £4,880; from May 2021 to July 2021, 3 hours per day which equals (61 x £30) £1,830; and from July 2021 to December 2021, 2 hours per day which equals (152 x £20) £3,040. This gives a total of **£48,690**.

(vi) Services

I think it is appropriate even on a conservative assessment to make an allowance for cleaning, window cleaning, gardening and DIY and decorating. For the period of what will in round terms be six years from the date of the accident to the date of trial and by reference to the 2019 schedule and taking a conservative global rate of £11 an hour and a total of three hours a week (£33 x 52 x 6) equals £10,296. I agree with the defendants that I should take (having allowed for the services identified), a more modest approach to other services in terms of DIY decorating etc Again I think it would be appropriate to allow 3 hours a week at £11 an hour for six years which (£33 x 52 x 6) equals £10,296). The parties will appreciate that I am taking rough averages over periods of time when Mr Duffy may be or have been more or less able to do some of these tasks. This gives a total of **£20,592**.

(vii) Costs of surgery

In the 2019 schedule a figure of £20,350 is claimed. On the basis that this appeared high the defendants suggested a figure of £15,000. In fact, the quotation provided for the cost

of the amputation surgery by Mr Sheikh in his report dated 5 August 2020 is £11,333.50. I therefore intend to allow the sum of **£12,000**. This is to allow for the possibility of an increase in costs by the time the surgery takes place.

(viii) Prostheses

The claimant will undoubtedly be entitled to the costs of privately provided prostheses. The 2019 schedule claims £41,412.09 p. The figure in Miss Edwards' report (page 412) is £31,918.29. The defendants concede £25,000 on the basis that there will be a range of opinion as to cost and reasonable need. On the conservative basis at this stage I allow **£27,500**.

(ix) Adaptations

The 2019 schedule includes a figure of £26,457 (in respect of an accessible wet room and an additional bathroom) and the defendant accepts these are necessary. The claimant now claims £34,142 by reference to page 407 of Miss Edwards' report but this seems to include the wet room and the bathroom conversion. it seems to me that there may be some additional accommodation costs required for Mr Duffy as a wheelchair user or occasional wheelchair user in relation storage for equipment and I propose to allow an additional £2,500. This makes a total of **£28,957.**

(x) Equipment/miscellaneous expenses

Miss Edwards' figure is £11,380. The 2019 schedule did not include anything other than prosthetics although there were some items included in "Miscellaneous expenses". The defendant agrees that the claimant will require a wheelchair and apart from the orthopaedic bed agrees the Miscellaneous expenses. That produces a sum of £9,231. Looking at Miss Edwards' report I allow an additional £3,000 for the wheelchair, £100 for the ramps and £50 for additional accessories which are wheelchair related. This gives a total of **£12,381.**

(xi) Therapies/rehabilitation

Miss Edwards refers to the need for psychology, physiotherapy (with the PACE team and ongoing), occupational therapy (with the PACE team and ongoing), hydrotherapy, chiropody as well as personal training, dietetics and some alternative therapies such as sports massage. Taking out the figure I have already referred to for prosthetics these are costed at £41,454. The 2019 schedule includes physiotherapy costs of £93. At page 14 there is a schedule of "Past treatment" including orthotic physiotherapy, pre-prosthetic physiotherapy, post prosthetic physiotherapy, personal training and gym membership, occupational therapy, vocational rehabilitation, pre-amputation equipment assessment and specialist counselling totalling £21,320. That sum together with the £93 physiotherapy is conceded by the defendants. It seems to me that the 2019 schedule was based on the PACE report which is at page 345 which sets out that it "details the recommendations in relation to potential elective amputation and prosthetic options, recommended treatment and associated costs for the next 12 to 18 months". In the circumstances taking the appropriate cautious approach I therefore intend to allow the sums of £21,320 (plus the £93) giving a total of **£21,413**.

(xii) Transport costs

The claimant puts forward a figure on top of the past travel expenses of £10,000 of a further £86,612 by reference to Miss Edwards' report. These claimed transport costs at £86,000 are excessive on any reasonably cautious view. The defendants submit that since Mr Duffy owned a seven-seater vehicle in any event before the accident one could not be confident that he will recover the full cost of a brand new one. I agree. It seems to me that there is likely to be some increased travel cost and probably some need for taxis and I consider it appropriate to apply a modest lump sum to cover this. Looking at the 2019 schedule (in which there is more careful itemisation) the defendants contend that the mileage rate is too high and suggests a figure of £7,500. It seems to me that Miss Edwards' analysis at page 416 even taking out the vehicle cost is excessive and involves an element of "double counting", allowing for the cost of the vehicle, a suitable rental vehicle and a weekly taxi allowance for 78 weeks. I accept that there will need to be modifications to any vehicle and that these will include past modifications and a future modification post amputation I intend to allow the sum of £2,500 for adaptations. There will be travel expenses involved over the period of surgery and thereafter undoubtedly and it seems to me even on a conservative basis that they will be greater than the costs incurred following the accident given there will be increased therapies et cetera. I therefore allow a further figure of £10,000 to trial. This gives a total of **£22,500.**

(xiii) Case management

Miss Edwards costs case management at a figure in excess of £40,000. This is not a head injury case. I could not be confident that a court would make anything other than a very modest award relating perhaps to liaison for example with the local authority. It would be unusual even in a case where there are several different therapies planned for a person capable of full-time employment to require case management at this level. Moreover, Mr Duffy will not be at work in the early months. I will allow a figure of **£1,000**.

22. This conservative assessment totals £262,070.87.

23. As indicated, I have included a sum for interest on general damages. I have no details of any basis on which to calculate interest on special damages in accordance with Dutch law. I therefore propose to allow 90% of this figure by way of interim payment award given that I am confident that it is a conservative figure and does not include that interest. This produces a figure of £235,863.78 from which must be deducted the sum of £120,210.37 already received giving a figure of £115,653.41 which I round up to £116,000. The claimant's application is granted therefore in the sum of £116,000.

24. I would ask counsel on receipt of this draft judgement to email short submissions as to costs and the form of an order.