



Neutral Citation Number: [2019] EWHC 2103 (Admin)

Case No: HQ17X00399

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2019

Before:

Margaret Obi
(sitting as a Deputy High Court Judge)

Between:

Carmelo Labbadia

Claimant

- and -

Alitalia (Societa Aerea Italiana S.p.A)

Defendant

Lionel Stride (instructed by **Irwin Mitchell**) for the **Claimant**
Jack Harding (instructed by **Eversheds Sutherland**) for the **Defendant**

Hearing date: 20 June 2019

Approved Judgment

Margaret Obi:

Introduction

1. On 5 February 2015, at 7.35 am the Claimant boarded flight AZ229 from London Heathrow airport to Milan Linate airport. The aircraft landed at 10.21am in poor weather conditions. As the Claimant disembarked from the rear of the aircraft, he fell headfirst from the aircraft stairs to the ground and sustained significant injuries to his right dominant shoulder and right pelvis. He required hospitalisation and operative treatment to his shoulder and conservative treatment to his pelvis. After a period in hospital the Claimant was transferred to a rehabilitation unit for several weeks. The Claimant is 77 years old. At the time of the incident he was 72.
2. The central issue in this case is: ‘Was this an accident?’ As the incident relates to the international carriage of a passenger by air, liability is governed exclusively by Article 17(1) of the Montreal Convention 1999 (the Montreal Convention). The Montreal Convention is the successor provision to the Warsaw Convention 1929. The provisions, although not identical, materially have the same effect and the authorities under the earlier instrument are equally applicable to the Montreal Convention. ‘Accident’ within the meaning of Article 17(1) of the Montreal Convention is an autonomous concept. In the interests of uniformity and certainty domestic law principles and domestic rules of interpretation do not apply. Therefore, there was no dispute between the parties that the concepts of equity, fault, reasonable care or negligence on the part of the carrier have no role to play. As stated by Lord Scott in re *Deep Vein Thrombosis Group Litigation* [2006] 1 AC (the DVT case) the balance to be struck between passengers and airlines ‘...ought not to be distorted by a judicial approach to interpretation in a particular case designed to reflect the merits of the case.’ He cited with approval the dissenting opinion of Scalia J in *Hussain v Olympic Airways* [2004] 124 S Ct 1221 that:

‘A legal construction is not fallacious merely because it has harsh results. The Convention denies a remedy, even when outrageous conduct and grievous injury have occurred, unless there has been an ‘accident’. Whatever that term means, it certainly does not equate to ‘outrageous conduct that causes grievous injury’. It is a mistake to assume that the Convention must provide relief whenever traditional tort law would do so. To the contrary, a principal object of the Convention was to promote the growth of the fledgling airline industry by limiting the circumstances under which passengers could sue.... Unless there has been an accident there is no liability, whether the claim is trivial ... or cries out for redress.’
3. Although there have been numerous judicial interpretations of ‘accident’ in various signatory countries, according to the research conducted by Counsel, there is no legal authority on all fours with the issues raised by this case. It was common ground between the parties that if the Claimant could not succeed under the Montreal Convention his claim must fail.

Issues

4. As liability and quantum are in dispute the broad factual and legal issues to be determined, as set out in the Claimant's skeleton argument, are as follows:
 - a. The mechanism of injury (namely whether the Claimant slipped on snow and/or ice on the disembarkation steps as he exited the aircraft);
 - b. Whether this fall amounted to an '*accident*' within the definition of the Montreal Convention;
 - c. The extent of the Claimant's injuries and whether he will require hip surgery;
 - d. Quantum.

Witness Evidence

The Claimant

5. The Claimant gave oral evidence. He affirmed his witness statements dated 13 May 2017 and 5 January 2019. He stated that at the time of the incident he was a consultant engineer and was travelling to Milan for business reasons. He stated that he was a frequent flyer, having travelled between the UK and Italy every five weeks or so for the last 15 years. The Claimant stated that as the aircraft approached Milan airport the pilot announced that the weather conditions on the ground were cold and freezing. He stated that, having landed, the aircraft taxied for approximately 5-10 minutes. The Claimant was in seat 22C, which was an aisle seat. During cross examination he accepted that the aircraft landed in daylight but denied that he had looked out of the window. He stated that once the aircraft came to a standstill there was a further announcement that passengers could disembark via either the front or rear exits but no further announcement about the weather conditions and no warning that passengers should proceed with caution.
6. The Claimant used the rear exit because that was the closest. He stated that the aircraft was not full and only two or three other passengers disembarked before him. The Claimant stated that as he approached the exit, he could see that it was snowing. As usual there was a shuttle bus a short distance from the aircraft steps to take the passengers to the airport terminal as there is no aircraft bridge at Milan airport. The passengers that had disembarked before him were already on the shuttle bus. He recalled noticing white flecks on his black coat. He stated that the rear aircraft stairs did not have a canopy, which in his experience was unusual. However, the front aircraft stairs did have a canopy. He stated that the rear stairs were metal and were covered in snow. He accepted that he did not see ice but suspected there was ice '*...because of the way [his] foot went.*' The Claimant described holding his trolley case and a plastic bag in his right hand and moving to the left to reach for the handrail. He stated that as he took one more step lost his balance and he '*went down.*' He stated that he did not have the chance to grab hold of the handrail.

Mr Wilson

7. Mr Wilson gave oral evidence on behalf of the Claimant. He affirmed his witness statement dated 13 May 2017. He was the passenger in seat 22B. He could not recall an announcement by the pilot. He did not see the Claimant's fall as he was two or three passengers behind him. He stated that as he exited the aircraft from the rear, he noticed that it was '*snowing slightly*' and '*blowing*'. He also noticed that the passengers exiting from the front exit had the benefit of a '*covered walkway*' but the rear exit steps were not covered. He saw a covering of snow and uneven '*darkish*' patches on the steps. He stated the dark patches could have been snow or compacted ice. He confirmed that he did not see ice.
8. Mr Wilson stated during his evidence in chief that when he stepped on to the platform he slipped and had to grab hold of the handrail. In his witness statement he stated that the surface was '*...very slippery*' but did not state that he had actually slipped. When cross examined, he accepted that this was the first time that he had mentioned that he had slipped. The explanation he provided was that he had given general descriptions in his witness statement and at the time did not think that his '*slip*' was relevant. Mr Wilson stated that as he was descending the aircraft, he saw the Claimant '*lying in a heap at the bottom*' of the stairs. During re-examination he stated that he had travelled to Milan 8-10 times per year during winter and had not experienced snow.

Mr Toselli

9. Mr Toselli gave oral evidence on behalf of the Defendant with the assistance of an interpreter. He confirmed that the contents of his witness statement, dated 28 January 2019, were true to the best of his knowledge and belief. He stated that he has been the Head of Operations at Milan airport since May 2015. He was employed by the airport in February 2015, but in a different role. He confirmed that Airport Handling SpA started its operations at Milan airport in September 2014 and since then aircraft stairs have always been used for the disembarkation of passengers. He stated that it had not been possible to ascertain which stairs had been used for the disembarkation of passengers from flight AZ229 on 5 February 2015 as there were no regulatory requirements to record or retain such information. Mr Toselli's witness statement exhibited an extract from the operating manual in relation to the use of aircraft stairs in the event of adverse weather conditions. The relevant extracts from the operating manual are as follows:

4.6.9 Positioning of the airport stairs

... ..

Prior to the positioning of the aircraft stairs, the operator must retract the aircraft stairs canopies, parades, handrails or other protections into a safe position and check that the aircraft stairs floor area does not present conditions that could be dangerous for passengers or operators, such as the accumulation of snow, ice and trash. If

abnormalities are found, they must be removed before authorizing the disembarkation of the passengers.

... ..

4.18.6 Snow and Ice alert

... ..

Make sure that passenger stairs are free from contaminations of ice or snow that could make them slippery and dangerous for passengers and operators'

10. Mr Toselli stated in his witness statement that the operating procedures are consistently applied and '*...deemed suitable to guarantee the safety of passengers using aircraft stairs, providing that in the case of bad weather stairs equipped with cover (canopy) are used where possible.*' He accepted that it was highly unusual for the aircraft stairs to have snow and/or ice on them whilst passengers are disembarking from an aircraft.

Expert Evidence

11. As a result of substantial agreement reached between the parties, I did not hear evidence from the medical experts. The medical experts were almost entirely agreed as to the Claimant's injuries.
12. The Claimant, in support of his claim for damages, relied on the following medical reports:
 - a. Mr Mark Falworth, Consultant Orthopaedic Surgeon, dated 5 December 2016, 11 December 2018, 28 February 2019.
 - b. The Joint Statement dated 21 May 2019.
 - c. Mr Jeremy Hucker, Consultant Orthopaedic Physician, dated 31 March 2017, 1 June 2017, 13 March 2019.
 - d. Joint Statement dated 28 May 2019.
13. The Defendant relied upon the following medical reports:
 - (i) Mr A J L Percy, Consultant Orthopaedic Surgeon, dated 3 December 2018
 - (ii) The Joint Statements dated 21 May 2019 and 28 May 2019.

Meteorological Data

14. According to the meteorological data, obtained from Milan airport by the Claimant, there was rain and snow from 9.20am and snow at 10.20 am (shortly before the aircraft landed at 10.21 am). The snow persisted until at least 11.20am. The

Defendants internet search of the weather history at Milan airport indicated that at 10.20 am there was some rain/snow. There was a 95% chance of snow on the ground.

Factual Findings - The Mechanism of Injury

15. The Defendant neither accepted nor positively challenged the Claimant's account of the mechanism of injury.
16. The Claimant's evidence as to the weather conditions on the morning of 5 February 2015 and the circumstances that led to his fall was clear and consistent. His account was supported by the contemporaneous record, dated 5 February 2015 and timed at 10.46am, from the Healthcare Emergency Room. Whilst in pain from multiple contusions, bruises and a suspected fractured humerus, the Claimant reported that he had '*...slipped as he descended the ladder (at approximately halfway down) of the AM arrival at Linate because the steps were covered in snow/ice.*' The Claimant's account of snow and freezing weather conditions was also supported by the meteorological data obtained from Milan airport and an email dated 31 August 2016, from Società Esercizi Aeroportuali S.p.A ("SEA"), which confirmed that they had registered '*critical issues*' as a result of '*...adverse weather conditions over Milan Linate airport caused by snowfall*'. The Claimant was understandably upset about what had happened to him. He expressed himself moderately though at times with justifiable irritation. He was consistent, accurate and honest. I accept the Claimant's evidence in its entirety.
17. I also accept the evidence of Mr Wilson and Mr Toselli. No point was taken with regard to the omission in Mr Wilson's witness statement that he himself had slipped. I am satisfied that the account he provided during his oral evidence was consistent with his account that '*the surface was very slippery.*'
18. Having accepted the Claimant's evidence, the evidence of Mr Wilson and the meteorological data I make the following material findings of fact:
 - (i) There had been a combination of rain and snow from 9.20 am on 5 February 2015 and snow from 10.20 am until at least 11.20 am.
 - (ii) The aircraft landed at 10.21 and the passengers began to disembark at approximately 10.30am.
 - (iii) Only two or three passengers disembarked from the rear aircraft stairs ahead of the Claimant.
 - (iv) The aircraft stairs were covered with snow and/or compacted snow prior to the Claimant's disembarkation.
 - (v) It was snowing when the Claimant exited the aircraft.
 - (vi) There was no canopy covering the rear aircraft stairs.
 - (vii) The surface of the stairs was very slippery.

- (viii) The Claimant slipped on the aircraft stairs whilst disembarking from the aircraft.
 - (ix) The Claimant slipped due to the presence of snow and/or compacted snow on the aircraft stairs.
19. I make no finding regarding the presence of ice. Neither the Claimant nor Mr Wilson saw ice. Furthermore, there was no evidence before me regarding the formation of ice in the specific circumstances that prevailed on 5 February 2015.

Was it an ‘accident’ for the purposes of the Montreal Convention?

The Montreal Convention

20. The starting point for considering the meaning of ‘accident’ for the purposes of the Montreal Convention is the natural meaning of the words in Article 17 which states:

The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition that the accident which caused the death or injury took place on board the aircraft or in the course of the operations of embarking or disembarking.

21. Therefore, there are three requirements for liability: (i) the passenger has suffered a bodily injury; (ii) the bodily injury was caused by an accident; and (iii) the accident took place on board the aircraft or during the process of embarking or disembarking.
22. Article 20 of the Montreal Convention provides a defence of ‘*partial exoneration*’ (equivalent to contributory negligence) if the injury was caused or contributed to by the passengers. Article 20 states:

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

Key Legal Principles

23. The parties were broadly in agreement as to the general principles of interpretation that should be applied. As the Montreal Convention is an international instrument the definition of ‘accident’ has been the subject of judicial interpretation in many jurisdictions. The leading modern authority on the interpretation and scope of the word is the US Supreme Court judgment in *Air France v Saks* [1985] 470 US 392. O’Connor J delivered the opinion of the Supreme Court following a comprehensive review of the text of the Warsaw Convention, the negotiating history, the preparatory works and existing authorities from the United States and elsewhere. In evaluating the meaning of ‘accident’ in Article 17 she noted that, (i) it was not the same as ‘occurrence’ (now ‘event’ under the Montreal Convention) in Article 18 (relating to

liability for destruction or loss of baggage) and (ii) Article 17 refers to an accident which *caused* the injury to the passenger, not the injury itself. O'Connor J stated:

'We conclude that liability under article 17 of the Warsaw Convention arises only if a passenger's injury is caused by an unexpected or unusual event or happening that is external to the passenger. This definition should be flexibly applied after assessment of all the circumstances surrounding the passenger's injuries...But when the injury indisputably results from the passenger's own internal reaction to the usual, normal, and expected operation of the aircraft, it has not been caused by an accident, and article 17 of the Warsaw Convention cannot apply.'

24. O'Connor J went on to state that:

'Any injury is the product of a chain of causes, and we require only that the passenger be able to prove that some link in the chain was an unusual or unexpected event to the passenger.'

25. The US Supreme Court's conclusion in Saks has been almost universally accepted and widely followed in the United States and in the courts of other signatory countries. The House of Lords (as it then was) has considered the requirements of an Article 17 accident on a number of occasions and affirmed the view expressed by O'Connor J in Saks, most recently in the DVT case (a group action alleging injury and in some cases death following the onset of deep vein thrombosis caused by air travel). In the DVT case Lord Scott stated:

'The use of the term "accident" in article 17 but the term "occurrence" in article 18 must be significant. Both terms impart the idea that something or other has happened. But "occurrence" is entirely general in its natural meaning. It permits no distinction to be drawn between different types of happening. "Accident" on the other hand must have been intended to denote an occurrence of a particular quality, an occurrence having particular characteristics. ... It is evident that it was never, or should never have been, enough for there to have been an occurrence that caused the damage. For article 17 liability the occurrence had to have the characteristics of an "accident".'

26. Lord Scott went on to state in the DVT case that:

'First, for Convention purposes the "loss or hurt" cannot itself be the "accident". Article 17 distinguishes between the bodily injury on the one hand and the "accident" which was the cause of the bodily injury on the other. It is the cause of the injury that must constitute the "accident". Second, it is important to bear in mind that the "unintended and unexpected" quality of the happening in question must mean "unintended and unexpected" from the viewpoint of the victim of the accident. It cannot be to the point that the happening was not unintended or unexpected by the perpetrator of it or by the person sought to be made responsible for its consequences. It is the injured passenger who must suffer the "accident" and it is from his perspective that the quality of the happening must be considered.'

27. The leading authority in English Law on the definition of 'accident' where there has been a slip is the Court of Appeal case of Barclay v British Airways PLC [2008] EWCA Civ 1419. In Barclay Laws LJ postulated three situations: (i) a member of the cabin staff trips in the gangway and spills hot coffee, burning a passenger's hand, (ii)

a passenger suffers a heart attack unprompted by any event in the aircraft, and (iii) the facts in *Barclay* (the Claimant slipped on a plastic strip embedded in the floor of the aircraft and sustained an injury). Laws LJ expressed the view that (i) was plainly an accident and (ii) was plainly not an accident. In finding that a slip on an inert plastic strip that formed a permanent part of the aircraft would also not constitute an accident, Laws LJ stated:

'I conclude that article 17(1) contemplates, by the term "accident", a distinct event, not being any part of the usual, normal and expected operation of the aircraft, which happens independently of anything done or omitted by the passenger. This gives the term a reasonable scope which sits easily in the balance the Convention strikes.

...

There was no accident here that was external to the claimant, no event which happened independently of anything done or omitted by her. All that happened was that the claimant's foot came into contact with the inert strip and she fell.'

28. It follows that to determine if there has been an 'accident' requires consideration of whether there has been an injury (i) caused by an event; (ii) that is external to the claimant, and (iii) which was unusual, unexpected or untoward rather than resulting from the normal operation of the aircraft.

The Claimant's Submissions

29. Mr Stride's written submissions, on behalf of the Claimant were further refined during his oral submissions. He submitted, that on a proper application of the relevant principles the Claimant's fall constitutes an 'accident' under the Montreal Convention.
30. Mr Stride submitted that the Claimant and Mr Wilson were both seasoned travellers and neither had exited a plane when there was snow or ice on the aircraft steps. He submitted that the use of uncovered steps in the presence of snow or ice was unusual from the perspective of the passenger as supported by the meteorological data and the evidence of Mr Toselli. He referred to the indication that there was a 94-95% probability of no snow on the ground on any given day in February. He contended that it would be even more unusual for there to be ice or compacted snow on the steps given the evidence of Mr Toselli that the airline had adopted special measures for adverse weather conditions which included ensuring that the steps were free from contamination. He submitted that neither the use of uncovered stairs to disembark, nor a covering of snow and/or ice on the steps is encompassed within the expression 'normal operation of the aircraft' because this expression necessarily implies something that must be common and generic to ordinary air travel and not to the individual characteristics of different types of exit steps used by an airline at a particular airport. He further submitted that the event was not a pure omission or 'state of affairs'; it was based on an active decision to use uncovered stairs without ensuring that the stairs were free from contamination.

31. Mr Stride referred to the three situations postulated in *Barclay* by Law LJ. He submitted that the spilling of hot coffee on a passenger and a heart attack were clear examples of the dividing line between accidents and non-accidents. He submitted that the Court of Appeal had correctly decided that a slip on an inert plastic strip of fabric when nothing ‘untoward’ had taken place was not an accident. However, he contended that the Court of Appeal did not consider what the outcome would be if the strip of fabric had been altered in some way that changed the nature or quality of its surface. He suggested that in those circumstances the slip/fall would constitute an ‘accident’. Mr Stride also referred to the unreported case of *Singhal v British Airways PLC* (20 October 2007, Wandsworth County Court). This was a case in which Recorder Bueno QC upheld an appeal having found that the claimant had lost her footing when disembarking from an aircraft onto a jetway that was aligned against the door at a level approximately six inches below its sill. The defendant had submitted that the jetway was in conformity with the requirements of the British Airports Authority at Heathrow. However, the court concluded that the step down was unexpected and unforeseen from the claimant’s viewpoint and clearly the result of an external factor. Mr Stride submitted that the case closest to the facts in this case is *Gezzi v British Airways PLC v British Airways PLC* 991 F.2d 603. In *Gezzi* the US Court of Appeals upheld the first instance decision and concluded that the proximate cause of Mr Gezzi’s fall was the presence of water on stairs used to embark on a flight at Heathrow Airport and that as this was ‘unexpected and unusual’ and ‘external’ to the passenger it met the definition of ‘accident’ under Article 17.
32. Mr Stride submitted that the authorities relied on by the Defendant can be distinguished. He submitted that *Cannon v My Travel* (2005, Lawtel, His Honour Judge Caulfield) in which the Claimant’s slip on a wet aircraft ramp at Zakynthos Airport was held not to amount to an ‘accident’ within the meaning of Article 17) was not a binding authority and pre-dates the House of Lords *DVT* case and *Barclay*. Furthermore, he submitted that the outside ramp in that case was fixed in place and was always exposed to the elements. Mr Stride submitted that there was no evidence that it was the airports practice to dry the ramp and therefore *Cannon* was fundamentally different on the facts from the present case. Mr Stride submitted that *Vanderwall v United Airlines* 80 F.Supp 3d 1324 also represented a fundamentally different proposition as it was not in dispute in that case that the presence of a single piece of litter in the aisle at the time of the injury was itself not unusual or unexpected. Mr Stride further submitted that the Claimant’s case was not based on the fact that it was snowing or that there was snow on the ground; it was the presence of snow (and/or ice) on the disembarkation steps and therefore not inconsistent with the view expressed by the court in *Chendrimada v Air India* 802 F.Supp 1089 (1992) where it was stated that it is not unusual for weather conditions to cause aircraft to be grounded for many hours or flights cancelled altogether.

The Defendant’s Submissions

33. Mr Harding, on behalf of the Defendant, emphasised that the question of liability cannot be driven by the merits of the case and submitted that the Claimant has no legal remedy as his slip/fall was not an ‘accident’ for the purposes of Article 17. He also relied on the *Barclay* case and agreed that the spilt coffee example was an accident and the heart attack example was not. He submitted that the fall or slip itself

cannot constitute the ‘accident’ and that just as there was no accident in *Barclay* there was no accident in this case due to the requirement of ‘externality’. He also relied on Lord Scott’s distinction between ‘accident’ and ‘occurrence’ in the *DVT* case.

34. Mr Harding referred to the case of *Ford v Malaysian Airline Systems Berhad* [2013] EWCA Civ 1163 which involved the administration of a diuretic by injection during a flight resulting in further physical discomfort. The Court of Appeal concluded that the circumstances in which the injection was administered by the doctor could not be characterised as ‘unusual’ for the purposes of Article 17 as there was no evidence that the injection was administered in an abnormal way. Aikens LJ stated that the only ‘unusual’ aspect of the whole process was that it occurred during a flight by a doctor who was a fellow passenger with the assistance of a crew member. It was found that there was no evidence of a causative effect in the chain of events which led to Mrs Ford’s injury as the same chain of events would have occurred wherever the injection had been administered. Mr Harding submitted that a similar finding should be made in this case.
35. Mr Harding further submitted that neither an omission nor a ‘state of affairs’ can be an ‘accident’ within the meaning of the Montreal Convention. In support of this submission he referred to the opinion expressed by Lord Phillips of Worth Matravers when the deep vein thrombosis class action was considered by the Court of Appeal (*re Deep Vein Thrombosis and Air Travel Group Litigation* [2004] QB 234). Lord Phillips stated:
- ‘I cannot see...how inaction itself can ever properly be described as an accident. it is not an event; it is a non-event. inaction is the antithesis of an accident.’*
- ...
- I am...persuaded that it is simply not possible to apply to a state of affairs, or an omission to act, the test that is relevant to deciding whether an event is an accident.’*
36. Mr Harding acknowledged that there was a lack of slipping cases. However, he submitted that the authorities were clear that slips and trips on items such as bags and shoes discarded or left in the aisle of an aircraft do not constitute accidents – *Vanderwall* and the cases referred to therein. He also contended that the courts have demonstrated a reluctance to accept that weather, of whatever variety, can sensibly be characterised as an ‘unusual or unexpected event’ in the context of international air travel. For example, in *Chendrimada* where severe fog delayed departure, the Court held that meteorological conditions cannot be considered an unusual or unexpected event in aviation travel. In addition, he referred to the case of *Cannon*. Although not a binding authority, Mr Harding drew attention to the court’s observation, in finding that the fall did not constitute an accident, that there is nothing unexpected about rainfall in any part of Greece in September or at any other time and that *Gezzi* was distinguished on the facts as it was an internal staircase.
37. In summary, Mr Harding submitted that (i) the presence of snow and ice is not a ‘distinct event; at best it is a state of affairs that the Claimant encountered as he disembarked from the aircraft, (ii) it is not unusual or unexpected for there to be adverse weather conditions in the middle of winter (February), which may result in floor surfaces being more slippery than usual; (iii) the failure to clear the snow/ice

from the steps is an allegation based on inaction or omission which cannot constitute an accident; (iv) the fact that the Claimant slipped cannot constitute the relevant 'event' and (iv) the choice of equipment depends on the type of aircraft and the availability of suitable stairs in a certain location and therefore the use of the steps was entirely ordinary and routine in the context of Milan airport.

Analysis

38. Although I was helpfully referred to various English and foreign authorities the key issue is whether the Claimant's fall from the aircraft stairs constituted an 'accident'. The word 'accident' is to be given a natural but flexible and purposive meaning in its context and as predicted by O'Connor J in *Saks*, there will be cases at the borderline between accident and no accident. It is well-established that although the decisions of other courts are likely to be of assistance, the weight to be attached to these decisions will depend on the standing of the court and the quality of analysis. In particular as stated by Lord Scott in the *DVT* case:
- '...the balance struck by the Convention between the interests of passengers and the interest of the airlines ought not to be distorted by a judicial approach to interpretation in a particular case designed to reflect the merits of that case.'*
39. The essential components of an 'accident' can be determined by considering the following questions:
- (i) Was there an event?
 - (ii) If so, was the event unusual, unexpected or untoward from the Claimant's perspective?
 - (iii) Was the event external to the Claimant?
40. As stated above Mr Stride's written submissions were refined during his oral submissions. To the extent that his written submission implied that the 'distinct event' was the presence of snow and ice and/or the fact that the Claimant had slipped on snow or ice, he resiled from that position. He was right to do so. There was a chain of causes which led to the Claimant's injuries. The links in that chain are set out in my findings of fact culminating in the Claimant slipping on the aircraft stairs due to the presence of snow and/or compacted snow. The poor weather conditions from 9.20 onwards on 5 February 2015 and at the point that the Claimant exited the aircraft was simply a 'state of affairs'. In any event, there is nothing unexpected or unusual about adverse weather in Milan during the month of February. According to the meteorological data the most common forms of precipitation throughout the winter season (November to February) are light rain, moderate rain and thunderstorms but there is a 9% average chance of snow. Mr Stride invited me to take into account the 5% chance of snow in February but in my view that would be too restrictive. The meteorological data is at best a guide and merely supports the well-known fact that although weather by its very nature is variable and, as a consequence unpredictable, there is a greater chance of snow in winter than at any other time.

41. The use of aircraft stairs without a canopy is a different matter. There was no dispute that aircraft stairs were always used at Milan airport for the disembarkation of passengers. These stairs conformed to the technical specifications for safety required by the aeronautical regulations and by the national and community regulations for the protection of health and safety of passengers and airport personnel. There was no evidence that the stairs were defective in any way. As the passengers prepared to disembark, they may or may not have been forewarned that it was snowing. The Claimant could not recall any such warning, but in any event, inaction could not, in and of itself, be properly characterised as an event and Mr Stride did not suggest that the failure to warn of a potential risk could constitute a relevant event. However, the use of the stairs without a canopy was not a non-event. It required a positive decision on the part of the airport personnel to use stairs either with or without a canopy. This decision involved a series of actions and omissions culminating in the aircraft stairs being aligned to the aircraft and the authority being given for the passengers to disembark. This was an event. According to the evidence of Mr Tosseli in bad weather stairs with a canopy should be used '*where possible*'. On occasions when canopied stairs are not available, for whatever reason, in accordance with the airport's operating manual policy, prior to authorising passengers to disembark, the stairs should be free from the accumulation of snow or ice. On 5 February 2015 at 10.30am the stairs were not free from contamination. Mr Harding suggested that the stairs may have been cleared but as the snow was continuing to fall it was an on-going 'state of affairs'. It is unnecessary for me to consider what the situation would be in the event of continuing snow in such circumstances because I am satisfied that the snow had not been cleared. At the time the Claimant disembarked the snow had compacted and unsurprisingly the flat surface had become slippery. Only two or three people had disembarked from the aircraft ahead of the Claimant. In my judgment, had the aircraft stairs been free from snow at the point that the first passenger disembarked it is unlikely to have become compacted with snow by the time the Claimant disembarked a relatively short period later. The use of the uncovered stairs at the point of disembarkation did not comply with the airports operating manual and was therefore not the 'normal operation of the aircraft'. The event was not mere inertia or inaction. It was an event involving a combination of acts and omissions.
42. The event was unusual from the point of view of the Claimant. He was a frequent flyer and had never experienced having to descend aircraft stairs at the airport without a canopy and reasonably anticipated that the stairs would be free from compacted snow. Of course, there are inherent risks in disembarking from aircraft stairs with luggage. The Claimant may have anticipated that aircraft stairs exposed to the elements would be wet from precipitation, but he had no reason to expect that the stairs would be slippery due to compacted snow. Therefore, the event was unexpected and unforeseen from his perspective. The event was also external to the Claimant.

Exoneration

43. Mr Harding submitted that if liability is established the Claimant should be held to be partly responsible under Article 20. He contended that although the Claimant knew that it was snowing and that the steps may be slippery, he did not immediately reach for the handrail, which would have reduced the risk of a fall. Mr Harding invited me to conclude that the Claimant did not take proper care of his own safety and that as a

consequence a reduction should be made to any damages awarded. Mr Stride submitted that there should be no reduction for contributory negligence.

44. In my judgment the Claimant was not the author of his own misfortune. He did nothing other than descend the disembarkation steps on the instruction of the Defendant. There is no basis for a finding of contributory negligence.

Conclusion

45. The Claimant's fall was directly caused by acts and omissions by airport personnel which was an unusual or unexpected event and external to him. It was not a reaction to the normal operation of the aircraft or an immutable state of affairs. I am satisfied that the Claimant sustained his injuries as a result of an accident within the meaning of Article 17 of the Convention.
46. In my view this decision is not inconsistent with the decisions in *Cannon*, *Vanderwall* and *Chendrimada* for the reasons articulated by Mr Stride during his oral submissions.

The Claimant's Injuries

Agreed Injuries

47. The undisputed medical reports of Mr Mark Falworth dated 5 December 2016, 11 December 2018, and 28 February 2019 and Mr Jeremy Hucker dated 31 March 2017, 1 June 2017, and 13 March 2019 confirm that the Claimant sustained fracture injuries to his shoulder and pelvis as a result of the index accident. The Claimant suffered significant post-accident restrictions to his daily and leisure activities, requiring assistance from his family and the need to employ a cleaner and gardener; and that the Claimant continues to suffer with painful and restricted movements in the shoulder, and stiffness resulting in a painful limp (both of which will necessitate treatment in the future).
48. Furthermore, based on the Joint Statements of Mr Falworth and Mr Percy dated 21 May 2019, and Mr Hucker and Mr Percy dated 28 May 2019 it is common ground that:
- (a) The Claimant sustained a four-part fracture of his right dominant proximal humerus and a fracture of his right iliac bone;
 - (b) He had no existing symptoms prior to the accident, and ongoing symptoms are entirely due to and/or are consistent with the mechanism of injury in the accident;
 - (c) His treatment to date has been reasonable, including a hemiarthroplasty to the ball joint of the shoulder and all subsequent shoulder and hip therapy in Italy;
 - (d) He will suffer from permanent right shoulder pain and stiffness, which will not improve but could deteriorate further necessitating further intervention (on the

Claimant's evidence, there is a 30% likelihood of the Claimant requiring a reverse shoulder replacement over the next five years);

- (e) The Claimant will continue to require assistance for heavy or bi-manual activities at shoulder height or above, due to the stiffness and compromised right shoulder function. This assistance has been necessary since the date of the accident and will be required on a permanent basis in the future. Similarly, he will require assistance with the heavier and more physically demanding tasks of life due to his hip condition.

- 49. The expert reports were considered and well-reasoned. I accept that the Claimant sustained the injuries as set out in paragraphs 47 and 48 above.

Disputed Injury

- 50. There was only one dispute between Mr Hucker and Mr Percy. Mr Stride characterised it as a dispute as to whether the Claimant would require a hip replacement in the future. Mr Harding described it as a dispute as to whether the Claimant injured his hip (as distinct from his pelvis) and therefore whether he has or will develop osteoarthritis as a result of his fall. In my view the key issues are the cause of the Claimant's hip symptoms and the benefits of surgery.
- 51. Mr Percy was of the opinion that the right hip had not been altered. He stated in his report, dated 3 December 2018, that (i) the radiographs did not show heterotopic calcification and (ii) Mr Falworth did not refer to any heterotopic calcification in his report. As a result of these two factors Mr Percy concluded that further surgical treatment of the Claimant's hip was unlikely. He also stated that as the fracture of the pelvis did not involve the hip the Claimant would not be in danger of developing degenerative changes as consequence of the accident. Mr Hucker in his report, dated 31 March 2017, expressed the view that the Claimant's right hip joint had been altered and that he was likely to have heterotopic calcification caused by the fracture to the right side of his pelvis which he stated '*...is a known complication of trauma.*' He concluded that the Claimant's hip symptoms are related to the accident because that is when the fracture occurred.
- 52. Both experts agreed in the Joint Statement that the 'hip issue' could be resolved by undergoing new x-rays. New x-rays were taken on 13 June 2019 and were sent to both experts. The x-ray report from Dr Kane stated there is '*...established osteoarthropathy affecting both hips, the changes are mild.*' Unfortunately, Mr Percy may have been on holiday at the time the radiology report was sent to him. In any event, he did not respond to the request for a review of the new x-rays by the date of hearing. Mr Hucker was able to comment on the new x-rays and maintained his view that the Claimant sustained a hip injury, as a result of the accident. Although he stated that the osteoarthropathy noted in both hips was mild and age related, in his opinion the Claimant would not have needed a right hip replacement but for the injury he sustained in February 2015. Mr Hucker stated:

'[The Claimant] would benefit from a right hip replacement. It is my opinion that in this accident, [the Claimant] sustained a nasty injury to his pelvis which has resulted

in mal union. There is a shortening of the right leg as compared with the right (sic); the right hip is externally rotated; he walks with a limp. In my opinion these all stem from the injury sustained in this accident. He did not suffer with symptoms in the right hip prior to his accident in 2015.'

53. Although there was a dispute with regards to the Claimant's hip, the distance between the two experts was very narrow. Mr Hucker initially took the view that heterotopic calcification was likely to develop as a consequence of the pelvic injury, but the up to date medical evidence confirmed that the established osteoarthopathy is age related and not a consequence of the accident. However, Mr Hucker has consistently maintained that the Claimants hip symptoms are related to the accident and in his report, dated 13 March 2019, he stated that that there is a 90% likelihood that he would benefit from a right total hip replacement. Whilst Mr Percy doubted that the Claimant would require surgical treatment for his hip, he did accept that the ongoing hip symptoms are attributable to the material injury sustained in the accident. Having reviewed all the medical evidence, I have accepted the holistic approach adopted by Mr Hucker in reaching the conclusion that the Claimant would be likely to benefit from the relief of his hip symptoms by undergoing hip replacement surgery.

Quantum

54. There were three main heads of claim made on behalf of the Claimant; (i) General Damages for pain and suffering and loss of amenity, (ii) Special Damages, and (iii) Future Losses and Expenditure.

General Damages

55. The claim for general damages related to the pain, suffering and loss of amenity that the Claimant experienced as a result of the shoulder, pelvic and knees injuries he sustained. There was no dispute that the injuries were life changing.
- i. **Shoulder (including hand symptoms).** Mr Stride submitted that as the Claimant has limited function of his shoulder the applicable category of the Judicial College Guidelines (the JC Guidelines) is 7(C)(a) (£16,830 to £42,110) including a 10% uplift. Mr Harding submitted that the applicable category is 7(C)(b) (£11,200 to £16,830) including a 10% uplift.
 - ii. **Hip/Pelvis.** Mr Stride submitted that the applicable JC Guideline category is 7(D)(a)(iii) (£34,340 to £46,040). Mr Harding submitted that the appropriate JC category is 7(D)(b)(ii) (£11,040 to £23,310).
 - iii. **Knee.** The knee injury was relatively minor and both parties agreed that it falls within the JC Guideline category 7(M)(b)(ii) and therefore the award should not exceed £5,250.
56. The Claimant is to be compensated on the basis that he suffered and continues to suffer with painful and restricted movements in the shoulder, and stiffness in his hip

resulting in a painful limp. His symptoms include weakness in his right shoulder, loss of mobility in his right wrist, difficulty walking/standing/sitting for long periods, pain in his hip going all the way up to his back, disturbed sleep due to pain and permanent scarring. The Claimant experienced significant post-accident restrictions to his daily and leisure activities. He requires assistance from his family and the need to employ a cleaner and gardener. The knee injury was comparably minor. It was swollen for 10 days and now causes minor and intermittent problems for which the Claimant has not sought specific treatment. The knee injury is not mentioned in the Joint Statements.

57. I have carefully considered the JC Guidelines. I have looked not only at those sections to which counsel referred but also at other categories of injury, producing restriction in mobility and pain. I have also considered the comparable cases provided by the parties. Ultimately, my assessment depends to a large measure on attempting to fit the Claimant's overall level of disability and suffering into a broad scale of awards for multiple and complex injuries. Taking account of the Claimant's permanent symptoms, I have concluded that his shoulder injury is serious rather than severe and therefore falls within category 7(C)(b) which specifically envisages symptoms including aching in elbow, sensory symptoms in the forearm and hand, and weakness of grip and/or damage to the rotator cuff injury with persisting symptoms after surgery symptoms which will be permanent. In my judgment an appropriate award for the shoulder injury is **£14,000**. In respect of the Claimant's pelvis/hip I have concluded that the injury is moderate rather than severe and therefore falls within category 7(D)(b)(ii) which envisages injuries where a hip replacement is required or may be necessary in the future. In reaching this conclusion I noted that the Claimant has not developed arthritis as a result of the accident, although he is likely to require a hip replacement due to the impact of his pelvic injury. In my judgment an appropriate award for the pelvis/hip injury is **£20,000**. Category 7(M)(b)(ii) suggests that where recovery from a moderate knee injury is almost complete, the award will not exceed £5,250. I am satisfied that it is appropriate to make an award of **£5,250**.
58. General Damages: **£39,250**

Special Damages

59. The Claimant paid for his treatment in Italy although this was supplemented by the Italian government and private physiotherapy in the UK. There was no dispute that prior to the accident the Claimant had been responsible for his own cleaning, gardening and DIY. Post-accident and until engaging paid assistance, the Claimant relied on his family for assistance with household tasks such as cleaning, shopping, cooking and any work on the computer.
- (i) **Past Care and Assistance.** In addition to the cost of the paid services, Mr Stride on behalf of the Claimant, sought damages for the additional assistance provided by his daughter and other family members. He acknowledged that the general rule was for a 25% discount for gratuitous care but submitted that it was within my discretion to apply a lower discount or no discount at all. Mr Harding submitted that the gratuitous care should be reduced by 25% and that no damages are recoverable for visits to hospital to provide social contact, support and comfort as the necessary care

was being provided experienced clinicians. He also submitted that from 30 November 2017 the Claimant employed a cleaner therefore a reduction in the hours claimed for gratuitous care over the same period should be applied. He further submitted that as a gardener was employed by the Claimant from 1 April 2018 no ongoing assistance with gardening from his daughter was required thereafter.

- (ii) **Past Cost of Medical Treatment & Associated Costs.** Mr Stride, on behalf of the Claimant, submitted that the treatment he currently undergoes in Italy is of significant benefit to him in terms of managing his daily pain and restrictions. The Claimant also sought subsistence costs. Mr Harding, during oral submissions, agreed the cost of treatment in Italy as distinct from the cost of travel. He submitted that the cost of travel to Italy is not recoverable as the Claimant could have undertaken the treatment in the UK. He further submitted that the subsistence costs for ‘eating out’ and ‘gifts’ to friends and relatives should be disallowed.
- (iii) **Past Miscellaneous Expenses.** Mr Stride, on behalf of the Claimant, sought the cost of damages clothing, miscellaneous costs associated with travelling and hotel costs incurred by his daughter and his brother. Mr Harding submitted that only the second-hand value of the clothing should be recoverable. He further submitted that the miscellaneous costs and the hotel costs of the Claimant’s brother were not recoverable.
60. The Claimant is entitled to recover the costs of past care and assistance. Having, considered the submissions from both parties the solution I have adopted is as follows. First, I have allowed the agreed costs of care in Italy and the agreed household costs for the assistance provided by the agency. Secondly, I have accepted and adopted Mr Harding’s criticism of the inclusion of household assistance from the Claimant’s daughter from 13 February 2015 to 21 February 2015, when he was in hospital. Therefore, this aspect of the claim has been disallowed. Thirdly, I have accepted and adopted Mr Harding’s criticism of the number of hours of household assistance provided by Claimant’s daughter from 1 April 2016 to 31 March 2017 when a weekly cleaner had been employed and the number of hours during the period 1 January 2018 to trial. The figures have been reduced by one hour. Fourthly, I have accepted and adopted Mr Harding’s criticism of the inclusion of gardening assistance from the Claimant’s daughter from 1 April 2018 to 31 October 2018 and 1 March 2019 until the trial date, as during these periods the Claimant had employed a gardener. Therefore, this aspect of the claim has been disallowed. Fifthly, I have applied a discount of 25% as I was unable to identify any reason from departing from the usual practice. The resulting figure is **£11,641.00** (rounded up) calculated as follows:
- Paid Costs in Italy - **£2,426.20**
 - Paid Household assistance - **£561.00**
 - Gratuitous Household assistance (subject to 25% reduction and one hour reduction - £1,954.08, £926.46, £1,180.25, £917.52, £100.11, £442.69, £104.66) - **£5,625.76**

- Paid Cleaner – (1 April 2016 to 30 November 2017 - £1,419 + 1 December 2017 to trial - £1,100) - **£1,519**
 - Gardening assistance (subject to 25% reduction - £36.15, £256.98, £49.70, £265.39, £41.66, £268.01, £38.29) – **£956.18**
 - Paid Gardener – (1 April 2018 to 31 October 2018 - £360 + 1 March 2019 to trial - £192.00) - **£552.00**
61. The cost of treatment in Italy and the UK was agreed in the sum of **£5,127.63**. The agreed figure was in recognition that the cost of treatment at the Gaetano Pino Orthopaedic Institute should not be included. The documentation within the trial bundle simply represented the average reimbursement paid to hospitals in Lombardy for the types of services the Claimant received during his hospitalization but was not evidence of an obligation to pay or any money actually paid. The costs associated with travel within the UK in the sum of **£5,706.48** was agreed.
62. The cost of travel to Italy for treatment was disputed. Although the Claimant is an Italian national, he lives in England. I do not accept the submission made by Mr Harding that the evidence indicates that the Claimant would have flown regularly to Italy in any event. The Claimant stated in his witness statement that he travelled to Italy every five weeks for the last 15 years, but it was clear from his oral evidence that at least some of this travel was for business reasons. As the Claimant ceased working following the accident he may not have travelled to Italy as frequently. However, it was suggested on behalf of the Claimant that he flew to Italy for the purpose of undergoing treatment. In my judgment this is not reasonable because, notwithstanding the availability of good quality NHS or private treatment in England, the Claimant selected the more expensive option. The legal principle is set out by Lord Hope in the case of *Lagden v O'Connor* [2004] 1 AC 1067:
- “The wrongdoer is not entitled to demand of the injured party that he incur a loss, bear a burden or make unreasonable sacrifices in the mitigation of his damages. He is entitled to demand that, where there are choices to be made, the least expensive route which will achieve mitigation must be selected. So if the evidence shows that the claimant had a choice, and that the route to mitigation which he chose was more costly than an alternative that was open to him, then a case will have been made out for a deduction.”*
63. In respect of the claim for subsistence whilst undergoing treatment in Italy I accept the submission made by Mr Harding that there was no reason for the Claimant to 'eat out' as he was staying with relatives. In any event, he would have had to pay for food irrespective of where he underwent treatment (i.e. Italy or England). I also accept the submission that the cost of 'gifts' given to friends and relatives in 'recognition of the help provided' is a re-characterisation of the care claim, for which he is already seeking substantial damages. As care damages are held on trust, any further payment would amount to double-recovery.
64. In my judgment the miscellaneous costs associated with travelling for treatment (toiletries, mobile phone charges) would all have been incurred in any event. Although the defendant agreed the costs of the Claimants daughter, his brother's costs were not agreed on the basis that it was unnecessary for both of them to be present. It

seems to me that a fair assessment of the care provided to the Claimant in the form of emotional and practical support while he was in hospital includes both his daughter and his brother. I accept the claim for expenses of the Claimant's daughter in the sum of **£1,177.25** and his brother's expenses in the sum of **£389.00**.

65. Special damages: **£24,043**

Future Losses and Expenditure

66. The Claimant contended that his need for assistance around the home and garden will continue for the foreseeable future. The Claimant will no longer be able to undertake DIY or maintain his classic cars as he had been able to do prior to his accident. There is no dispute that the Claimant's symptoms continue and are now permanent.

(i) **Future Care and Assistance.** Mr Stride, on behalf of the Claimant, sought the costs of employing a gardener and domestic assistance from trial for the rest of his life. He also sought the cost of gratuitous domestic and gardening assistance from his daughter for the rest of his life. In addition, there was a claim for DIY costs of £600.00 per year and classic car maintenance costs of £500.00 per year. Mr Harding submitted that the gratuitous care should be reduced by 25%. He submitted that paid assistance from a gardener and a cleaner is sufficient to meet the Claimant's ongoing needs. He further submitted that in the absence of an estimate annual DIY costs of £400.00 and car maintenance costs of £250.00.

(ii) **Future Treatment Costs.** Mr Stride, on behalf of the Claimant, submitted that he continues to derive benefit from the physiotherapy treatment he receives in Italy. He suggested that the claim for ongoing treatment should be limited for five years. He submitted that in the event of further deterioration of the Claimant's shoulder there is a 30% risk that he will need to undergo a reverse shoulder replacement. He further submitted that the Claimant now requires a total right hip replacement. Mr Harding submitted that the orthopaedic experts are unanimous that ongoing physiotherapy will not have any therapeutic benefit and the Claimant should simply do home exercises. He further submitted that if hip and shoulder surgery is required the fees claimed are not disputed. However, he submitted that the claim for gratuitous care should be reduced by 25% and suggested that there was no reason the travel costs associated with a single surgical procedure and 10 sessions of physiotherapy to cost £500. The Defendant offered £250.00. As the chances of shoulder surgery was between 20% to 30% Mr Harding suggested a median figure of 25%.

67. The Claimant is entitled to recover the costs of future care and assistance. Having considered the submissions from both parties the solution I have adopted is as follows. First, I have allowed the agreed costs of paid gardening and domestic assistance. Secondly, I accepted and adopted Mr Harding's criticism of the inclusion of domestic assistance from the Claimant's daughter. The orthopaedic experts are agreed that the Claimant will require assistance with '*heavy or bimanual activities*' that '*need to be undertaken at shoulder height and above*', but not with '*normal*

activities of daily living'. The cleaner will undertake the heavy chores around the home, including vacuuming, changing bed sheets, cleaning high places etc. The gardener will undertake the heavy tasks in the garden. There is also a separate claim for DIY (see below). In these circumstances the Claimant does not need regular ongoing help from his daughter in addition to paid assistance from a cleaner, gardener and individual or company providing home maintenance services. Therefore, this aspect of the claim has been disallowed. Thirdly, I have accepted the relatively modest DIY and care maintenance costs claimed on behalf of the Claimant. The resulting annual figure for future care and assistance is **£2,235** calculated as follows:

- Paid Gardener - **£420.00**
- Paid Household assistance - **£715.00**
- DIY - **£600.00**
- Car maintenance - **£500.00**

68. The final issue concerning the future care and assistance claim is the assessment of the multiplier. The parties agree that the discount rate is -0.75%. Mr Stride, on behalf of the Claimant, contends that I should allow a multiplier for the future care claim of 11.92. Mr Harding suggested that I should allow a multiplier of only 8.5 on the basis that it is likely that the Claimant would have required assistance by the age of 85 in any event.
69. The introduction of the Ogden Tables brought a far more mathematical approach to the calculation of future losses. However, there are occasions when a more pragmatic approach is required to do justice between the parties. Both parties agree that the full Ogden life multiplier is the starting point. In my judgment an appropriate multiplier for future care, considering the normal impact of the ageing process is 10. It is a round number, falling roughly between the parties' respective positions, which seems to me to best do justice. It allows for the impact of ageing and the prospect of there being some improvement in function and relief from pain and discomfort in the event that the Claimant is required to undergo a hip replacement operation.
70. The amount allowed for future care and assistance is therefore $£2,235 \times 10 =$ **£22,350**.
71. The Claimant is entitled to recover future treatment costs. I accept the submission made by Mr Harding that the orthopaedic experts agree that further physiotherapy treatment will not provide any therapeutic benefit. There is a clear distinction to be drawn between the Claimant's past physiotherapy treatment in Italy which was reasonably believed at the time would aid his recovery and future treatment which is now known to be unnecessary. The Claimant is of course free to continue with the treatment but in my judgment, it would not be reasonable to expect the Defendant to fund these costs. This aspect of the claim is disallowed.
72. The Claimant has a 90% chance of requiring hip replacement surgery. He has a 20%-30% chance of requiring shoulder reversal surgery. I accept the submission made by Mr Harding that for the purposes of calculating the future costs a mean figure of 25% should be adopted. There is no dispute with regards to the cost of the surgical procedures and the follow up care (hip - £16,970 and shoulder £12,397). The

gratuitous care and assistance claim following the procedures has been discounted by 25% as I was unable to identify any reason for departing from the usual practice. I will allow £350 x 2 for travel by taxi.

73. The amount allowed for future treatment costs is therefore **£15,273** (hip - £16,970 x 90%) + **£3,099.25** (shoulder - £12,397 x 25%) + **£1628.10** (gratuitous care subject to a 25% discount) + **£700** (travel by taxi).
74. Future Losses and Expenditure: **£20,701** (rounded up).

Quantum Summary

Head of loss	Amount
General damages for PSLA	£39,250.00
Interest	Tbc
Past care	£11,641.00
Past cost of treatment & associated expenses	£10,835.00
Past miscellaneous expenses	£1,567.00
Interest	Tbc
Future care and assistance	£22,350.00
Future treatment	£20,701.00
Total (excluding interest)	£106,344.00

Disposal

75. The parties should seek to agree interest. Hopefully, the above deals with all disputed matters sufficiently to allow the parties to calculate the appropriate judgment sum and to agree an order reflecting my judgment. If there are any outstanding matters the parties are invited to identify the issues and their proposals for resolution.