

A comparative study of awards in recent large claims – part 2

	Davies	Crofts	Smith	XXX	Pankhurst	C v Dixon	[Next big case]
Neutral citation – where available	[2008] EWHC 740 (QB)	2008	[2008] EWHC 2234 (QB)	[2008] EWHC 2727 (QB)	[2009] EWHC 1117 (QB)	[2009] EWHC 708 (QB)	
Judge	Wilkie J	HHJ Collender QC	Penry-Davey J	Jack J	MacDuff J	King J	
Date of Judgment	21.04.08	5.09.08	1.10.08	14.11.08	10.06.09	25.06.09	
Injury	Incomplete C5/6 tetraplegia with Brown-Sequard Syndrome Walks unaided slowly for relatively short distances; stick for middle distances; wheelchair for more than a few hundred yards. Expected to deteriorate in function with age.	Severe traumatic brain injury Impaired speech/swallow and memory; dysexecutive syndrome and personality change; traumatic amputation of dominant arm through humerus with phantom pains.	Severe neo-natal brain damage Only v. mild physical signs of Cerebral Palsy (clumsiness); autistic spectrum disorder; severe learning diff's; almost no expressive communication; incontinent and restless at night; temper; noise intolerance; impulsivity.	Severe cerebral palsy No movement in legs; very little movement in left hand but rather better in right; 2 carers for all transfers. Some intellectual impairment: attending mainstream schooling but with modest success only.	C4 Tetraplegia Postural hypotension – requiring to keep legs raised in wheelchair; but remarkably proficient in manourvring it with his chin on the control. Provisional damages for risk of syrxn/ventilator care.	Severe brain injury Organic personality change and dysexecutive syndrome with episodic aggression and poor impulse control/social judgment; problems with visuo-spatial awareness and movement/co-ordination but able to walk	
General damages		£170,000	£210,000		£225,000		
Age at trial	63	52	7	<17	54	25	
Private healthcare		£24,832 allowed for attempt at procuring a functional arm prosthesis (even though doomed from the start.) £17,825 allowed for future non-functional prosthetics. CBT disallowed as very unlikely to be used in future. Cont'd ¹					
Care experts	Doherty/Jennings	Johnson/Palmer	Sargent/Slawson	Daykin/Pace		Statham/Bingham	
Day care (the adult package - substance of care to be delivered by a team)	Enhanced risk of falling insufficient for resident carer (even though already instituted.) 42 hours a week (£23,940pa) to age 70; resident carer (£55,111pa) from 70 to 75; ... with double up and night time elements (£105,555pa) after 75.	Past non-commercial care to be phased into a more commercial package (only way to allow marriage to survive.) See footnote for detail ² . Package enhanced for 25% chance after 4 years of marriage failing despite increased commercial care.	Adult residential care rejected in favour of domicillary package with family. Directly employed carers under case management supervision – not in issue after decision on placement. £199,013 pa in adult life, with stepping stones of £96,327 and £120,470pa.	2 directly employed carers throughout a 16 hour day – but see below for one of the two carers being the night carer for the final hour of the day and first hour of the next. A two-tier team structure, with unequal seniority and pay, was rejected – unreasonable to dilute package.	Overall care package agreed at £260,000 pa with PPO linked to ASHE 6115 at 90 th centile.	24 hour care of some sort required for rest of life. If living with partner and child: 11 hours of support worker input a day (8.5 hours of attendance and 2.5 hours of <i>free time</i> telephone support) + £3,500 pa for non-commercial care. If living without partner: 14 hours a day, of which 2.5 hours to be telephone support. If living with partner – none.	
Night care (ditto)			Waking night care was the fair assumption (contrary to the evidence of Dr Rosenbloom, who thought she would begin to sleep better.)	1 night carer (paid 5 hours for 8) but on duty for an additional hour either side as part of the day care team.		If living without partner – night sleeper	

¹ A proportion of private surgery was awarded to reflect the chance of private as against NHS provision – 65% for total hip replacement and removal of ectopic bone; 60% for urological inflatable prosthesis. Neuropsychiatric support: 10 hours in year 1; 6 in year 2; and 4 hours thereafter @ £150/hr.

² **Year 1:** 20 hours a week + 8 weeks with additional 10 hours = 1,200 hours commercially with 9 hours a day non-commercial care. 108 hours pa case management + travel time and costs. **Year 2:** 30 hours a week with a similar enhancement for 8 weeks = 1,720 hours commercially with non-commercial care at c 7.5 hours per day. 108 hours pa case management + travel time and costs. **Year 3:** 40 hours a week with an additional 5 hours a week for 24 weeks = 2,200 hours with non-commercial care at just over 6 hours a day. 144 hours pa case management + travel time and costs. **Years 4-18:** 45 hours a week with similar enhancement = 2,460 hours commercially and non-commercial care at just under 5.5 hours a day. 144 hours pa case management + travel time and costs. **Year 19 onwards** – 14 hours a day for 7 days a week = 5,096 hours pa commercially with 9 hours non-commercial care. 180 hours pa case management + travel time and costs. **If the marriage failed:** £108,061pa for 24 hour support workers + contingency of 3 weeks (reduced from 6 weeks claimed) for waking night care (supposedly £6,501 pa in the judgment but this seems too high?) + case management of £13,013 pa + *on costs* for activities, holidays and transport combined of £6,700 pa (cut in half) = £134,275 pa all in.

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Details (adult): hourly rates	Agency rate of £10 for the 42 hours a week to age 70 – agreed [Yorks.]	Agreed composite rate of £12 an hour for commercial care [Herts.]; and £8 and hour without discount for non-commercial care in future.	£10/hr and £12/hr accepted [Herts.] (against £9.50 flat rate.)	£12/£14 an hour accepted (v.£10/£12) as Guildford said to be an expensive area in which to provide care.		£10/£11 per hour weekday/weekends substituted as the reasonable future cost in place of the historical rates paid of £11.80/£13.85.	
Night sleeper					Paid 5 hours for 8		
Waking night carer							
Calculation for hols, Bank Hols and sick pay		52 weeks with the composite rate	59 weeks pa for such a specialist package requiring training etc	60 weeks statutory rise in holiday entitlement: 4.8 ↑5.6 wks pa 04/09		59 weeks; but the case was heard before XXX and judgment then delayed. The Claimant did not take a 60 week point at trial.	
Employer's contributions to employee's pension				3% of pay "within limits" otherwise not defined from 2012 – see Pensions Bill		Pre-XXX - point not taken	
Team leader				£2 / hour increase agreed for team leader above normal carer rate		Rejected – no team leader and historically and nothing the support workers could not do for themselves.	
Monthly whole team liaison meeting				Principle conceded - only hrs. contested. - 4 monthly whole team meetings @ 1½ hrs ave. + 1 hr pa liaison between leader and each team member + 2 further hours per month allowed for out of hours work by team leader alone. - Handover periods of 3 x 20 mins. per day rejected entirely.		Allowed at 1 hour per month as a reasonable average in terms of case management time.	
Carer contingency							
Food/leisure/subsistence for carers						£40 per week	
Recruitment / advertising				£1,000 pa [v. £3,000 pa claimed]		£500 pa rejecting the claim for £1,250. Historically the carers had simply come off JSP's books.	
Insurance				£720 pa premium against care staff injuring claimant + £240pa against claims for wrongful dismissal: both rejected			
Training				£1,750 pa – greater training now required by CISCI		No sum allowed for generic training courses in the classroom. "On the job" training preferred within the annual calculation for care.	

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CRB/Payroll						£400 pa	
Case management (adult life)	24 hours pa at £80 with 1 hour travelling at £10/hour for each visit (after 1 st 9 months when 4 hours a month allowed.)	£93.50 accepted in preference to £70 an hour (but without reasoning or reference to other recent awards.)	£80 per hour accepted (against £75)			Claim for 344-372 hours pa (£34-37,000 pa) based on historical JSP intervention) rejected in favour of: Per month 6 hours face to face contact 2 visits 1 hour team meeting Extra time for supervision and appraisal of staff rejected. 5 hours telephone support 20 hours pa contingency	
Domestic chores					Care staff expected to muck in; but 4 hrs./wk cleaning given.		
Childcare training / OT						Significant sum allowed (½ of claimed “start up” of £26,302) for training the brain injured Claimant to interact with his child; and unspecified annual costs thereafter. Claim for training the support workers in childcare rejected – onerous and unnecessary.	
Holidays			£3,000 pa allowing 2 carers x 1 holiday a year x 34 = £102,000 (v claim @£200,000.)		£11,000 pa allowed with a full life multiplier – claim for £51,500 pa rejected (for spending 4 winter months in Europe) on the main grounds that [1] excessive and [2] no care package could be expected to work with all the upheaval and carers expected to fly out on a fortnightly rotation.	£700 per week per support worker to include accommodation . If with partner: 2 weeks with 2 support workers and 1 week with 1 support worker [£3,500 pa] If split from partner: 2 support workers for all 3 weeks [£4,200 pa]	
Accommodation			£300,000 for sale price of former family home (over whole of life multiplier given family’s wish to live together.)		Claim for purchase of property subject to subsidence, knocked down and lavishly re-built rejected – it was an unreasonable purchase in the first place. A notional property costing £500,000 substituted, with £235,000 for adaptation and £20,000 value added.		No adjudication on any claim for increased cost of holidays for the Claimant himself.
Hydro at home			Claim for £147,325 installation (less £15,000 betterment) + £4,000 pa running costs = £269,805: rejected. Swimming at school and, in later life, with support workers was reasonably sufficient.				

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Hydro experts			<u>Clegg</u> (joint and against the hydro at home)				
Transport: Vehicle and Replacement period			7 seater family vehicle agreed until claimant aged 19 (£25,000 capital v £10,000 car which would have been purchased.) In adult life, a new, larger 4 door vehicle (£13,000) for claimant (<i>with</i> wheelchair but not seated in it) and 2 carers as against the 2 nd hand car likely to have been purchased (£10,000.) All changes after 6.5 years (on claimant's concession.)		Chrysler Voyager Entervan agreed.		
Increased insurance			£800 pa for carers to drive.				
Additional mileage			Allowed for an extra 10,000 miles at 21.89p per mile until age 19; and at 10,000 mile pa x extra 12.83p in adult life.				