Neutral Citation Number: [2025] EWHC 1531 (KB)

Case No: KB-2022-004619

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/06/2025

Before :

MASTER STEVENS

- -

Between :

CWLX (a child proceeding by his father and Litigation Friend , SWSX)	**Claimant**
- and -	
Aneurin Bevan University Health Board	**Defendant**

- -
- -

Farrah Mauladad KC (instructed by **Addies**) for the Claimant
Richard Booth KC (instructed by **NHS Wales Shared Services Partnership Legal & Risk Services**) for the Defendant

Hearing dates 24th March 2025 (Order 24th April 2025) and 20th May 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.00 on 20th June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MASTER STEVENS

Master Stevens:

Background to the interim payment application

1. On 24th March 2025 I heard an application by the Claimant dated 6th December 2024 (witness evidence in support dated 27th January 2025 & 10th March 2025), seeking an award of £3M, by way of further interim payment, to enable the Claimant's Deputy to be put in sufficient funds to proceed with the purchase of an adapted forever home, to reimburse past expenses and provide a payment towards further expenses to be incurred prior to trial.

2. At the start of the hearing there was a contention between the parties as to whether there was a real need for the accommodation question to be resolved before the final hearing. That argument fell away during the course of submissions, for which I was grateful, as I considered that was the correct conclusion. Matters then proceeded on the basis of what would be a reasonable figure to allow now, for accommodation on a conservative basis, i.e. what is "*reasonably necessary*" as per Smith LJ in *Eeles v Cobham Hire Services Ltd* at [45] ("Eeles").

3. The Claimant's family had identified a particular property which their experts supported as reasonable to meet the Claimant's needs, costing £1,257,000 plus adaptations costed at £955,189. The Defendant's expert contended for a property price of £375,000 upwards but settling on a value of £410,000 plus adaptations of £97,369.

4. The Claimant had served all of their expert evidence and their Schedule of Loss dated 7th March 2025, but under the directions timetable, the Defendant's evidence was not yet due. The Defendant relied on expert accommodation evidence dated October 2024, a letter from their expert dated 13th February 2025 (served on 19th March) and a witness statement from their solicitor dated 19th March 2025. The Defendant apparently had expert assessments from a paediatric neurologist on 27th January 2024 and a care expert on 13th May 2024, but had chosen not to serve these, nor any brief letter from them on any specific point in contention. The Defendant submitted that an interim payment of £1,160,000, or certainly no more than £1,500,000 was appropriate.

5. I was somewhat hampered in my assessment, not by any real dispute over settled law, but due to the gaps in the evidence before me. Due to the level of agreement between the parties I will not set out the legal principles governing the making of interim awards, having already recited them relatively recently at length in *XS1 (A Child Proceeding by her Mother and Litigation Friend XS2) v West Hertfordshire Hospitals NHS Trust* [2024] EWHC 1865(KB). It would however be correct to highlight that the Defendant expressed the frequently articulated proposition in applications of this type, that I should be extremely careful not to tilt the playing field at this stage by allowing too great a sum for accommodation, such that the trial judge's decision-making could be fettered, because the Claimant's family was already well established in a larger than reasonable home, at the time of the final disposal hearing (*Campbell v Mylchreest* [1999] PIQR Q17 (at [4], and [39])). The Claimant countered that by reference to the authorities which are also frequently cited on occasions such as this, that if the Claimant proceeds to use monies awarded by way of interim payment for a home that is significantly larger, or more luxurious, than the Defendant's accommodation expert would support, they do so with their eyes fully open to the risks that they may face on the final trial judge's award. This was clearly articulated by HHJ Robinson in *Grainger v Cooper* [2015] EWHC 1132(QB), where he held at [36], "*if the claimant bought the property she knows she is doing so in the teeth of fierce opposition by the defendant on the issue whether this is an appropriate*

property. There will be no scope to argue that she bought the property in ignorance of any dispute on that issue."

6. As counsel for the Claimant accepted that the award sought would need to be calculated under Eeles 2, there was significant argument between the parties, and competing tables produced which were updated after the first hearing, about the identity and quantum of heads of future loss which could be taken into account now, as likely to be awarded by the trial judge by way of capitalised lump sums. In familiar argument it was submitted by the Claimant this would not fetter the trial judge's discretion whatsoever. This is a focus which needs to be approached with great care. The test, as set out succinctly in the headnote to Eeles at [G] is that I need to have identified a "*real, reasonable and immediate need for the interim payment requested for the purpose for which it is requested… Where the request is for money to buy a house …the judge must not make such an interim payment order without first deciding whether expenditure of approximately the amount he proposes to award is reasonably necessary*".

7. Thus, to my mind if I diverted my focus to what future heads of loss may readily be awarded at trial as lump sums, without the structural underpinning of my analysis under the Eeles headnote at [G], it would be the equivalent of what could be described, colloquially, as considering matters through the wrong end of the telescope. My focus has to be on a "*bottom up*" approach, conservatively assessing a reasonable sum to meet the accommodation needs, rather than a "*top down*" assessment, with more emphasis on the apparent safety net of what the overall capital award might look like, if I had been over generous now, in my assessment of the interim payment.

8. Similarly, as counsel for the Claimant was contending for losses to be incurred between now and trial to be taken into account, I am mindful of the reasoning of Mrs Justice Yip in *PAL v Davison* [2021] 1108(QB), ("PAL"), when confronted by the issue of a pressing need for a home, where there was a big gulf between the parties' valuations as to what that should cost. She proceeded cautiously, deciding to leave out of account special damages likely to accrue between the time of the application and trial, which were unrelated to accommodation (even though she accepted that such costs would reasonably need to be incurred), because the purpose of the application was to consider capitalisation of an award for accommodation and she did not want to risk "*taking out of the "pot" required to be allocated for those needs in order to fund the accommodation now*". She emphasised that this was "*not to ignore the guidance at paragraph 44 of Eeles that the judge need have no regard to what the claimant intends to do with the money when addressing the first stage of Eeles. Rather, it is a case of acknowledging that the same sums cannot be spent twice. If they are brought in at this stage and relied upon to found an interim payment which is then used to fund accommodation they will not later be available to fund care and other needs*" (at [31]).

9. Following the first hearing I awarded an interim payment of £1,160,000, setting out detailed reasons by way of footnotes to my Order. I permitted the Claimant to renew their application for a further interim payment, should they be able to support it with better evidence as to the reasonable cost of a property to meet the Claimant's needs. This further application was listed in consequence of that Order. The overall sum now sought, including the £1,160,000 already ordered, is

£2,200,000. This is the net figure disregarding a prior voluntary interim payment of £200,000.

10. In readiness for the renewed interim payment application I was provided with a further letter from the Claimant's accommodation expert, a witness statement from the Claimant's Deputy and one from his Litigation Friend.

The Claimant's situation

11. The Claimant has global developmental delay, autistic spectrum disorder, avoidant restrictive food intake disorder and significant cognitive impairment. The first witness statement of the Claimant's solicitor filed in support of the application (dated 27th January 2025) alerted me to the Claimant's extremely challenging unpredictable and aggressive behaviour, making it difficult and stressful to take him out into the community. This has led to a desire to be accommodated in a property with sufficient space both internally and externally to manage his condition. The Claimant's solicitor's statement dated 27th January 2025 also noted that, even at 7 years old, the Claimant was already a big stocky boy, weighing 5 stone. His parents have provided 24 hour care to him since his birth, and his Schedule of Loss dated 7th March 2025 claims that 129.19 hours of care per week are being given by his parents which is unsustainable.

12. The earlier voluntary interim payment of £200,000 was to enable the Claimant and his family to move into rented accommodation in September 2024 and to appoint a case manager. The tenancy is for a fixed term of 12 months, due to expire in September 2025, and the landlord has confirmed he will not extend the term. The Claimant does not cope well with change, and it was clear that moving into further temporary accommodation before a forever home could be found would be entirely suboptimal.

13. The Claimant's father and Litigation Friend described in his first quantum witness statement, dated 30th July 2024, his own early life growing up in Newport, South Wales where he subsequently had purchased a home in 2012. Having described his son's difficulties extremely well, he explained at [70] how CWLX "*likes to be free to wander in open spaces, this seems to calm him a lot. Consequently, we spend a great deal of time at my parents' home as they have a much bigger house and huge garden where CWLX has the freedom to wander around and touch things*…". At [77] he went on to say, "*because of CWLX's aggression, we struggle to take him out to places. We are extremely fearful he may hurt someone. Visits to the park become a military exercise. We must scout out places in advance that are not very busy so that it is less likely he will encounter other children. Sometimes even if we do manage to get to a park that is quiet, CWLX will decide it's not the right park and refuses to get out of the car*". At [86] he states "*his meltdowns have escalated in severity as he gets older and stronger. When CWLX attacks people he hurts them. He is now 5 stone and will push, hit, kick, grab, pinch, headbutt, indiscriminately when upset and sometimes without any provocation at all. This can also occur when CWLX becomes too excited due to overstimulation*". At [88] "*Because of CWLX's unpredictable and violent behaviour, we are rarely able to go out together as a family. Trips are fraught with extremely high levels of anxiety for everyone, consequently we tend to avoid this as much as possible which is a source of guilt as this means CWLX's world*

has become a very small place. This is one of the reasons we would be thankful for a more spacious home and garden…"

14. The Claimant's father went on to describe in his witness statement dated 27th January 2025, that the rental property was in a very rural location, making life difficult for the Claimant's younger sibling to meet friends. The internet connection was also described as "*dreadful*" which had a massive impact on the Claimant who apparently uses a TV and iPad pretty continuously, and who becomes aggressive, and even more difficult to manage, when the connection fails. Although the family was benefiting from more space at the rental property than their previously owned property, their choices had been very limited in the local rental market, so it was very much a stop gap housing solution.

15. Irrespective of the accommodation issues, I consider it important to highlight that this family has undertaken **all** the early years 24 hour care of the Claimant without any paid help or carer support from statutory services. This is despite the fact that the Claimant has an older half-brother regularly visiting and staying at the family home, and a younger brother to be looked after. Additionally, the Claimant's father apparently travels long distances all over England and Wales in the course of work, as set out at [11.6] of the Claimant's educational psychology report, and at [142] of the Claimant's father's quantum witness statement. It was pressed upon me that the Claimant's parents are now "*at breaking point*", needing to move to somewhere large enough for a proper care regime to be put in place, and set out in compelling, and extremely moving detail, in witness statements, the daily struggles which they unsurprisingly face.

16. The Claimant's paediatric neurologist assesses the Claimant's life expectancy to age 70 at [2.23] of her report. On a without prejudice basis the Defendant sought to contend for a life expectancy to at least 58.6 in submissions, with some figures put forward using age 60 as an estimate.

Procedural stage reached

17. Proceedings were issued on 24th November 2022, breach of duty having been admitted on 16th January 2020. Judgment was entered on 24th November 2023 for 85% of the damages the Claimant would have received if the case had been assessed for full liability, and the first interim payment of £200,000 was ordered at the same time.

18. I have already mentioned that very shortly prior to the first contested interim payment hearing a Schedule of Loss was served. In addition the following Claimant's expert evidence was served:

    i) Paediatric neurology (examination /interview 25th March 2024)

    ii) Paediatric neurosurgery (examination /interview 10th January 2025)

    iii) Educational psychology (examination /interview June 2024)

    iv) Accommodation (interview April 2024) plus letter 5th February 2025 concerning the family's chosen property

v) Clinical psychology (examination /interview 22nd December 2024)

vi) Care and occupational therapy (examination /interview 30th May 2024)

vii) Sensory Processing assessment (occupational therapy) (examination/ interview February 2025)

19. The quantum trial is listed to commence on 26th January 2026.

20. A Deputy was appointed by the Court of Protection on 8th of January 2024 to manage the Claimant's property and affairs.

Extracts from some of the Claimant's expert evidence and from the case manager

a) Educational Psychology evidence

21. The Claimant's expert conducted an assessment in June 2024. She described the Claimant's behaviour at home as "*vicious, aggressive and unco-operative*" at [3.15] and states "*Many less strong and less committed parents would have reached crisis long ago*" at [3.16].

22. The expert recites from the Claimant's Individual Healthcare Plan issued by his primary school in November 2021, where in referring to school trips and activities away from school it was stated, "*staff would need to monitor CWLX at all times as he has no understanding of social behaviours and communicates by scratching, pinching and biting*" at [7.10].

23. It was also recorded in the report that the Claimant's parents take him to school, rather than using a taxi or school transport, because he finds transition extremely difficult on arrival and departure from school. At times he refuses to get out of the car, is physically aggressive, believed due to anxiety and will sometimes throw himself on the floor (at [9.6-9.8])

b) Paediatric Occupational Therapy (sensory report)

24. This specialist interviewed both the Claimant's class teacher and parents, and observed his behaviours as well as video recordings of past behaviours. The position she reports is consistent with those of the other experts, as to physical aggression towards others, difficulties in travelling in the family car and arriving at and leaving school, sometimes with several teachers having to become involved in trying to get him into the car at the end of the school day. The Claimant was observed going up and down stairs at home and it was noted that he had poor judgment of depth perception. His class teacher reported that he alternates between walking flat footed and walking on his toes and appears unsteady when running. A sensory processing standardised screening questionnaire was completed by both the Claimant's parents and his class teacher, which recorded him to be in the severe range for every measure tested, which indicates significant problems having a noticeable effect on daily functioning.

25. The Claimant was also reported to have poor balance on observation, and his parents reported to the therapist that he frequently falls over. When therapists observed him going up and down stairs he was unsteady. In summary the therapist

reported that the assessment had highlighted "*that CWLX presents significant sensory processing dysfunction which presents as a combination of sensory modulation and sensory discrimination difficulties. If left unaddressed and untreated sensory difficulties identified have the potential to manifest as aggressive behaviour, reduce capacity to learn, barrier to social opportunities, and significantly hinder overall developmen*t". She further recommended that the Claimant would benefit from the creation of a sensory rich home environment that supports him to achieve and maintained sensory regulation. Specifically, a sensory room in the home environment was recommended where he could calm and regulate his sensory system, as well as a therapeutically designed outdoor sensory garden. Costings were provided at page 229 of the bundle for the hearing (the report itself did not have internal paragraph or page numbers).

c) Care & Occupational Therapy Report

26. The Claimant's care and occupational therapy expert has held a number of NHS and social services positions, culminating in becoming the lead occupational therapist for children with disabilities before taking on a case management roles in the private sector. Her report is dated February 2025. When observed at home in August 2024 the Claimant could physically move around the house in rapid movements but had no awareness of danger. For example, he would jump and climb without any awareness of his risk of injury, indeed such activities were instigated to provide sensory feedback (at [7.8]). His motor control was said to be compromised by sensory feedback. He was observed to be at high risk of falls and tripping, with a range of involuntary movement patterns and unpredictable behaviour changes. Level access accommodation was said to be indicated. There was said to be a high risk level that he would grab or hold members of the public when out in the community (at [7.9]).

27. The Claimant's care expert believes that the Claimant will require constant support over a 24 hour period, and that until he is 19 years of age he will need access to one waking night carer, with his parents providing additional sleeping carer support. In the daytime 2:1 care is recommended. From age 19 it is considered he will need a professional sleeping night carer in addition to waking night care, but this is subject to medical opinion.

d) Case manager report

28. Bush & Co's Sian Hooban has been retained as case manager for the Claimant. Her first report is dated August 2024 and she provided a brief update in December 2024 setting out immediate needs. In particular she noted that the Claimant's family has not received any welfare benefits advice, nor received any therapeutic interventions such as speech and language or occupational therapy through the NHS with regards to his autism or his behaviours that challenge. She recommended a full range of support which would also include continence assessment as the Claimant is doubly incontinent and there has been no assessment of that either to date. Additionally she identified the need for an urgent paediatric dietitian assessment as there appeared to be no consistency between home and school in trying to support the Claimant's nutritional intake, which is of concern as the Claimant has a very restricted diet which is not being monitored. She wanted to arrange psychology support, not only for the Claimant but also for

his parents. Although she wanted to put in place a directly employed care package, similar to the one recommended by the care expert, initially she requested funding for short break respite care with a flexible 30 hour per week provision, while the family adjusted to having carers in the home, but with consistency of carers who could get to know the Claimant well, and would be well trained in the challenging behaviours that he exhibits. Respite 24 hour care provision over the school summer and other holidays was another identified requirement with clinical case management to organise the package.

Additional information provided by the Deputy and the litigation friend following the first interim payment hearing

29. The Deputy simply confirms it would be in the Claimant's best interest to consider applying some of the likely damages for pain suffering and loss of amenity, as well as past gratuitous care, future loss of earnings and future holidays towards the cost of securing an appropriate property meeting the Claimant's long term needs. He suggests that, subject to the award ultimately determined by the court, it should be possible to purchase suitable accommodation for £1M but he is not explicit about whether that sum will need to be supplemented by an award for adaptations.

30. The Litigation Friend, in his further brief statement, refers to the fact that the family have viewed many properties all of which they have deemed to be unsuitable in the past year. I do not have a schedule of those properties, or know what was wrong with them, but nonetheless it is helpful to know that a search has been ongoing independent of the litigation, and that the family has reached settled views as to how the Claimant's needs are to be best met. Furthermore they have undertaken a trial of a property in a more remote location, since September 2024, and therefore have an informed view of the shortcomings of certain types of location.

The accommodation requirements identified by the accommodation experts

31. The Claimant's expert has listed a number of requirements which can be summarised as follows, with the Defendant's contrasting views alongside:

    i) Ideally the property should be single storey, certainly the Claimant's needs should all be met on one floor with potential tripping hazards and steps removed, large enough to accommodate live in carers on the same floor as the Claimant; this was originally contested by the Defendant but conceded at the first hearing.

    ii) The Claimant's care expert allowed for up to three bedrooms for carers plus their own lounge and shower room and kitchenette, but the Defendant questioned the need for three carer bedrooms; the Claimant contended for at least 2 bedrooms for the carers suite in submissions.

    iii) The Claimant will need an ensuite facility including a level access shower, specialist toilet, plus his own lounge and overall the Claimant's accommodation space is likely to take up around 76 square metres of floor space with an additional 66 square metres for carers' facilities. The Defendant

questioned the need for a separate lounge, and opined that a much smaller property, less than half the size of that recommended by the Claimant's expert would be adequate.

iv) A separate utility room for the Claimant's laundry needs was recommended; this was disputed by the Defendant.

v) The property needs to be equipped with safety equipment, such as smoke alarms, fire extinguishers, a security system and visual door opener intercom as well as CCTV.

vi) There should be room for separate spaces for therapy/sensory sessions, and as the Claimant is unlikely to be able to access community facilities, provisions such as a cinema room could be needed. The Defendant disputed the cinema room and contended that only one additional room is required for therapy and a sensory space.

vii) A sensory garden would be appropriate, and a fairly large open outdoor space with good fencing. The Defendant's expert disputed the need for a large garden.

viii) There should be adequate storage for equipment and safe manual handling.

ix) There should be on-site parking for a minimum of four vehicles.

x) The Claimant's family would benefit from a bedroom for his parents, separate bedroom for his sibling and a guest bedroom.

xi) The chosen property should be reasonably quiet, but not too far from a reasonably sized town.

xii) Although a property of the size required would suggest a rural location, due to the need to be near to local facilities, and for ease of recruitment of the Claimant's care team, the Claimant's expert suggested avoiding such properties.

xiii) A location not far from the Claimant's school would be preferred, as it is expected that he will attend there for about another 12 years.

xiv) In addition to the original list of properties suggested as potentially suitable to meet the Claimant's needs, the Claimant's accommodation expert added three more properties in his latest evidence. All are in, or very close to, Newport. He now suggests that a number of the original properties within his first sample are unsuitable because they are too remote. He provided a critique of 5 of the properties recommended by the Defendant's expert. He revised the price bracket for a suitable home as either £850,000-£950,000 within a semi-rural situation, or £1,000,000 for a property closer to populated areas. The Defendant's expert contended initially for a target price of £410,000 but revised this to £455,000.

32. I have updated the tabulated summary which I prepared for my first interim payment Order, detailing the purchase prices and broad property characteristics taken from the expert accommodation evidence as follows:

Claimant	**Defendant**
Size: 260-300 m sq (ground floor ("GF") 121 m sq Suitable purchase price range at second hearing £900,000-£1M depending on location (decreased from £1,257,500) Adaptation cost £693,141 (decreased from £955,189)	Size: 120.5 m sq Suitable purchase price range at second hearing £455,000 (increased from £410k) Adaptation cost £97,369

Suggested reasonable target range properties - in descending price order

	Claimant expert report July 2024	**Claimant expert letter 5.2.25 and 4.5.25**	**Defendant expert report Oct. 2024**	**Defendant expert letter 13.2.25**
1	£1,625k Usk 4 bed detached 296.96sq m 1.4 acre plot			
2		£1.195k Pontypool 4 bed detached 349sq m GF 161 FF 179 0.32 acres		
3	£1,570k Caerleon 11 bed detached 130.4 sq m "large plot"	Now reduced to smaller plot 950k Edge of village Expert says too remote	D says C omitted to have regard for the fact that there are other houses all around	
4	£1,200k Langstone 5 bed detached 306sq m 1.46 acre plot	Has leisure barn + paddock		
5	£1,150k			

	Leckwith (18miles from school) 6 bed detached 423.1.sq m 5 acre plot			
6		Newport £1.1M GF 132 FF 129 Busy housing estate but quiet location		
7		Rogerstone NP10 £1M GF 148 FF 113 Busy housing estate but quiet location		
8	£995k Abergavenny (17.9 miles from school) 7 bed detached 383.2 sq m 1 acre plot			
9		Newport £925k GF 150 FF 121 Busy housing estate but quiet location		
10	£900k Greenacre Cottage Caldicot (12.4 miles from school) 5 bed detached 261 sq m excl outbuilding 0.5 acre plot	Now £895k Particulars say a quiet hamlet + down a track on septic drainage Expert says internal layout can be reconfigured		
11	£890k now £850k Usk 4 bed detached 296.96 sq m "reasonable garden"	Now £850k but C says too remote GF 167 sq m Semi-rural May not require any extension	D says not too remote	
12			£455k Cwmbran 5 bed detached house-177.8 sq m	Ditto

			"enclosed generous sized garden" GF 104sq m FF 73 sq m	
13				£400k Pontypool 5 bed detached No overall size given "generous garden" Town house
14				£400k now £390k Cwmbran-main road 5 bed detached 187.2 sq m "front and rear gardens" 101sq m GF
15			£390k Pontnewydd 3 bed dormer bungalow 179 sq m "front and rear gardens" GF 152 FF 27	
16				£375k now £355k Newport 4 bed detached 198.9sq m "rear garden" Part shared drive
17			£365k Cwmbran -main road 5 bed detached house 191.3 sq m "enclosed rear garden" GF 97.9 sq m ? room to extend FF 93sq m	Ditto
18			£179,950	

			Pontypool 3 bed semi-detached -**40 yr lease** + no floor plan "rear garden"	

Conclusions on the reasonable costs of accommodation to meet the Claimant's reasonable needs

33. I have found the additional material produced for this hearing to be extremely helpful. Whereas previously I was presented with a target purchase price range from the Claimant which was approximately 4 x the amount allowed by the Defendant's expert, the gap is now substantially narrowed. The Claimant's most conservative estimate, as set out above, is now £900,000- £1M, and the Defendant's top priced property is £455,000.

34. There were a number of problems with the Defendant's accommodation evidence. For example, in his report the Defendant's expert had misunderstood the Claimant's requirement to be based in single level accommodation, which is extremely well evidenced, consistently through both the lay and expert witness statements and reports, and those of other treating professionals. Furthermore, one of the properties that he contended for was being sold on a 40 year lease which would not even have lasted the Claimant's lifetime, and most others have insufficient parking space for carers' vehicles, and from the details available to me, no apparent scope to make necessary driveway adaptations in that regard. Property 16 on the list even had a shared drive with another house according to the sale particulars. The properties generally had extremely small gardens, which also do not appear to provide for the Claimant's reasonable need, supported by all the expert evidence available to me, for him to decompress in a safe space without the attendant stress of trying to encourage him into a vehicle, when already agitated, and then find a public open space where he will not be at risk of harming others, whilst in one of his frequent agitated behavioural states.

35. It seems to me that even the Defendant's most expensive suggested property exhibits significant challenges for the Claimant and his family and the layout is at odds with all the expert evidence that the Claimant has produced. Like others, it is extremely close to neighbours on quite a small plot and the driveway looks too small for carer vehicles. I had noted on the previous occasion the Claimant's evidence that he frequently screams, so there is understandable concern about being too close to a neighbouring property, That property now appears to have been in sold in any event, and a number of the other properties put forward by the Defendant's expert, from as long ago as October 2024 have also been sold, and the market has moved on, as he recognises in his letter of February 2025.

36. In submissions, Defendant's counsel was keen to impress upon me that the Claimant's accommodation expert appears to have become confused about what is a suitably secluded property, without being too remote, as he now asserts that some houses within his original list are unsuitable on that basis. In particular counsel drew my attention to one of the Claimant's original properties, numbered

3 on the list, and currently priced at £950,000 which he contends really is not too remote, and similarly the property numbered 11, now priced at £850,000, pointing out that there are a number of properties in that locality so it is not at all isolated.

37. During the hearing it was hard to reconcile or understand the Claimant's accommodation expert's apparent U-turn on some of the evidence, but afterwards, reflecting on the Litigation Friend's witness evidence, with Google Maps open in front of me, it was more readily apparent, that the final selection list of the Claimant falls broadly within a well-connected valley corridor stretching from Newport in the south, where the Claimant's father grew up and his grandparents are still based, northwards through Cwmbran where his mother was based before the parents' marriage and where the Claimant's special school is, and then slightly northwards beyond that to the Claimant's chosen property. This corridor has a major A road running its length with some smaller settlements to either side but none on the final selection list far off the beaten track. The current rental property which is said to be too remote, is way up in the hills beyond the valley on minor roads, as are a number of other properties now said to be too far away. As counsel for the Defendant pointed out, these more remote properties are not isolated dwellings but in small clusters, but I take cognisance of the fact that the Claimant is a very agitated car passenger and travelling journeys with him appears to be accepted by all who have witnessed it, including independent professionals, to be very stressful for those supervising him. Furthermore, his younger brother goes to school in the valley and needs transporting there and to after school activities. The Claimant's father has to travel widely for work. When he gets home his attention is immediately demanded by the needs of his family. For the purposes of this application I accept why he states it is important to be in a home with good transport links. A number of therapeutic treating professionals are recommended to assist the Claimant going forwards, as would be usual for this type of case, so there is a lot to be said for purchasing a property that is closer to good transport links. The Claimant's father has referred to difficulties in recruiting carers to a remote location; I have no direct evidence of that but it is certainly not implausible.

38. I am not required to approve a specific property, and on the contrary I am positively bound not to do so, but in assessing the amount to be awarded as necessary to meet the pressing housing needs of the Claimant, I prefer more of his evidence filed in support, without of course predetermining the ultimate stance which will be for the trial judge.

39. Whilst not departing from their expert evidence, counsel for the Defendant provided me at the second hearing with figures for the accommodation claim if a property could be purchased for £800,000. This was helpful, but actually there were no properties before me from either expert at that purchase price.

40. In all the circumstances I consider that an initial purchase price of £900,000 would not be unreasonable as a conservative estimate. However, the Claimant's final award will only be 85% of the overall damages assessment, due to the liability judgment.

41. In approving a figure for reasonable property costs in excess of the Defendant's estimate I have in mind what Mrs Justice Whipple (as she then was) said in *AC (*

A minor suing by his litigation friend MC) v St George's Healthcare NHS Trust [2015] EWHC 3644(QB) at [39] when approving a sum for accommodation in excess of the Defendant's evidence, "*I do not believe that ordering payment of this sum by way of interim damages will fetter the trial judge's discretion, or create an unlevel playing field which would be to the Defendant's disadvantage at trial. But even if there is a risk of prejudging the accommodation issue by this award, I remind myself that this is merely one factor to be weighed in the balance.. The Claimant's entitlement to damages, and his obvious need to be re-housed in advance of trial, tip the balance firmly in the Claimant's favour*." She continued at [40], *"the Defendant can, if so advised, challenge these figures and indeed any property purchase which has by then taken place at trial, by expert evidence, as excessive or unreasonable. It is open to the trial judge to make whatever findings are appropriate on the evidence presented at that stage*."

Other property costs

42. The competing claims of the parties in this regard can be summarised in a further Table as follows, with my decision in the right hand column, reasons being outlined in paragraph 43 and subsequently:

Capital cost of property	**Claimant Figures on 2nd hearing** (previous figures in brackets)	**Defendant**	**Decision on interim payment basis- conservatively**
Capital value of property	**£1,000,000** (1,257,500)	410,000	900,000
Value of property in any event (A)	**£90,000.00** (190,000)	89,975	89,975
Betterment (B)	**NIL** (97,500)	Nil	Nil
Re-instatement (C)	**NIL** (15,000)	9150	9150
Life expectancy (D)	**70** (53.7)	60	To age 70
Reversionary interest	**£29,908.21** (83,720.63)	36,493.74	26,621.60
Value (A-B+C-D)			
Subtotal (Claimant's capital damages)	**£880,092** (1,066,279.37)	**£283,531**	**783,403.40**
One off/initial costs			
Purchase costs (£50,000- £4,473.90 in any event)	**£45,526.20** (71,030.71)	442.60	35,442.60
Property finder and suitability assessment	**£11,310.00** (ditto)	8290 +VAT=9948 Included below	9948
Adaptations	**£693,141.28** (955,188.94)	**119,195** (i.e. £97,369 + all other one offs below)	300,000
Initial furnishing	**£10,000.00** (ditto)	£948 (in reports)	2000

Carer furniture	**£6,000.00** (ditto)	Defers to OT (no sum provided)	3082.92
Installation of Aquanova Gemini Bath 2000	**£23,005.68** (ditto)	Nil	20,000
Installation of sensory lighting in bathroom	**£4,528.10** (ditto)	Nil	4000
Running costs for 4 months-Sept-trial (£13,279.43 p.a. after deduction of "but for" running	**£4,426** (7934)	£2364 (in reports) i.e. £7093 pa but less uninjured costs after aged 25	3250 (£9750 pa divided by 3 to date of trial)
Sub-total one off costs incl 4 months running costs to trial from September	**£1,088,997.43** (1,081,063.43 + running costs of 7934)	**£121,559**	**377,723.52**
OVERALL TOTAL on 100% basis including running costs for 4 months	**£1,969,089.43**	**£405,090**	**£1,161,126.92**
OVERALL TOTAL on 85% basis including running costs for 4 months	**£1,673,726.02**	**£344,326.50**	**986,957.86**
Alternative sub-total if running costs for life added as per latest Claimant skeleton (i.e £713,105)	**£1,506,616**	**359,631** (NB allowed 240,436 in total for future running costs)	**894,083.52** (NB allowed 9750 pa with multiplier of 52.96 for approx. 61.5 years = 516,360 in total for future running costs to age 70)

OVERALL TOTAL on 100% basis including running costs for life	**£2,386,708.20**	**£1,186,010**	**£1,677,486.92**
OVERALL TOTAL on 85% basis including life running costs	**£2,028,701.90**	**£1,008,108.50**	**£1,425,863.88**

43. There was no significant difference between the parties at this stage on the value of a property in the uninjured scenario, nor betterment or re-instatement, so I have adopted the Defendant's figures. On life expectancy I see no reason not to rely on that of the Claimant's paediatric neurology expert. As I stated earlier, the Defendant's similar expert examined the Claimant on 27th January 2024 but no report has been disclosed and the age contended for by the Defendant was merely suggested in legal submissions.

44. Incidental purchase costs contended for by the parties differ greatly depending on the amount of stamp duty payable on the capital purchase. The Defendant had contented for a figure that rolled up all the one off costs, with the adaptation costs, so it was not entirely clear how much was included for individual components. Nevertheless, their expert allowed just £442.60 for moving costs and legal fees having deducted the uninjured scenario costs. The Claimant's expert in contrast, had prepared figures based on a capital purchase of £1,257,500 thereby including significant additional stamp duty fees, and produced a variety of uninjured costs depending on whether the Claimant would have purchased or rented a property, and how large that property would have been depending on whether he was sharing it with a partner. For a conservative estimate at this stage I have based my assessment on the Defendant's costs, save that I have added stamp duty for a property purchase of £900,000.

45. For the cost of a property finder and suitability assessment, the Defendant's expert allowed £8290 + VAT where the Claimant's expert assessed the cost at £10,590 minimum - £11,310, including VAT. Conservatively I am prepared to proceed on the basis of the Defendant's costs.

46. As to the cost of adaptations, I accept that until a property is chosen it is not known just how much adaptation work may be required. I also accept that ensuring an appropriate layout of accommodation is essential, to meet needs adequately.

47. Considering the expert accommodation reports, I have noted that whilst they include many common items, and similar regional variation, contingency and professional fee formulae, there is a world of difference as to the extent of items included and some of the costs. For example, a new shower for the carer accommodation was £3000 for the Claimant and just £300 for the Defendant, redecoration costs following adaptation, which one might have expected to be

broadly similar, are £18,000 for the Claimant and £13,552.80 for the Defendant. The Claimant allows £40,000 for a cinema room (the Defendant allows nil) and quotes an extension cost (net of professional fees and disbursements etc) of £148,500 whilst the Defendant allows nothing but adaptation costs.

48. The original overall Claimant total of £955,188.94 in the Schedule of Loss is not understood, as the Claimant's expert report quotes £907,443.38, which also had been somewhat reduced by the time of the second hearing to £693,141.28, whereas the Defendant's figure remained steady at £97,369. I have already dealt with re-instatement deductions under the one-off capital purchase sum. However the Claimant's expert remained "cautiously optimistic" that his figures could be reduced further, in his letter report of 4th May 2025. I note he had costed £17500 + VAT for blinds within windows which somewhat duplicates the furnishings costs contended for elsewhere. There were no detailed submissions on the comparative costings, but I am left with the impression that the Claimant's reduced figure is still too high, and the Defendant's figure is still too low, having failed to include items which are well-supported by expert evidence such as the need for secure fencing in the garden. It is impossible at this stage to fully dissect the figures, and that task in any event is reserved to the trial judge hearing all the evidence. For now, I need to be conservative, so doing the best I can I allow £300,000 being roughly just below the mid-point between the two. To allow any increase beyond that I would have needed detailed submissions rather than mere recital of the two totals contended for.

49. For initial furnishing costs, I did not have compatible information. The Claimant's accommodation expert contended for £10,000 because of his perceived need for electrically operated blinds and curtains in the Claimant's accommodation, and ordinary curtains and blinds in the carer accommodation and family facilities. In addition, the Claimant's expert allowed £6000 for carers' furniture and equipment but deferred to the care and occupational therapy expert. The Claimant's care expert on the other hand simply identified a risk of curtains being pulled and therefore falling on top of the Claimant, which she suggested could be addressed by attaching them to a holder with velcro or magnetic attachments, or by enclosing the blinds within the window frames during manufacture. I could not find a specific cost for this within her report, nor within the Claimant's Schedule of Loss. In terms of carer furniture, the care expert had allowed for office furniture and a computer, bedroom furniture and equipment for the carer's kitchen and a pay as you go carer mobile phone. Those costs were summarised on pages 68-72 of her report, totalling £3082.92 (excluding any sum for curtains). None of these costs look extravagant, but clearly they are less than allowed for by the accommodation expert. The Defendant's expert simply allowed £1,889 for new curtains for the Claimant less £1,337 in the uninjured state, plus carer furnishings and therapy room curtains totalling £396, but accepted there would be additional sums from an occupational therapy expert in due course. I have allowed £2000 for now, conservatively, for curtains and the Claimant's expert equipment costs as set out as they appeared modest.

50. The Claimant's care expert opines that a specialist bath is required, and there is significant lay and expert evidence about the current difficulties faced in washing the Claimant. The model of bath suggested has variable height controls as the Claimant is said by the expert to be at risk of "submarining down the bath", and given his current aversion to washing, has the facility to drain and lower sides in a safe manual handling operation, if he refuses to get out. The costs include not only the purchase but also installation costs, and contingency costs of £1360.21 plus consultant fees and VAT on the total. I have conservatively removed all those contingency costs of £1605.04, and rounded down a little to achieve a conservative valuation of £20,000.

51. The claim for sensory lighting in the bathroom has been costed by the accommodation expert, having been recommended by the care expert. The Defendant has not yet disclosed or costed for any such modification, but I do not consider the concept unreasonable, having read the plethora of Claimant evidence, both lay and expert within the hearing bundle. I have made a modest deduction from the sum sought to reach a conservative figure.

52. Running costs for the new property will be influenced by overall property size amongst other things. The Claimant contends for £13,279.43 a year (after deducting the family's own personal costs) whilst the Defendant argues £7093 per annum until age 25 and £4555 from age 25. Calculations have differed within the various documents produced for the application, as to whether or not lifetime running costs are to be included, but it is well-established that whole life costs are frequently included in calculations for interim accommodation awards, and this was not a principle the Defendant contested. I bear in mind that the Claimant's expert was costing for a larger property than I have allowed for conservatively, and conversely, that the Defendant was arguing for a lower priced one. Doing the best I can, and bearing in mind the need to be conservative, and having no knowledge of the likely energy efficiency of any new property that is purchased, I have allowed a mid-point figure between the two (£9764.59 a year, rounded to £9750).

Pain, suffering & loss of amenity award

53. In the renewed application, there was reference again to damages for pain, suffering and loss of amenity, which I have already awarded on the last occasion at the sum contended for by the Claimant, namely £392,014 including interest. This did not appear to be contentious at the second hearing.

Other losses claimed through to trial

54. The largest element of loss sought is in respect of past care. Past care costs are claimed on the basis set out in the Claimant's care expert's report. The Defendant's figures were very conservative ahead of their own expert evidence, although I remind myself their care expert attended on the Claimant a year ago, and certainly by the time of the second hearing had been in receipt of the Claimant's care evidence and costings for a number of weeks, but still they did not produce even a brief letter setting out specific objections. They only included gratuitous care costs in their figures as commercial care had not yet started, although outside of counsel's schedule I was made aware of the case manager's

projected imminent estimated costs for introductory paid care which I will deal with separately. A 25% deduction for the gratuitous nature of the care was conceded by the time of the second hearing.

55. There were no submissions on hourly rates claimed and I did not find them remarkable considering what is usually allowed in similar cases of child brain injury cases. The number of hours contended for do not sound alarm bells in the context of the extensive evidence before me, and in a situation where a 24/7 care package is recommended for introduction and would have been commonplace for many other children, much earlier in time, with similar types of disabilities. There has been a big increase in time spent on care since the Claimant was aged 4, but I note the extra demands of meeting his school schedule and his increasing weight. The Claimant's care expert has commented on the devotion of his parents, and observed at [8.3.9] that CWLX "*cannot be left alone with his sibling due to the risk of injury to his sibling*", therefore requiring constant supervision with 2:1 support due to his behaviours that are challenging.

56. The Litigation Friend has explained how desperate the family is for proper paid support but that it would be very difficult to implement in the current open plan rental property which the Claimant has to vacate under the tenancy agreement about 4 months pre-trial. The Claimant's experts all agree that paid care is a top priority. Whilst it may be difficult to implement during a cross over time between moving out of the rental property (in September) and into purchased accommodation, it is clear that the house move itself will place many additional demands upon the family, so it seems only right to include an award for the start-up of a commercial care regime, as recommended by the case manager even if it will still be in its infancy by the time of trial rather than well-established. Also, I note that the case manager was hoping to implement some respite care during the school summer holidays.

57. The hours for which past gratuitous care were sought were as follows:

Time period	**Care hours per day**	**Notable events impacting care**	**Care hours claimed per week**
Approx first 5 months from dob	No additional care costs claimed		Nil
2 weeks hospital admission	3 hours extra per day		21
Rest of first year	2 extra hours in the day and 1 at night		21

Year to 2nd birthday	2.5 hours per day 2 hours at night		31.5
Year to 3rd birthday	3 hours per day 2.5 hours at night	Diagnosed with Autistic Spectrum Disorder	38.5
Year to 4th birthday	4 hours per day 3 hours per night	Attendance at nursery disrupted by pandemic but Mother had to always remain outside when he did attend so no discount	49
From age 4 to assessment at age 6 +10 months	School days 7 hours support + 5 hours of Father's double up support Non-school days 10 hours per day + 7 hours double up support 4 hours at night	At primary school but off school 15 weeks pa for holidays + sickness	129.19

58. I consider it reasonable to allow 75% of the past gratuitous costs claimed on a conservative basis. Additionally, the cost of introducing paid care between now and trial on a tapered approach, as mentioned earlier at paragraph 54 was costed by the case manager for one year. I am aware from witness evidence that recruitment is already underway. I consider it appropriate to allow now for 20 weeks of term time care and 10 weeks of holiday care in a combined sum of £80,000, adopting the broad calculations of the case manager, and being unaware precisely when care will commence but with due regard to the urgent need for its introduction. I am conscious that the introduction of any care package can be accompanied by unexpected difficulties so costings will be an evolving picture, but I do not believe this award introduces any risk of overpayment, it is more a question of timing. I do not consider that during the early introduction phase of paid care, there will be a significant reduction in gratuitous care provided, as the family learns to hand over vary tasks and deals

with teething issues in the new regime, as well as all the additional care involved in with settling the Claimant into an unfamiliar new home..

59. The other past losses claimed through to trial, excluding some costs in the Immediate Needs Assessment are set out in the next paragraph, and my brief comments on valuations follow from paragraph 61.

60. Table of past losses claimed in skeleton arguments

<table>
<tr><th>Head of Loss</th><th>Claimant value to 1 March 2025</th><th>Claimant value to 26 January 2026</th><th>Defendant's figures</th><th>Conservative assessment by the court</th></tr>
<tr><td>Past care -now with 25% discount for gratuitous element</td><td>316,535</td><td>380,611</td><td>162,600</td><td>285,458.25</td></tr>
<tr><td>Past equipment</td><td>10,000</td><td>10,000</td><td rowspan="7">61,258</td><td rowspan="7">92000+ interest (to hearing)

+

78000 to 26.1.26

NB commercial care added at foot of this Table</td></tr>
<tr><td>Past travel</td><td>10,180</td><td>11,710</td></tr>
<tr><td>Past case management</td><td>3058</td><td>29,898</td></tr>
<tr><td>Past OT</td><td>1580</td><td>10,155</td></tr>
<tr><td>Past COP</td><td>10,767</td><td>30,930</td></tr>
<tr><td>Past accommodation (rental and associated charges)</td><td>57,005</td><td>78,005</td></tr>
<tr><td>Sub-total</td><td>409,125</td><td>551,308

(which includes</td><td>223,858</td><td>455,458.25</td></tr>
</table>

		78107 extra non-care costs to trial)		
Interest: Nov 2017-19.6.2025 @half special account rate	36,453	49,122 (claimed from Nov 2017 to 1.2.26)	19,946	28,913.30 (to 19.6.25) on combined 285,458.25 + 92,000
Sub-total	445,578	600,431	243,804	484,371.55
Less interest on £200,000 interim payment	7080	11,840	19,946	16,354.33 (full special investment account rate from 23.12.23 to 19.6.25)
Total past @100%	438,498	588,591	223,858	**468,017.22**
Total past @85%	**372,723.30**	**500,302.35**	**190,279.30**	**397,814.63**
PLUS Introduction of paid care pre-trial (not 24/7)	Case manager INA report relied upon		Not expressly referred to	80,000 NB @ 85% = **68,000**

61. One of the curiosities that I noted on this second review, is that the Defendant had asserted that past losses claimed to date, excluding care, totalled £31,258 which they submitted they had allowed in full, whereas in fact having checked the arithmetic they totalled £35,225 + past accommodation of £57,005 (combined total of £92,410 and interest after giving credit for the earlier interim payment of £29,373 i.e. £36,453-£7080). Those costs were increased by £180 for travel in the latest submissions, but it is unclear why, so I will discount that from my

calculations. The costs do appear modest and I allow £92,000 as reasonable on a conservative basis plus interest of £28,913.30 .

62. The Defendant had also allowed £30,000 extra past (non-care) costs to trial whereas the Claimant's total was £86,017 (including interest). The principle of awarding losses through to trial was not controversial between the parties on the facts of this case, where there is a relatively short time frame to trial and the case manager has identified urgent needs. I have no difficulty in making provision for such sums within my award. However, I do not consider it appropriate to add interest as monies are being awarded now before sums are incurred.

63. The picture of costs to be incurred between now and trial was slightly confused by the fact that the Schedule of Loss dated 7th March 2025 does not appear to include all the figures separately contended for by the Claimant's case manager, and those figures were not reproduced in the Heads of Loss tables produced for the hearings, although they were referenced in submissions. Having reviewed the Immediate Needs Assessment updated to 3 December 2024, alongside the claim for £86,017 I can see that the sum contended for is fairly modest and allow £78,000, excluding paid care costs which I have dealt with separately above at paragraph 58.

Summary of calculations under Eeles 1 and 2

64. As referenced at paragraph 6, the Claimant accepted that it would not be possible to fund the level of interim payment they were contending for under Eeles 1. As the liability judgment is for 85%, the Deputy is alive to the fact that the property purchase price will need to be subsidised by other heads of loss (see paragraph 29 above). I am aware that the Claimant's Deputy will have to find funds for 100% of the purchase price before the trial. The same will be true for the introduction of the commercial care regime and continuation of case management and some therapies. Whilst the pain, suffering & loss of amenity award can be used to subsidise some of the shortfall, that will also be needed to cover shortfalls on other losses over the lifetime of the Claimant. It is not any part of my role to keep the Claimant out of his money, but simply to avoid risk of overpayment or fettering of the trial judge's discretion at this interim stage. I am also cautious about taking into account the past gratuitous care element of the award for use by way of subsidy at this stage. Strictly speaking that money is held on trust for the Claimant's parents, rather than being the Claimant's monies per se.

65. It is commonly accepted that it would be extremely rare for a trial judge to award the whole future losses award by way of periodical payments order. During submissions it was clear that the Defendant accepted that in this case some heads would likely be capitalised and therefore available to the Court as part of an Eeles 2 calculation, although they contended that claims for future loss of earnings and Deputyship are more frequently forming part of a periodical payments order than hitherto. They accepted that, even after allowing reduced sums than contended for, in respect of future therapies, equipment, transport and holidays, those heads would likely result in a future 7-figure lump sum award. They pressed upon me the well-established principle only to release an award on account of such future sums now where there is a real and immediate need for them. I accept that proposition; the application was brought on the basis that it is to meet immediate

needs before trial, and I have now assessed those sums conservatively. As the Deputy cannot fund all those amounts under Eeles 1 (especially due to the 85% liability judgment), I consider it would be appropriate to make an award under Eeles 2, but only if the identified immediate needs cannot be provided for within the Eeles 1 calculation. Any amount to be provided under Eeles 2 can amply be met from the likely capital award for future losses and I do not need to be specific about which losses that might be, given the nature of the submissions from both parties accepting there was sufficient in the claim to do so.

66. Authorities require me to award no more than a reasonable proportion of my conservative estimate on an interim payment application, although I can award a high proportion. I allow 90% of my conservative figures.

67. The Table below summarises the award on the renewed application:

EELES 1 HEADS OF LOSS	CONSERVATIVE VALUATION @ 100%	CONSERVATIVE VALUATION @ 85%
Pain, suffering & loss of amenity including interest	392,014.00	333,211.90
Past losses to trial (net of interest on previous voluntary payment) but including both gratuitous and commercial care	468,017.22 + 80,000 (paid care) = 548,017.22	465,814.63
Accommodation claim (capital + one-off costs)	1,161,126.92	986,957.86
Accommodation claim (ongoing running costs)	516,360.00	438,906.00
TOTAL	**2,617,518.14**	**2,224,890.42**
Reasonable but high proportion of total i.e. @90% of sum claimed	2,355,766.33	2,002.401.38 which I will round to £2,000,000

		NB £200,000 previous interim payment to be deducted

68. In preparing the Eeles 1 calculation, and allowing the running costs of the new property for life of £516,360 (later reduced by 15% to reflect the liability judgment and then reduced further so that only a high proportion is paid now = £395,015), I believe I have provided enough interim funding in the period to trial for both reimbursement of incurred costs to date which are very modest, and to meet the likely immediate needs for housing, care, case management and therapies pre-trial. This is despite the fact that my estimates are conservative, and only a (high) proportion of my figures is payable at interim payment stage and the Claimant only has an 85% liability judgment, but his Deputy will need to reimburse expense on a 100% basis. I estimate the shortfall at this stage on meeting those future immediate needs to be £227,040.64, comprised of the following elements on my conservative valuations:

i) 15% add back to total accommodation purchase, one-off costs and 4 months' running costs of £174,169.04

ii) Add back of reversionary interest of £26,621.60 less re-instatement cost of 9150 as that is not part of the immediate calculation

iii) 15% add back to equipment, therapy and COP costs between application and trial of £11,700

iv) 15% add back to the commercial care costs between now and trial of £23,700

Conclusions

69. Having considered all the evidence now available at this interlocutory stage I am left in no doubt that the sum of £2M by way of interim payment, (inclusive of £200,000 paid voluntarily previously), is no more than a reasonable proportion of the amount likely to be awarded as a lump sum by the trial judge at final disposal. None of the individual assessments of heads of loss which I have been required to make is in any way binding on the unfettered discretion of the trial judge to reach their own conclusions for each separate element of the claim, and with the benefit of all the Defendant's served evidence. The Deputy will therefore have to proceed cautiously as to how the funds are used at this stage but there is certainly a real and immediate need to find new housing for the Claimant and his family and to implement a commercial care package and to meet other immediate needs.

70. Although I was prepared to make an Eeles 2 award, to meet "*real, reasonable and immediate needs*", for expenditure of an amount I considered "*reasonably necessary*" pursuant to the Eeles test set out at paragraph 6 above, ultimately I decided I could order a sufficient award under Eeles 1. If I am wrong about that, I would have had no hesitation in ordering the necessary "top up" under Eeles 2 and am satisfied there will be sufficient capitalisation of some future heads of loss

to make that lump sum provision now, without fettering the trial judge. As stated earlier, that conclusion was not in contention between the parties either.

71. The application has illustrated the very great need to apply the overriding objective to the handling of accommodation claims at all stages of litigation, particularly for this very serious type of birth injury. That focus on ensuring issues are narrowed as early as possible saves time, expense and court resource. That is not in any way to overlook the psychological benefits to the injured individual's family, in a liability admitted case, of having their very great needs addressed as soon as possible. It is regrettable that an understanding of the Claimant's housing needs was still emerging, and being refined, during submissions at the first interim payment hearing, almost 8 years post-injury and less than a year before trial. It is difficult for all involved if accommodation experts prepare reports on the basis of incomplete or inaccurate assumptions, for whatever reason, which then have to be refined and corrected very late in the day.