Neutral Citation Number: [2024] EWHC 2389 (KB)

Case No: QB-2019-002379

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice,
Strand,
London

Date: 20 September 2024

Before:

HER HONOUR JUDGE MELISSA CLARKE
Sitting as a Judge of the High Court

- -

Between:

STEVEN WILSON — **Claimant**

- and -

MINISTRY OF JUSTICE — **Defendant**

- -
- -

Mr Giles Mooney KC (instructed by Irwin Mitchell LLP) for the **Claimant**
Mr Richard Wheeler (instructed by the Government Legal Department) for the **Defendant**

Trial dates: 24, 25, 26, 29 and 30 April 2024
Draft circulated to parties on 2 September 2024

- -

JUDGMENT

Her Honour Judge Melissa Clarke:

I. Introduction

1. There is no dispute that on 2 July 2018 the Claimant Mr Steven Wilson was a remand prisoner at HMP Chelmsford, undertaking duties in the prison kitchen, when he was attacked by another prisoner who stabbed him multiple times with a 9-inch kitchen knife in the abdomen, back, right chest, left arm and left flank. His attacker had been sentenced on 8 June 2018 to life imprisonment for murder, with a tariff of 20 years, having taken his victim's life by stabbing him in the chest and abdomen with a large knife. The prison's work/activity risk assessment for Mr Wilson's attacker disclosed that the questions *"Sufficiently trustworthy to be left unsupervised?"* and *"Temperament to work safely without causing disruption to others?"* had been answered *"Unknown"*. Nonetheless, the Defendant had deployed him to work in the prison kitchen with ready access to knives.

2. Mr Wilson's attacker caused him life-threatening and life-changing injuries. These included an incomplete spinal lesion at T5 to T7, thoracic posterior vertebral fractures, lacerations to his liver and stomach, bilateral diaphragmatic injuries, a right-sided haemothorax, a pneumothorax and haemopericardium, lacerations to his left arm exposing his annular ligament and radial head, and penetrating wounds to his abdomen and chest wall. Mr Wilson was taken to the Royal London Hospital by air ambulance where he received an emergency laparotomy for haemorrhage control, two right-sided chest drains placed in order to relieve the haemothorax and subsequent intensive care for 9 days in an induced coma. He then had further surgery. He remained at the Royal London Hospital until discharged to a specialist rehabilitation unit (Askham Village Community Care Home) on 24 August 2018, over 7 weeks later.

3. While at Askham, Mr Wilson was diagnosed with Post-Traumatic Stress Disorder (PTSD) caused by the index event. He remained at Askham, receiving daily input from a multidisciplinary rehabilitation team, including physiotherapy, hydrotherapy and psychological therapy, until 19 January 2019. After the incident he was convicted of aggravated burglary and received a 9 year sentence of imprisonment, discounted to 6.5 years on account of his injuries, so he was discharged from

Askham to HMP Peterborough. Mr Tom Barclay, a case manager, provided informal assistance with discharge planning.

4. Mr Barclay was then formally appointed as case manager and carried out an initial needs assessment of Mr Wilson in September 2019. Mr Barclay recommended that Mr Wilson needed a comprehensive package of rehabilitation to assist with the physical psychological and practical difficulties that he was experiencing as a result of the injuries he sustained. He recommended that Mr Wilson receive intervention from occupational therapy, psychology, physiotherapy, pain management and case management. Some rehabilitation continued while he was at HMP Peterborough, including some community treatment at Askham and some outpatient treatment at Peterborough Hospital arranged by Mr Barclay, but after the Covid-19 lockdown started in March 2020 this really stopped.

5. During his time at HMP Peterborough, Mr Wilson had reduced mobility, walking with an altered gait and limp, and was unable to mobilise quickly or run. He reported spasms in his legs and balance issues, and experienced several falls in his cell and in the shower. He relied on a self-propelled wheelchair for distances of over about 30m, and used a walking stick and walking frame to mobilise, depending on his levels of pain and fatigue. He reported pain in his lower limbs when mobilising and ongoing pain in his lower back around the stab wound at the spine. He had tonal changes and spasms, particularly in his left leg, which caused him pain and impacted on his mobility and his ability to sleep. He was prescribed Gabapentin, Baclofen and Tramadol to manage his pain and spasms. He reported ongoing issues with reduced sensation and proprioception bilaterally in his lower limbs, including a distinct loss of sensation on the soles of his feet. He reported continence issues in the form of constipation and was prescribed senna. He reported low mood, anxiety, symptoms of PTSD, loss of confidence and low self-esteem. His sleep was poor because of pain and recurrent nightmares about the index event and his injuries, and he would wake sweating in the night. He was prescribed Propranolol, Atomoxetine and Amitriptyline to manage his anxiety and depression and to support sleep.

6. Once Covid-19 restrictions began to ease, Mr Barclay arranged for a telephone assessment of Mr Wilson with a clinical psychologist, Dr Jonathan Hutchings, who opined in a report of 2 September 2020 that Mr Wilson was experiencing anxiety,

depression and PTSD and suffering from chronic pain. He recommended psychological therapy including cognitive behavioural therapy ("**CBT**") and eye movement desensitisation and reprocessing therapy ("**EDMR**"). Mr Wilson attended 39 telephone sessions with Dr Hutchings from October 2020 until shortly after his release from prison. Dr Hutchings noted the limitations of telephone therapy rather than video or face to face sessions, particularly in relation to the EDMR therapy, in a letter to Mr Wilson's solicitors of 20 July 2021, and opined that despite some psychological improvements while in prison, Mr Wilson had relapsed somewhat on release from prison which was a significant life change. In his view, Mr Wilson was "*still experiencing severe levels of PTSD symptoms*", severe anxiety and moderate depression.

7. Mr Barclay also arranged a private physiotherapy assessment for Mr Wilson in December 2020 who recommended weekly physiotherapy sessions, hydrotherapy and a TENS machine, but these were put on hold until his release from prison.

8. Mr Wilson was released from prison on 22 June 2021, after which he received private rehabilitation arranged by Mr Barclay. This included: further psychological input from Dr Hutchings and later a local clinical psychologist Ms Kim McLeod who specialises in chronic health conditions, trauma and pain management; physiotherapy from a Ms Danielle Lewis at Benfleet Physiotherapy from August 2021; hydrotherapy at the Spire Hartswood Hospital in Brentwood from December 2021; development of a home exercise programme for Mr Wilson to use in a local gym; and an occupational therapy assessment in August 2021 resulting in equipment recommendations and a wheelchair assessment. There is no dispute that Mr Wilson has failed to attend about 50% of the physiotherapy and hydrotherapy appointments arranged for him and a number of medical appointments and assessments.

9. On his release from prison, his mother Mrs Wilson moved into his flat to care for him, taking time off work to provide 24hr care for the first two weeks and then returning to work but staying with him overnight for a further 2 weeks. After she left, Mr Wilson's nephew Dylan moved in with the aim of providing support, but Mr Wilson says that he did not provide him with the care he needed, and he moved out in December 2021. Then Jenny, the daughter of his mother's partner began to provide him with care and assistance but this only lasted a short while because she

was unable to find childcare for her young son. Mr Wilson began a relationship with Darcy O'Brien around Christmas of 2021, and she started to live with Mr Wilson shortly afterwards, taking on a role as his carer. He described her as providing significant assistance, doing nearly all the housework including cleaning and laundry, most of the ironing and some cooking, accompanying him to appointments, reminding him of medication, helping him out of bed in the morning and staying close by while he is in the shower in case he needed assistance. His mother continued to assist him with managing bills, online shopping and anything else he needed.

10. In January 2022 Mr Wilson was assessed at the Royal Buckinghamshire Hospital. That assessment noted, inter alia:

   i) he walked with a cane or using furniture for support and can only take a few steps without support, using a wheelchair for longer distances and taxis for community access;

   ii) he had a spastic gait, more on the left, with clonus in ankle;

   iii) his walking distance was limited by pain and his level of spasticity to 50m;

   iv) his spasticity increased as he gets tired after a few metres;

   v) increased tone prevents controlled movement in his lower limbs;

   vi) he had impaired sensation in his lower limbs, more on the left side, and impaired balance; and

   vii) he had a limitation in range for ankle dorsiflexion.

11. He was recommended for, and attended an inpatient 4-week residential rehabilitation programme at the Royal Buckinghamshire Hospital in June 2022. The Claimant's expert physiotherapist in this trial, Ms Laura Bochkoltz, is based at that facility but did not treat him at that time. He received 4 hours of therapy, 4 days a week during his stay. There seems to be no dispute between the parties that this was beneficial for Mr Wilson. He describes it as "*really beneficial*" and leading to "*a real improvement in his physical symptoms*".

12. In October 2022 Mr Wilson's relationship with Ms O'Brien broke up acrimoniously, and she moved out. He began seeing Ms Rachel Derby. Their evidence is that they do not live together, but he goes to her flat on weekdays and she goes to his flat on weekends, and she provides him with some personal care and assistance with daily living.

13. Mr Barclay has continued to assist Mr Wilson in arranging physical and psychological therapy as well as further case management support, including in relation to urology and bowel management, and support sourcing suitable rental accommodation in a single-level, two bedroom, ground floor flat in Grays, Essex. Since attending the residential rehabilitation programme at Royal Buckinghamshire Hospital Mr Wilson has continued to struggle to engage with other medical and non-medical appointments and therapies arranged for him. I will come back to that.

14. Mr Wilson was born on 20 February 1988 and so was aged 30 at the index accident and was 36 at the date of trial.

II. Procedural matters

15. The Claim was issued on 2 July 2019 and served on 31 October 2019. The Defendant admitted liability in open correspondence on 22 July 2019 and confirmed that admission in its defence dated 26 November 2019. There was a stay in proceedings from January 2020 to May 2021, and the Defendant was permitted to rely on an amended defence which was served on 24 January 2022. Mr Wilson's updated schedule of loss was served on 22 November 2023 and the Defendant's counter-schedule on 23 February 2024.

16. Causation and quantum remain in dispute. In particular there are disputes relating to Mr Wilson's condition and prognosis, the nature and level of treatment, rehabilitation, equipment and accommodation needs that arise as a result, Mr Wilson's likely compliance with future treatment/rehabilitation, and quantification of Mr Wilson's future loss of earnings.

17. The parties were permitted to rely on expert reports in the fields of spinal cord injury ("**SCI**"), psychiatric injury, pain, physiotherapy, care/occupational therapy and accommodation. They were permitted a single joint expert in the field of urology.

18. In relation to care and occupational therapy, the Defendant had permission to rely on the expert report of Mr Redz Lenfield, Occupational Therapist, which was filed and served. I have not seen that report. Mr Lenfield met with Mr Wilson's expert, Ms Way, and a joint statement was produced, in which Mr Lenfield agreed with almost all of Ms Way's costings. The Defendant says that this was a substantial change from his initial report and Mr Lenfield gave no explanation for his change of view, such that the Defendant had lost confidence in him and does not rely on his evidence. The Defendant sought permission for a new care and occupational therapy expert, but this was refused shortly before trial on 12 April 2024 by Master Davison. Accordingly, the Defendant has no care and occupational therapy evidence.

19. Also on 12 April 2024, Master Davison gave the Defendant permission to rely upon surveillance footage from January and February 2024 (7 short videos of less than 2 minutes each) and permission to rely on supplemental reports from the Defendant's **SCI** expert, Mr Kumar, and the Defendant's physiotherapy expert, Ms Keech, commenting on that footage. Mr Wilson did not object to the admission of the surveillance evidence as he says the footage is helpful to his case. Master Davison gave Mr Wilson permission to serve updated witness statements addressing the surveillance footage by 19 April 2024. He refused permission to the Defendant to rely on a further supplementary expert report of Mr Kumar dated 13 March 2024 ("**Inadmissible Expert Report**") but I have seen it, as Mr Mooney cross-examined Mr Kumar and Mr Burton (the Defendant's accommodation expert) about its contents. I will come back to that.

20. Master Davison also gave the parties permission to rely upon a single joint urology report of Mr Shah and for the Defendant's questions to Mr Shah to be answered, and gave Mr Wilson permission to serve a further updated schedule of loss setting out the claim for urological treatment, and the Defendant a further updated counter schedule which pleads to the urology claim. The former was served on 19 April 2024 and totals some £6.7m, and the latter was served on 22 April 2024 and totals some £967k.

21. In the five-day trial, Mr Giles Mooney KC appeared for the Claimant and Mr Richard Wheeler appeared for the Defendant. I thank them both very much for the

assistance they have provided the Court in their written and oral submissions and the manner in which they conducted the trial.

III. Witnesses

Lay witnesses

22. I heard three lay witnesses for the Claimant: Mr Steven Wilson (the Claimant himself); Ms Angela Wilson, his mother; and Ms Rachel Derby, Mr Wilson's current partner.

23. Mr Wilson has filed witness statements dated 24 June 2022, 14 February 2023 and 19 April 2024. He was in the witness box for over a day. We had frequent breaks of about 15 minutes every hour.

24. Mr Wilson's issues with focus and emotional dysregulation arising from his ADHD were apparent in the witness box. He sought to pre-judge both the questions that the Defendant's counsel Mr Wheeler asked in cross-examination and his reasons for asking them – often wrongly – and so spent considerable time and energy answering the wrong, unasked questions or getting upset about Mr Wheeler's or the Defendant's perceived motivation for asking them. He wanted to tell his history to the Court and impress upon it the physical and psychological difference between the person he was now and the person he was before the attack, and how that attack has changed his life, and appeared to find it difficult to understand, despite my repeated attempts to explain it to him, that it was Mr Wheeler's job in cross-examination to explore and challenge his evidence and put his client's own case. He appeared to believe the cross-examination to be unfair and aimed at proving him to be a liar, when he had been the victim of a horrendous attack due to the Defendant's admitted negligence. Despite that, he did well in controlling his emotions and emotional responses, which I know is not easy for him, but after a long first day in the witness box he did lose control and shouted at Mr Wheeler. He immediately became very upset with himself and apologised to the Court, but it was apparent he was tired and had lost focus entirely, so Court rose early and we finished his oral evidence on day 2. I do not draw any adverse inferences from that episode which I am satisfied arose from Mr Wilson's disabilities, but I do consider it appropriate to note here that Mr

Wheeler's cross-examination was entirely fair and proper, and not inflammatory, in my judgment.

25. I am satisfied that Mr Wilson came to court to give his honest evidence to the best of his recollection and ability. There are a few caveats to that:

i) First, he admitted and displayed a very poor memory for dates and chronologies, telling the Court that he "*always had a brain like a sieve*", and I am satisfied he was not reliable on these matters.

ii) Second, it became clear that he had a different and less precise interpretation of language to that of counsel and the Court. For example, he said in his witness statement that he never drinks. His initial response to being asked in cross-examination if he drank, was "*I don't drink at all, I can't stand alcohol*". However he later made clear that he does drink alcohol, saying he had a bottle of beer about 2 or 3 times a week, but it seems that he doesn't consider beer to be "*alcohol*" or perceive that as "*drinking*", which he takes to mean drinking to excess, or to get drunk, or having an alcohol dependency.

iii) Third, his thoughts appear to be very scattered and he speaks very quickly, saying really the first thing that comes into his head. It was difficult to get him to focus on the questions being asked, and pin down what he was saying, in cross-examination and re-examination. This meant that he often provided multiple, seemingly contradictory, answers to the same question. For example, he gave very confused accounts of why he had missed so many physiotherapy and hydrotherapy sessions, saying in his witness statement that since leaving prison he hadn't liked being told what to do, then telling the Court in cross-examination that he was going through periods of low mood so hadn't felt motivated to go, next saying that in prison he had structure but once outside he did not and so if he didn't feel like attending physiotherapy he didn't go, next saying that his 5-day a week regimen of physiotherapy, hydrotherapy and psychotherapy was too much for him and left him no time for simply living his life, although when the frequency and formality of rehab was reduced, he still frequently did not attend. I do not think this was dishonest evidence, rather I think that each of those answers was true in relation to at least some of those

missed appointments, and in fact there was a complex interplay of reasons why, on a given day, he did not attend his appointments. He agreed that he was often poor at attending appointments even before the accident, so I am satisfied that his ADHD, lack of organisational skills and poor memory plays a part, as does his anxiety about leaving the house arising from his PTSD, and his lack of motivation arising from his depression and low mood. This is also Mr Barclay's evidence and it is supported by the psychiatric evidence, in my judgment.

iv) The other result of Mr Wilson's difficulties in processing and organising his thoughts, poor memory and poor chronology is that it has resulted in some inaccuracies in his witness statement. For example, he said in his witness statement in 2022 that he had not used drugs since he had left prison and intended not to return to drugs. However, he freely admitted in cross-examination that his nephew Dylan had moved into his house for some months in 2021 bringing cannabis with him, and they regularly smoked it together. When this inconsistency was pointed out by Mr Wheeler, he accepted that his witness statement was not true, but said in 2022 when he wrote his witness statement he was not using any drugs. He says that he now uses cannabis on a daily basis as a pain reliever as it relaxes his muscles which are otherwise always tense from neuropathic pain, and helps him sleep. He is adamant that he has not used cocaine since his release from prison, and on balance I accept that evidence. Another example is his evidence about his work history. In his witness statement he said that he had earned up to £800 per week cash in hand before being incarcerated in advance of the index attack. His oral evidence was quite different.

26. I found Mr Wilson to be very open in his oral evidence and I am satisfied that he was doing his best, within his own limitations, to assist the court in giving a truthful account. I have no concerns that he was giving dishonest or self-serving or exaggerated oral evidence. He volunteered evidence against his own case, was willing to make admissions and concessions where appropriate once he understood and could focus what was being asked and tried very hard to concentrate and maintain control in stressful circumstances. I find his written evidence much less

credible and reliable. Significant parts of it did not survive the scrutiny of cross-examination. I have no doubt that he must have been a difficult client for his legal team to pin down when it came to producing his witness statements because of his memory issues and difficulties in gathering and presenting his thoughts accurately and precisely. On balance I am satisfied that in his written evidence he has also not deliberately or dishonestly sought to mislead the Court.

27. Mr Wilson's evidence is that he had a troubled childhood in Essex, having frequent difficulties at school where he was suspended a number of times, and having difficulties with reading and processing written information. He was diagnosed with ADHD as a teenager. His parents divorced and he moved between living with each of his parents and accommodation in the criminal justice system. At 13 he spent time in a juvenile detention centre following driving-related charges. Convictions for assault and violence followed. He was first sent to prison when he was 15 years old and has been in and out of prison since. When not in prison, he said he used to work in manual labour positions, but in oral evidence confirmed these were odd-jobs here and there for cash, selling scrap metal, a bit of house removals, and gardening. As a teenager he moved into a caravan and then became homeless. He said between the ages of 18 and 20 he was smoking cannabis every day and using cocaine most weekends.

28. Mr Wilson's evidence is that he was an athletic person and generally fit and healthy before he was injured. He says that he enjoyed playing football, jogging and going for a swim, and used the gym. He described himself as an outgoing person who made friends easily.

29. Mr Wilson said that he used to go abroad on holiday before the index incident and has been to a number of countries in Europe, the USA and Barbados. He said his father would take him on holiday every two years.

30. Mr Wilson was on remand for aggravated burglary at the time of the index attack. After the attack he was convicted and sentenced to 9 years, discounted to 6.5 years on account of his injuries. He was transferred to HMP Peterborough in January 2019 and after a period of time on the health care wing was given his own disability cell in the prison, on the ground floor. He was mostly using a wheelchair to get around but walked with a stick for short distances. He said that he felt very vulnerable in prison

and was frightened that he would be attacked again, and this time be unable to protect himself or get out of trouble due to his limited mobility. He continued with rehabilitation at Peterborough General Hospital but said this was fairly limited as issues between the medical team and prison staff, or problems with prison transport, meant that he missed appointments. Once Covid-19 lockdown started in March 2020, he says his rehabilitation effectively stopped.

31. Following his release from prison on 22 June 2021, Mr Barclay arranged his rehabilitation to start again. Mr Wilson accepted that he had failed to attend about 50% of his appointments. I have already set out his evidence about why he found it difficult to engage. He said that he will engage in future physical therapy, in particular gym sessions with a personal trainer, and said that he was positive that he wanted to get better. He gave clear and in my judgment reliable evidence about the care that he had received from family members and partners since the accident and about his physical limitations and how he managed issues such as getting in and out of chairs and sofas, showering, dressing, getting in and out of bed etc. His evidence about his difficulties in rising in the morning, as he needed to stretch his limbs and gather his strength, and on bad days he needed his partner to come over to assist him to get out of bed, was supported by both Ms Darby and the written witness statement of his previous partner and as to the need to stretch, Ms Bochkoltz. I will come back to some of his evidence when I look at the individual heads of loss that he claims.

32. Ms Angela Wilson made witness statements dated 21 June 2022 and 16 February 2023. She gives evidence about Mr Wilson's childhood, his criminal record, his work record and his health before the index attack, his rehabilitation and condition after the attack before his release from prison, his accommodation and his current problems. She also addresses the care and assistance that she and other family members and partners have given to Mr Wilson. She appeared to me to be an entirely honest and credible witness and I accept her evidence.

33. Mr Tom Barclay, Mr Wilson's case manager since 2020. He has a background as a physiotherapist. He filed witness statements dated 21 June 2022 and 13 February 2023. I found him to be a thoughtful, professional and straightforward witness, both credible and reliable, and I accept his evidence.

34. Ms Rachel Derby filed a witness statement dated 19 April 2024, specifically addressing the video surveillance evidence. In it, she described how Mr Wilson struggled with his mobility indoors and outdoors, and when he was indoors, he was usually holding onto something for support, including the walls, when walking around the flat, and outdoors he would use the car for support, hold onto the top of the car door and roof, and put all his weight on his right leg while using his arms to lower himself in. That is exactly what the videos show. She attended court and was cross-examined. She was unshaken about this in cross-examination. She described how he kept a stick in the car so that he always has one when needed, and how he could access the stairs to and from her flat alright, with a bit of a struggle, although he is slow. This accords with Mr Wilson's evidence. She described Mr Wilson as someone who smokes cannabis and drinks occasionally, commenting "*He's not a drinker*". She said that in the past couple of months he would stay at his flat during the week, and they would meet on weekends, but that when he was having a bad day she would go over to his flat and help get him out of bed in the morning, after her young son had gone to school. She said that was not every day. It was put to her that she had not said that in her witness statement, but her witness statement was only permitted to address the surveillance video. It was put to her that she was a liar, and she denied it. I found her very straightforward and I accept her evidence as both credible and reliable.

35. Ms Sally Jayasegaram, who has known Mr Wilson as a family friend and neighbour from childhood, and employed him from time to time when he was a teenager, filed a witness statement dated 22 June 2022 but she was not required to attend at Court as the Defendant had no questions for her. Her evidence is unchallenged. She says that Mr Wilson was a polite, fit and healthy young man who she paid cash in hand to do odd jobs for her such as gardening. She described him as the best gardener she ever had, meticulous and thorough with his work. She lost contact with him when he moved away some years before the index attack.

36. Ms Darcy O'Brien, who is Mr Wilson's ex-partner, filed a witness statement dated 24 June 2022 but did not attend at Court as expected, so her evidence could not be tested in cross-examination. To the extent that her evidence accords with that of Mr

Wilson, Mrs Wilson or is supported by contemporaneous documentation, I give it some weight.

37. The Defendant relies on the evidence of Ben Murray, a legal services investigator who took the video surveillance videos of Mr Wilson. He filed a witness statement dated 25 February 2024, Mr Murray introduces the video surveillance evidence and in his witness statement gives his description of what he believes they show, but I am able to watch it for myself and it is the medical experts' opinions about what it shows which are of relevance to the issues I have to determine, so I give those descriptive parts of his witness statement no weight. I accept his evidence about how it came to be filmed, which is unchallenged.

Expert witnesses

38. The following are the experts in the case:

Area of Expertise	*Claimant's expert*	*Defendant's expert*	*Date of Joint Statement*
Spinal	**Mr Fahed Selmi** MBBS, FRCS (Neurosurgery) **Consultant in Spinal Cord Injury**, Northwest Regional Spinal Injuries Centre, Southport Report 24 May 2022 Supp. Report March 2023 2nd Supp. Report April 2024	**Mr Naveen Kumar**, MBBS, D Orth, DNB (Tr & Orth), MRCS (Edinburgh), Senior FEBPRM (Europe), FRCP (Edinburgh) FRCP (London), FRCS (Glasgow), FRCS (Edinburgh) **Consultant in Spinal Cord Injury**, Midland Centre for Spinal Injuries, RJAH Orthopaedic Hospital Gobowen, Oswestry Report November 2022 Supp. Report 10 April 2023	5 July 2023 (NB Mr Selmi's Supp. Letter to the joint statement of 7 July 2023, Mr Kumar's Supp. Letter to the joint statement of 20 July 2023)

		2nd Supp. Report 6 March 2024	
Psychiatric	**Dr Parashar Ramanuj**, MBBS, BSc (Hons), MRCPsych **Consultant Psychiatrist and Clinical Lead**, London Spinal Cord Injury Centre, Royal National Orthopaedic Hospital, Stanmore Report 12 April 2022	**Dr Mujtaba Husain**, MBBChir, MA (Hons) Cantab, MRCPsych **Consultant Liaison Psychiatrist and Associate Medical Director**, South London and Maudsley NHS Foundation Trust Report 15 December 2022 Supp. Report 14 April 2023	May 2023
Pain	**Dr Jon M. J. Valentine**, MB, ChB, FRCA, FFPMRCA, FRCP **Consultant in Pain Medicine** (private practice since 2016) Report 11 April 2023	**Dr Neal D Edwards**, MBBS, FRCA **Consultant in Pain Management** No CV Provided Report April 2023	May 2023
Physiotherapy	**Ms Laura Bochkoltz**, MSc, Chartered Physiotherapist **Physiotherapist in Spinal Injuries**, The Royal Buckinghamshire Hospital Report 28 March 2023 Supp. report 17 April 2024	**Mrs Nicola-Jayne Keech**, MCSP, Chartered Physiotherapist **Senior Community Physiotherapist**, Luton and Dunstable NHS Trust Report 20 March 2023 Supp. report 19 April 2024	4 August 2023

Care/ Occupational Therapy	**Ms Emma Way**, BSc Occupational Therapy **Occupational Therapist and Case Manager**, private practice since 2007 Report September 2023 Supp report 16 April 2024	[The Defendant previously instructed **Mr Renz Lenfield** who produced a report and a joint statement with Ms Way, but no longer relies on his report]	October 2023
Accommodation	**Mr James P Nocker**, BSc (Hons) Surveying, CUEW **Surveyor** at William Martin Property Consultants Ltd Report September 2023 Supp. report 17 April 2024	**Mr Nigel Charles Burton**, CIOB, MAPM, MAPS, MCMI **Surveyor** at Idapt LLP Report September 2023 Supp. report 1 March 2024	October 2023
Urology - Single Joint Expert	**Mr P J R Shah MB ChB FRCS** Honorary Consultant Urological Surgeon, London Spinal Injuries Centre at the Royal National Orthopaedic Hospital, Stanmore Honorary Associate Professor, University College London Report February 2024	**Pt 35 Questions asked on 12 April 2024 and answered on 16 and 22 April 2024.**	

Assessment of the experts

39. I heard oral evidence in Court from the SCI experts, physiotherapy experts, pain management experts, accommodation experts and Mr Wilson's care/OT expert. The parties agreed that the psychiatric experts and the single joint urology expert were not required to give oral evidence.

SCI experts

40. Both Mr Selmi and Mr Kumar attended Court, were cross-examined and re-examined.

41. I found Mr Selmi to be a good witness. He was thoughtful, careful and considered and took account of all the evidence before him, including his examination of Mr Wilson, what Mr Wilson told him, the medical records, the reports of the other experts and the video evidence, including a video taken by Mr Wilson's expert physiotherapist Ms Bochkoltz and the covert video surveillance. In the joint statement it can be seen that he shifted his position on occasion after speaking with Mr Kumar, and was able to justify why he did so in oral evidence. After the joint statement he gave further consideration to Mr Wilson's likely life expectancy and agreed with Mr Kumar's opinion, which has been reflected in the further updated schedule of loss and reduced it from the updated schedule of loss by just under £1.4m. This is consistent with my assessment of him as a thoughtful and independent expert who understood his duties to the Court, including his duty in PD35 paragraphs 2.1, 2.3 and 2.5, in my judgment.

42. Mr Wheeler for the Defendant criticised the change in Mr Selmi's evidence about Mr Wilson's likely future physical deterioration between his first report and his second report, which I will set out further below, but I accept Mr Selmi's evidence that in his first report he set the ages for different phases of deterioration at generic levels for a patient who had the particular spinal injury that Mr Wilson has, whereas at the time of his second report he had more information about Mr Wilson, and in particular more evidence about his reluctance to use walking aids, such as to give rise to concerns about functional overload causing accelerated deterioration, which enabled him to give a more considered opinion. I do not accept the Defendant's

submission that there was insufficient evidence to support that change in his opinion. There was, as Mr Selmi explained.

43. Mr Selmi also made errors in the prognosis section of the joint statement of 5 July 2023 which he corrected immediately by a supplemental letter to the joint statement of 7 July 2023. He explained in cross-examination that he had wrongly imported some details from another report, not related to Mr Wilson, and that had arisen because he was working on lots of reports at the same time. The Defendant submits that this was not a credible reason, given that Mr Selmi said he had typed his sections of the joint statement himself and other sections of report are clearly referable to Mr Wilson. Mr Wheeler for the Defendant asks me to find that this was a considered piece of writing. I decline to do so because he did not put it to Mr Selmi that he was lying about this, so he has had no opportunity to answer the charge and because in my assessment Mr Selmi was an honest witness who was telling the truth about this. Mr Selmi's explanation that the wording had come from another report is unfortunate, but easy to understand given that both Ms Bochkoltz and Mr Kumar had made the same type of mistake in reports of their own in this case.

44. I found Mr Kumar to be a partisan witness who, unusually, agreed quite early on in his cross-examination by Mr Mooney with the contention that he had lost all independence and objectivity in this case. He initially agreed that part of his evidence (that he did not find Mr Wilson to have any balance or weakness issues) was wrong, and it was put to him by Mr Mooney that it showed he had a lack of objectivity and was advocating for the Defendant. Mr Kumar replied "*I agree. I have said he had impaired balance previously*". I asked Mr Mooney to put his point again to clarify what Mr Kumar was agreeing to, and Mr Mooney asked very clearly, "*When you look at that document* [being his report] – *that is you losing independence and losing objectivity, isn't it*?" to which Mr Kumar replied "*That is correct. I agree*." I then asked Mr Kumar whether he understood that he had just accepted that he had not provided independent and objective evidence in accordance with his Part 35 duties to the Court, and he said that he did.

45. Although Mr Kumar sought to resile from this in re-examination, saying *"I have tried to be an independent expert, I realised I made a mistake in talking about*

balance. I do not believe I have lost objectivity. I believe I have been an independent expert in my duty to the Court", I am satisfied that his earlier answers were the true and correct ones. Mr Mooney submits that Mr Kumar would say anything to slash the value sought by Mr Wilson in this case and although I would not put it in quite those terms, I am satisfied that Mr Kumar said and wrote quite a lot which was not justified on the evidence, or which was directly contradicted by the evidence, or by which he trespassed outside his area of expertise and/or into my judicial functions, or which amounted to argument and advocacy, and he did so because, in my judgment, he had lost sight of the fact that his first duty was to the Court, and was actively seeking to influence the Court to make a lower award to Mr Wilson than that which is justified.

46. A fairly full but not complete list of problematic evidence given by Mr Kumar includes the following:

i) Mr Kumar assessed Mr Wilson as having a "*motor score of 100/100 (normal) with mild sensory impairment"*, and so *"at the better end of T10 ASIA D incomplete paraparesis"* despite having seen the physiotherapists' reports by the time of the joint statement, and accepting in cross-examination that:

a) His only observation of Mr Wilson walking was *"a couple of metres"* from the front door to the lounge of his small flat;

b) He did not observe his outdoor mobility or see him shower, bath, get in or out of his car, or do any walking which made him fatigued;

c) He accepted that Ms Keech, the Defendant's expert physiotherapist, had made an objective assessment of Mr Wilson on 20 March 2023 in which she assessed him as tending to use furniture and walls for support, and that on an ongoing basis he may use walls and furniture to walk indoors on bad days and not need to do so on good days;

d) He deferred to Mr Wilson's physiotherapist in respect of Mr Wilson's outdoor mobility, and accepted that the videos of Ms Bochkoltz's outdoor assessment showed that Mr Wilson stopped three times for a

rest, which meant that Mr Wilson had a then-current need for a wheelchair or scooter for outdoor mobility;

e) He had failed to note in his report that Ms Bochkoltz found in her outdoor assessment that Mr Wilson's spasticity level increased as he mobilised, despite:

i) accepting this was not uncommon in patients with incomplete paraplegia; and

ii) accepting her finding.

ii) Mr Kumar recorded in his report under "*Mobility and Transfers*" that Mr Wilson told him that he did not use a wheelchair, although he had later quoted Mr Wilson in the same report as saying to him "*I use a wheelchair when I go shopping".* When this inconsistency was shown to him, he sought to argue that the earlier reference was to Mr Kumar himself not observing Mr Wilson using a wheelchair on the day of assessment, but was eventually forced to accept that section of his report was not qualified by reference to the assessment or Mr Kumar's observations. He also accepted that medical records and those of Mr Barclay show that Mr Wilson uses a wheelchair outdoors and for longer distances.

iii) Mr Kumar accepted in cross-examination that his statement in his report that "*I did not find [Mr Wilson] to have any balance or weakness issues"* was a mistake, given that he had consistently reported Mr Wilson as having poor balance due to his impaired sensation in his lower limbs and feet for light touch and pinprick and joint position (this was the point in cross-examination at which he admitted he had lost independence and objectivity) and that he accepted Ms Keech's assessment of March 2023 that Mr Wilson displayed an unstable gait and high risk of falling.

iv) Mr Kumar opined that *"[Mr Wilson] will need in his older years an electric scooter or manual wheelchair*" and signed-off on the further updated counter-schedule which provides only for an electric scooter from Mr Wilson's 60s, despite accepting: (a) that it would be reasonable for Mr Wilson to have a

wheelchair for safe outdoors mobility; (b) that he had in fact recommended an electric scooter at the time of his assessment; and (c) that he had sight of medical records and witness evidence from both Mr Wilson and Mr Barclay that Mr Wilson had been using a wheelchair for longer distances since he had been discharged from Askham to HMP Peterborough.

v) Mr Kumar wrongly criticised Mr Selmi, noting in his report *"that Mr Selmi revised his findings and concluded (in his report dated 24.05.22) that he found an MRC grade 4/5 weakness in the left ankle and normal power in all other muscle groups. He has since revised this and stated that he found an MRC grade 3/5 in left ankle dorsiflexion and 4/5 in hip flexion".* Mr Selmi denied that he had revised his findings, this was not put to Mr Selmi in cross-examination, and I accept that Mr Selmi did not revise his findings, as did Mr Kumar in cross-examination. As Mr Selmi says, he examined Mr Wilson only once on 23 October 2021 and found an MRC grade 3/5 in left ankle dorsiflexion and 4/5 in left hip flexion, as he recorded in the muscle chart which he attaches as appendix 1 to the joint statement, as well as sensory changes on his examination. Although Mr Selmi pointed this out to Mr Kumar after the criticisms in his first report, Mr Kumar did not attempt to correct himself in the joint statement (accepting in cross-examination that he should have done) or in correspondence.

vi) He accepted that he stepped outside his area of expertise (as he is neither a pain expert nor a psychiatrist), and made a mistake in stating in the joint statement that "*if the Court accepts the findings and opinions of Dr Edwards*" then Mr Wilson's spasticity has a "*non-organic (functional) element*" which is "*unrelated to the claim*". He accepted in cross-examination that he should have deferred to the expert psychiatrists and told the Court he "*did not mean to say*" that the spasticity was unrelated to the claim, which he accepted was not justifiable.

vii) Mr Kumar noted in the joint statement that Mr Wilson "*has no bowel issues*" in disagreement with Mr Selmi, despite noting in his own report of November 2022 that "*He has mildly impaired sensation in his bowels. He does not use suppositories, he takes Lactulose as and when needed. He is independent with*

bowel management". He sought to argue that he did not disagree with Mr Selmi in the joint statement on this point. I am satisfied he did.

viii) He relied on Dr Edwards describing the spasms as *"possible non-organic /functional spasms"* in the joint statement despite agreeing that he had himself, in his initial assessment, found that Mr Wilson had spasticity in his left leg and spasms. He confirmed in cross-examination that he did not find those spasms to be anything other than organic, saying *"I felt they were explained by the incomplete paraparesis. I did not find anything functional at the time of my assessment"*.

ix) Mr Kumar opined and advocated on matters relating to Mr Wilson's criminal record and its effect on his employability, despite accepting in cross-examination that he was not an employment expert, nor was he an advocate, and agreeing he should not have done so.

x) Following his review of the video surveillance evidence, Mr Kumar in his second witness statement:

a) Commented that Mr Wilson *"can walk unaided… all activities were unaided and without any support"* although this is not factually correct. Mr Wilson can be seen supporting himself on his car or his building while moving about, and can also be seen almost losing balance, as the physiotherapists and Mr Selmi agree. In getting in and out of the car, Mr Wilson can be seen using the car as leverage and for support and in one video can be seen bodily lifting his own leg into the car, as Mr Kumar accepted in cross-examination. In my judgment no reasonable, independent expert who watched those videos could fairly make such a comment. Mr Kumar accepted that the videos showed Mr Wilson moving slowly, using walls and the car for support, struggling with his mobility and losing balance, and that he did not include any of this in his commentary but should have done. He denied being selective in his commentary but I find that he was.

b) Notes Mr Wilson's car seen on the videos as not having an MOT. I do not know why he, as an SCI expert, would comment on the MOT status

of Mr Wilson's current vehicle as it has no possible relevance to Mr Wilson's spinal injury. He agreed in cross-examination that he should not have done so.

c) Refers to "*Facebook posts which all show that [Mr Wilson] is much more active and remains independent with all aspects of [daily living] since my assessment on 4.9.2022*". The Facebook posts referred to, in my view, show almost nothing at all. Mr Kumar admitted in cross-examination that he should not have commented on them and that they do not show that Mr Wilson is "*independent of all aspects of daily living*".

d) Opines that Mr Wilson "*is exaggerating his disability which is factually negligible (AIS total motor score of 100/100 based on my assessment)…*". I pause to note that it has never been suggested by any of the treating professionals or other experts in this case that Mr Wilson has or may have exaggerated his disabilities, and Mr Wheeler quite properly did not put this suggestion to Mr Wilson in cross-examination. In cross-examination Mr Kumar apologised for this opinion which he says he should not have offered.

47. Pursuant to CPR 35.3, the duty of an expert to help the Court on matters within their expertise overrides any obligation to the person who instructs or pays them. CPR 35.10 states that an expert's report must comply with the requirements set out in PD 35. PD 35 is explicit in, *inter alia*: para 2.1 that expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation; para 2.2 that experts should provide objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate; and para 2.3 that they should consider all material facts, including those which might detract from their opinions. I am satisfied that in providing the evidence summarised above, Mr Kumar has breached these duties.

48. As Cotter J stated relatively recently in *Muyepa v Ministry of Defence* [2022] EWHC 2648 (KB) at [284]:

> "Experts should constantly remind themselves through the litigation process that they are not part of the Claimant's or the Defendant's "team" with their role being the securing and maximising, or avoiding and minimising, a claim for damages. Although experts always owe a duty to exercise reasonable skill and care to those instructing them, and to comply with any professional code, as CPR35.3 expressly states, they have, at all times an overriding duty to help the Court on matters within their expertise. That they have a particular expertise and the court and the parties do not … means that significant reliance may be placed on their analysis which must be objective and non-partisan if a just outcome is to be achieved in the litigation."

49. Mr Wheeler submits that Mr Kumar is experienced and distinguished in his field, and I should not allow the concessions he made to cause me to dismiss all of his evidence. I disagree. In my judgment to place any significant reliance on Mr Kumar's non-objective and partisan evidence would be to risk an unjust outcome in this case. I place no weight at all on Mr Kumar's second expert report. Where the SCI experts indicate that they disagree in the joint statement, I accept Mr Selmi's evidence as it is the only independent expert evidence on which I can safely rely.

Physiotherapy experts

50. Ms Bochkoltz is a specialist-chartered physiotherapist with expertise in the field of SCI. She is based at the Royal Buckinghamshire Hospital but previously worked at Neurokinex, an active rehabilitation centre for SCI, the London Spinal Injury Centre at the Royal National Orthopaedic Hospital and the National Spinal Injury Unit at Stoke Mandeville Hospital. She assessed Mr Wilson on 23 August 2022 at home, and had a further telephone conversation with him on 30 August 2022 before preparing her report. She carried out a number of physical assessments, including a 10 metre timed walk and a 6 minute walk in a car park, which she videoed, and which was played in Court. I found her to be a highly impressive witness, with a good understanding of Mr Wilson's condition and physiotherapy needs and good insight into his challenges and psychological barriers, both of which she was able to explain and articulate effectively for the Court.

51. Ms Keech is a Senior Community Physiotherapist specialising in Neuro-Physiotherapy, working with adult and paediatric clients with complex needs arising from birth injuries, traumatic events, and medical negligence including brain injury,

SCI, neuro-developmental disability and amputation in both domiciliary and community settings. She attended Court and was cross-examined. In cross-examination she said that she had not worked in a specialist in-patient facility, virtually all her work was in community settings, about 60% was with clients with SCI, and her clients were very varied, with a range of psychosocial difficulties. She said that she had more experience than Ms Bochkoltz of community based physiotherapy and Ms Bochkoltz had more experience of in-patient settings.

52. Ms Keech visited Mr Wilson at home on 19 January 2023 with another physiotherapist colleague and carried out functional and physical objective assessments. She confirmed in cross-examination that she observed him on his bed, sitting and walking up and down in the confined space of what she described as his "*very small flat*". She agreed that was only a short distance. She did not see him walking outdoors on her visit and at this point had not seen Ms Bochkoltz's report.

53. Nonetheless, when she met with Ms Bochkoltz and produced a joint statement there was a very large measure of agreement between them. Once again, her view changed in the expert report she wrote after seeing the video surveillance evidence. I deal with that later evidence below, but I am satisfied that is flawed, and for that reason I prefer Ms Bochkoltz's assessment of what it shows. On balance, where Ms Bochkoltz and Ms Keech are in dispute, I prefer the evidence of Ms Bochkoltz.

Pain experts

54. Both pain experts attended Court and were cross-examined. Mr Wheeler had few questions for the Claimant's expert, Dr Valentine who was a thoughtful, careful witness who was unshaken in cross-examination. Dr Edwards similarly had a short time in the witness box with few questions from Mr Mooney, but that was because most of the points of disagreement which were identified in the joint statement of the pain experts really dissipated as he gave his oral evidence, as I will come to describe.

Care/OT expert

55. Ms Way attended court and was cross-examined. She assessed Mr Wilson on 3 December 2021. Her cross-examination by Mr Wheeler was focussed on whether

she considered that Mr Wilson's presentation in the video surveillance indicated an improvement compared to what she saw in her assessment. She said that she was not able to say one way or another, due to the variability in his presentation generally, with some days better than others (with which the SCI experts and physiotherapy experts also agreed), the short timescale of the video clips and the short distance he walked in them. She said that her assessment showed him as able, in part, as in the videos, she did not think the videos showed evidence of spasm in his leg or body, but felt he may not have been fatigued or in particularly high pain at that time that he was under surveillance. Her view was that when she assessed Mr Wilson he did not hold onto furniture or walls all the time when walking, but variably, sometimes using a light touch and sometimes heavy, and the video surveillance did not necessarily show improvement in that regard. I found her to be a professional, straightforward, credible and reliable witness.

Accommodation experts

56. Both Mr Nocker and Mr Burton attended Court and were cross-examined. There were very few questions for Mr Nocker who was a good witness, professional and careful, in my assessment. Mr Burton was subjected to cross-examination in particular on his supplemental report produced after a joint report in which he and Mr Nocker had largely agreed, and he emerged out of that cross-examination with his credibility and independence significantly damaged, as I will come to explain. I place little weight on that supplemental report but do give weight to his initial report and contribution to the joint statement.

IV. Expert evidence

Psychiatric experts

57. As mentioned, the psychiatric experts did not attend court to give evidence. They agreed, so far as is relevant:

    i) Mr Wilson was diagnosed with ADHD in childhood for which he had been treated with methylphenidate;

ii) His ADHD has persisted into adulthood and manifests as difficulty maintaining attention and impulsivity;

iii) He developed a history of recurrent depressive disorder in his adult years, being treated for episodes of depression in 2015 and 2016 with anti-depressant medication;

iv) He had a history of cocaine use from his adolescence which developed into a cocaine dependency in his mid-20s, using crack cocaine but not intravenously. He also used cannabis regularly from adolescence, but this did not develop into a dependency;

v) He is in full remission from his cocaine dependence, but continues to use cannabis socially on a regular basis, though less than before. I pause to note that this is a matter for factual finding by the Court, and not for these experts. However having heard Mr Wilson's evidence and that of Ms Darby, I do make such a finding;

vi) He has previously been diagnosed with a Dissocial Personality Disorder but there is insufficient evidence to fulfil the diagnostic criteria for a personality disorder. Dr Husain considers that Mr Wilson may have Dissocial Personality Traits, Dr Ramanuj considers that it is difficult to disentangle the effects of personality from ADHD;

vii) Mr Wilson has developed PTSD following the index event, re-experiencing the assault in the form of nightmares and intrusive memories, avoiding knives and kitchens and feeling anxious and on edge when leaving the house. He would not have developed PTSD but for the index event;

viii) He has experienced a prolonged period of emotional adjustment in reaction to the physical injuries sustained in the assault and during adaptation to the SCI which he would not have experienced but for the index event;

ix) He has depressive symptoms (although they disagree about whether these amount to a depressive disorder). Irrespective of the diagnosis, his depressive symptoms place a significant burden on him;

x) The index event has not affected Mr Wilson's ADHD;

xi) Mr Wilson's motivation to engage in physical treatments can be impacted upon by his psychological conditions (low mood and PTSD) and as such are a significant barrier to the management of his physical injuries;

xii) He needs greater support and care for his functional and physical impairments than he would in the absence of his psychiatric problems;

xiii) He is unable to leave his house on his own or be in his house for prolonged periods of time on his own;

xiv) Family and partners provide a great deal of emotional, as well as practical, support to Mr Wilson. The demands of caring for him, practically and emotionally, place a great strain on his relationships, many of which have broken down as a result. These relationships are important for his psychological wellbeing and there would be a greater need for specialist input, care and support without them. The psychiatric experts defer to the care experts to quantify the level of care and support he would require absent the informal care he receives;

xv) In relation to employment, Mr Wilson's ADHD impacted adversely upon his employment capacity before the index event, as he was able to find, but not sustain, employment. His added psychiatric conditions since his injury adversely affect his ability to find meaningful work now. He would not be able to maintain concentration in sedentary jobs and his anxiety would prevent him from working in public-facing roles. As such, he is disadvantaged on the open labour market;

xvi) Mr Wilson has had appropriate psychological and pharmacological therapy for his PTSD for an appropriate length of time;

xvii) He has not received appropriate assessment or management of his adult ADHD symptoms;

xviii) His ADHD, though preceding the index event and not exacerbated by it, complicates the treatment of his other conditions and specialist assessment and

treatment of his ADHD is recommended before management of the other conditions associated with the index event;

xix) Once his ADHD has stabilised he should have further psychological treatment of his PTSD in the form of trauma-focussed CBT or EMDR principles as recommended by NICE;

xx) Mr Wilson has only had a partial response at best to Sertraline to treat PTSD, which can also help low mood and wider anxieties. He would benefit from specialist psychiatric assessment and treatment to optimise pharmacological management of his psychiatric conditions;

xxi) After treatment of his ADHD and PTSD he is likely to require further blocks of psychological therapy to help him emotionally adjust to his injuries, which should follow CBT or Acceptance and Commitment Therapy principles;

xxii) It is difficult to predict the longer-term prognosis of Mr Wilson's psychiatric conditions as much depends on his response to ADHD treatment;

xxiii) A resumption by Mr Wilson of psychoactive substance dependence would complicate treatment further and diminish his long-term prognosis. He is at high risk of developing dependence on prescribed medication, especially for management of his pain. His pain treatment should be very closely monitored by a pain specialist in collaboration with a psychiatrist with expertise in addiction medicine.

58. I accept their agreed evidence. The psychiatric experts have differences of opinion on the following:

i) Dr Husain considers Mr Wilson is suffering from a depressive disorder of mild-moderate severity. Dr Ramanuj considers Mr Wilson's significant low mood to be a function of his difficulties adjusting to his injuries. Dr Husain considers that in the absence of the index accident Mr Wilson would have continued with a history of recurrent depressive disorder in any event, and that the index event has exacerbated his depressive episode by impacting his sense of self, negatively affecting his self-esteem. As set out above, whatever the

diagnosis, they agree it provides a significant burden on Mr Wilson so this is a difference of opinion which I do not feel requires a factual determination;

ii) Dr Ramanuj considers that Mr Wilson would benefit from peer support as provided by charities that work with people with SCI such as the Spinal Injuries Association and the BackUp Trust. Dr Husain does not express a view, but given that he has agreed on the importance of Mr Wilson emotionally adjusting to his injuries, I accept Dr Ramanuj's opinion, which is supported by Mr Selmi, Mr Wilson's spinal injuries expert;

iii) Dr Husain considers there is scope for further improvement in Mr Wilson's mental health but that is likely to be slow. Dr Ramanuj contends that treatment of Mr Wilson's PTSD is at a critical point and the longer it endures, the less amenable it will be to further therapy. I do not think that this is a material disagreement as both seem to be saying that further improvement is possible, but slow and difficult. Dr Ramanuj provides a more detailed explanation for Mr Wilson's challenges in achieving further improvement. He opines that in addition to Mr Wilson's ADHD hindering the benefit he finds from therapy, his inability to discuss the index event without a high degree of anxiety is a poor prognostic sign. Dr Ramanuj notes evidence from longitudinal trials of PTSD that demonstrates that PTSD which persists for longer than 6 years is at high risk of becoming treatment-resistant. Dr Ramanuj considers that Mr Wilson's further emotional adjustment to his injury depends on whether his PTSD symptoms resolve or endure and whether his dependence on prescribed or illicit substances can be ameliorated. I accept his evidence.

Consultants in Spinal Cord Injury

59. Mr Wilson's SCI expert, Mr Selmi, examined Mr Wilson in October 2021 a few months after he was released from prison and after he had started twice-weekly physiotherapy and hydrotherapy sessions. He found reduced muscle power in Mr Wilson's left lower limb. He found Mr Wilson using the furniture and walls to mobilise indoors, with occasional indoor wheelchair use, and a stick outdoors. He found Mr Wilson had difficulty with transfers and getting in and out of a car. He

reviewed updated medical records and witness statements in the case, but did not examine him, before writing his updated expert report of March 2023.

60. The Defendant's expert Mr Kumar examined Mr Wilson in September 2022, after Mr Wilson's 4-week residential rehabilitation programme at the Royal Buckinghamshire Hospital which Mr Wilson felt had caused a *"real improvement"* in his physical symptoms. Mr Kumar found full muscle power in all mytomes. He found Mr Wilson to be walking independently indoors without walking aids and not relying on furniture/walls, but noted *"his walking is slow, he has an unsteady gait, he has had falls"* and *"he has mild focal spasticity in his ankle"*. He found Mr Wilson to be fully independent with transfers and mobility. He noted that Mr Wilson told him that he had improved *"and was still improving"*. He described Mr Wilson as *"substantially better than the average T10 AIS D paraparesis patient"* and predicted that he would continue to improve, stating *"he is likely to maintain a greater degree of independence with the further passage of time"*.

61. In their joint statement, the consultants agreed that:

i) Mr Wilson sustained serious stab injuries to his spine and partial injury to his spinal cord as a result of the index knife attack;

ii) the spinal injury was a Thoracic T10 incomplete ASIA D spinal injury;

iii) his spine is stable;

iv) his disability is permanent, and he is unlikely to make any neurological recovery;

v) his life expectancy has been reduced, and since the joint report has been agreed at 70.9;

vi) the risk of development of a syrinx is 'very negligible' (Mr Kumar puts it at 0.25%);

vii) he is not at risk from Autonomic Dysreflexia;

viii) there are no likely respiratory and cardiovascular complications as a direct consequence of the index event;

ix) the SCI has resulted in increased tone and spasms in the muscles below the level of paralysis on the left side (but disagree on the level of increase, see below);

x) he suffers from musculoskeletal and neuropathic pain in the back and left leg requiring care by specialists in pain management and medication. They defer to the pain specialists in relation to such care;

xi) he has neurogenic bladder dysfunction in the form of urgency hesitancy and incontinence. They agree he will need lifelong regular urinary surveillance, and he needs regular Cialis to support his erectile function;

xii) he has impaired sensation along the left leg and buttock;

xiii) he needs access to chiropody, suitable care, equipment and surgical treatment for complicated pressure sores;

xiv) he should be enabled to purchase from the private sector the shortfall in his follow-ups and hospital admissions for a variety of ad-hoc reasons as the NHS cannot always meet his needs;

xv) he needs a yearly follow-up, but they differ on the extent of the follow-up required;

xvi) he needs lifelong access to physiotherapy and is unlikely to receive all that is required through the statutory services. They defer to the expert physiotherapists;

xvii) as Mr Wilson uses aids and appliances for the routine aspects of daily living, he will require lifelong access to an occupational therapist. They defer to the expert care /occupational therapist for his future needs;

xviii) he has psychological/psychiatry needs and they defer to the expert psychiatrists for his immediate and future support;

xix) his present accommodation is not suitable and they defer to the accommodation experts for his needs;

xx) holidays and recreational activities will involve additional expenditure above that of an able-bodied person, and he will require reasonable care and support. They defer to the care and occupational therapy expert as to how this can best be provided.

62. The areas of dispute identified in the joint statement are set out below. In relation to each of them, because of my concerns about Mr Kumar's lack of independence, I accept Mr Selmi's opinions which I set out below:

i) In relation to Mr Wilson**'s level of disability arising from the SCI**. Mr Selmi's opinion is that Mr Wilson has limited upright mobility due to residual weakness, pain and spasms in the left leg, which affects his walking, and he has to use support of walls and furniture indoors and a walking stick for short distances outdoors, especially on uneven ground. For longer distances he needs to use a wheelchair because of his left leg fatigue, poor balance and risk of falls. This is also the evidence of the physiotherapists in their initial reports and joint statements, it is Mr Wilson's evidence and it is supported by the evidence of his lay witnesses in particular Mr Barclay and Ms Darby. Mr Selmi's opinion is that on the balance of probability, his upright mobility will start to deteriorate in 5-10 years, due to increased pain and arthritis in the lower limb joints, when he will be dependent on other mobility aids such as crutches or a walking frame and later a wheelchair indoors. In cross-examination he confirmed that he meant 5-10 years from the index event, and said that has been borne out, because the Claimant is currently experiencing hip and knee pain, and walking with a stick outside and using a wheelchair for longer distances.

ii) In relation to Mr Wilson's **muscle spasticity**, the extent of the increased tone and spasms that they agree he has on the left side. Mr Selmi puts this on the Ashworth scale at 3/5.

iii) In relation to prognosis, Mr Selmi opines that Mr Wilson would at present benefit from some combination of **personal care and buddy support** to supervise and help with activities of daily living. In his letter of 7 July 2023 correcting an error in paragraph 15 of the joint statement dated 2 days earlier,

he says that in his opinion as an incomplete ASIA D spinal cord injury with left leg weakness and spasms causing an altered upright mobility and gait, Mr Wilson is at greater and earlier risk of developing complications with the lower limb joint problems and spinal degenerative changes as opposed to someone with a more complete injury, from trying to maintain his function. He says that it is anticipated that most complication from an incomplete ASIA D spinal court injury will start to manifest within 5-10 years following the incident with additional need for increased support and care. In cross-examination he said that this is particularly the case as Mr Wilson is *"not consistently using mobility aids now".* As I heard from Mr Wilson himself, he is determined to walk and do as much for himself as possible without mobility aids, and only uses a wheelchair when he considers it necessary. Mr Selmi said *"he doesn't like them* [mobility aids]*, but that's what he needs"*. Mr Selmi explained that with Mr Wilson's greater functional improvements achieved at, for example, his residential stint at Royal Hospital Buckinghamshire, he was walking longer but not properly. He was walking on abnormal muscles and overloading his lower limbs. The more active he was, the more likely he was to have overuse syndrome. If he were to use his mobility aids consistently, he said, that might help prevent loading on his joints and slow his deterioration. His opinion is that the effects of ageing will also manifest earlier at age 40 – 45 and become more profound in Mr Wilson's case as compared to more complete SCI or a similar individual in the general population. He says that at this stage there will be a deterioration in Mr Wilson's physical and functional abilities, requiring more help with personal care and activities of daily living and equipment. He opines that this will get progressively worse so that Mr Wilson will require mobility aids indoors and support with day to day activities and adaptations, at 55 years of age, due to complications of the SCI and further deterioration in his mobility. In his opinion, from 60 years of age Mr Wilson is likely to require 24 hours support and full-time use of a wheelchair for mobility both indoors and outdoors with difficulty with transfers and help with personal care and likely skin care at night. I accept this prognosis in its entirety.

iv) In Mr Selmi's opinion Mr Wilson has **irregular bowel sensation and movements** and continues to use laxatives. This has also been noted by, inter alia, the single joint expert urologist Mr Shah.

v) In relation to **transfers**, Mr Selmi's opinion is that due to residual weakness, pain and spasms in the left leg, Mr Wilson has difficulty bending, which makes getting up out of low chairs and toilet seats difficult without support. He has a special recliner chair and profiling bed to help get in and out. He notes that Mr Wilson says he experiences difficulty getting in and out of his car and getting in and out of the bathtub at his girlfriend's house. Mr Wilson's evidence about his issues getting out of low chairs and his bed was supported by the care/OT expert, physiotherapists and Mr Wilson's current partner Ms Darby and I accept it. I do note that Mr Wilson says he does not need to use the specially raised toilet seat however.

vi) Mr Selmi believes that Mr Wilson is vulnerable to develop **skin complications** including injury along his left leg and buttock. His opinion pre-dates the opinion of the single joint urology expert and is supported by it.

vii) Mr Selmi states that **follow-ups** should include a multidisciplinary team assessment and investigations. This is also the view of the pain experts, particularly Dr Edwards who was vocal on the point in cross-examination, and Ms Bochkoltz.

viii) In respect of **employment**, Mr Selmi's opinion is that Mr Wilson will be unable to undertake any form of physical or manual work, but may be able to do some sedentary part time work, which leaves him significantly compromised in a competitive employment market. On the balance of probability, he believes it is likely that Mr Wilson will not be able to undertake any form of consistent renumerated employment or work. This is also the view of the psychiatric experts and I accept it.

63. The SCI experts have seen the surveillance footage from January and February 2024. I have already set out my view of Mr Kumar's supplemental report dealing with this footage, and why I give it no weight.

64. Mr Selmi in a supplemental report dated April 2024 opines that, inter alia: video ET01 *"clearly demonstrates"* that Mr Wilson *"has a spasm in his left leg and is stood on his right leg with the left leg flexed and has difficulty sitting in his car"*; that in ET03 Mr Wilson supports/holds himself on the rear of the car while walking around the back of it to get to the driver's side; ET04 shows him *"walking with a limp due to the left leg weakness"* and supports himself with the front of the car until he gets to the driving seat; he walks with a limp in videos ET05 and ET07; and in ET06 turns around to enter his flat *"with a limp and circumduction of his left leg"*. He says this shows that Mr Wilson has a limp when walking due to weakness and increased tone in the left leg and circumduction of the left leg, and using the car for support which is equivalent to using the wall and furniture indoors. He says that video ET07 shows a good day and ET01 a bad day. He notes that none of the videos show him walking more than a few steps where he would have to use a walking aid/stick. The video surveillance evidence does not, he says, change his opinion of Mr Wilson's physical difficulty and present and future needs. This evidence was not challenged in cross-examination.

Physiotherapist Experts

65. Ms Bochkoltz assessed Mr Wilson on 23 August 2022 when she took a video of Mr Wilson completing a 6-minute long walk which was played in open court. This was about 2 months after his beneficial 4-week outpatient intensive therapy at the Royal Buckinghamshire Hospital in June 2022. In my judgment it is valuable evidence of his mobility at that time, and there is no dispute between the various experts (physiotherapist, SCI, pain) that it shows a significant deterioration in Mr Wilson's walking pattern the longer he walks. In particular, as Ms Bochkoltz noted in her report, he walks with a stick to stabilise himself, and although he can initially control his left leg and flex it when stepping forwards, as he became tired he lost control of his left leg and his spasticity level increased leading to reduced speed, increased asymmetry in his walking pattern, loss of balance and increased difficulty in walking. He stopped three times to rest, lost concentration and focus, and only completed it, in my view, with Ms Bochkoltz's constant encouragement and coaching.

66. Ms Keech assessed Mr Wilson on 19 January 2023. This was 4 months after the examination of Defendant's spinal injury expert Mr Kumar, however like him Ms Keech found Mr Wilson to have a 100/100 motor score. However she, like Ms Bochkoltz, did more extensive mobility testing than the spinal injury experts did. In the section of her report entitled "Objective Assessment", she described Mr Wilson in the following terms:

> "Mr Wilson is independently mobile both at home and out in the community. At home, he tends to use the furniture and walls for support, but uses a stick to support his walking outdoors, and has a self-propelled wheelchair for longer distances, however he advises that he would prefer not to use this. His walking distance is limited, although he reports that he can achieve 15 minutes on a treadmill. Mr Wilson's gait pattern is unstable, and he is at high risk of falling. He is able to take steps unaided, without his stick, but is unsafe in doing so. He has reduced heel strike on the left, with significant clonus and increased tone into plantarflexion during the stance phase of his gait pattern. He fixes his knees into extension and circumducts his lower limb to achieve foot clearance, which is more evident on left tha[n] the right. He appears to do this in order to avoid knee flexion, which brings on increased lower limb spasms. He has fallen numerous times previously, once injuring his thumb. During the assessment he demonstrated that he is able to get himself back up from the floor if he were to fall. Mr Wilson has reduced static and dynamic balance, as well as reduced proprioception".

67. In their joint statement, the physiotherapy experts agree:

i) that Mr Wilson presents with a T10 incomplete ASIA-D SCI following the index assault, which have resulted in physical difficulties and PTSD. He also presents with ADHD, diagnosed prior to the index assault, which impacts upon his behaviour engagement and function;

ii) his SCI has had an impact on his mobility and his balance, walking speed and distance is now significantly impaired. This has resulted in negative impact upon his daily living activities, and he is no longer able to walk long distances or run. Neither have seen him using stairs, but they anticipate that accessing stairs is also likely to be difficult for him and pose an increased risk of falls;

iii) the findings of their respective assessments of Mr Wilson were broadly similar, except for discrepancies within the results of lower limb muscle

strength testing. They do not consider that these impact upon their recommendations. For completeness, Miss Keech for the Defendant documented that although he had some weakness in his left lower limb compared to his right, he still had 5/5 strength on both sides when tested using the Oxford Muscle strength scale, indicating that he was able to move his legs against resistance throughout the range. Miss Bochkoltz's findings caused her to score the muscle groups around his left hip, knee and ankle between 2/5 and 4/5. In her opinion, if Mr Wilson had full muscle power (5/5) he would not present with such an asymmetrical walking pattern and would be able to overcome/counteract his levels of spasticity, and his mobility would be less impaired as a result. Ms Keech notes that Mr Kumar and Mr Selmi also found discrepancies within their objective muscle testing findings;

iv) the physiotherapy provided in the community and at the Royal Buckinghamshire Hospital was appropriate, although Mr Wilson only attended approximately 50% of the sessions offered to him. They appear to agree that his PTSD and ADHD are likely to contribute to his difficulties in engaging in physiotherapy provision;

v) he has benefitted from physiotherapy provided during inpatient rehabilitation stay at Royal Buckinghamshire Hospital, but did not sustain these improvements following discharge despite access to physiotherapy in Benfleet;

vi) he has undergone a Keeogo trial and was booked into a Mollii suit trial that he did not attend. Ms Bochkoltz supports these assessments, Ms Keech does not recommend these pieces of equipment and so does not support the assessment costs incurred. In relation to Keego, both agree that it does not provide Mr Wilson with extra assistance to his walking. They agree that on the balance of probabilities, the Mollii suit and drop foot simulator are not likely to have a significant impact on his walking pattern;

vii) Mr Wilson will require lifelong access to neuro-physiotherapy, with increased provision in the first 12 month period in order to optimise his recovery and transition him from clinic-based physiotherapy to a community based

approach with a focus on land and water gym-based exercise and supported self-management. This should be based on 30 sessions of physiotherapy and 94 sessions of personal training in Year 1;

viii) he will require maintenance input over the rest of his lifetime to oversee a community-based exercise programme and address any future issues of need as they arise;

ix) he needs therapists that he can trust and that can manage his complex psychological presentation as well as his physical disability, being in Year 1:

a) a local physiotherapist with experience in neuro-disability at a cost of £185 per session plus travel (being an average of the recommended costs of both experts in their reports);

b) a musculoskeletal physiotherapist at £50 per session; and

c) a personal trainer at a cost of £45 per session;

x) he needs two "BackUp" wheelchair skills courses in Year 1 to improve his wheelchair mobility, independence and safety at a total cost of £700;

xi) from Year 2 until end of life, he would largely be able to self-manage his condition via gym/pool based exercise with intermittent reviews from a physiotherapist and personal trainer to review and advise as he ages. They agree the reviews and sessions set out at page 6 of their joint report;

xii) he should be reviewed by a multi-disciplinary therapy team specialising in spinal cord injuries as he ages. Ms Bochkoltz recommends 2 weeks every three years as an outpatient at a specialised centre until aged 55 and as an inpatient after 55 years. Ms Keech considers that this is above what is reasonably required. Her view is that this is mainly a medical need and is outside of the scope of physiotherapy to comment upon. She defers to the medical experts;

xiii) he will require gym membership in order to complete land and water-based gym exercise and they have agreed a reasonable cost for the purpose;

xiv) they agreed that he is recommended to use a left foot orthotic and the reasonable costs of such, but by the time of trial agreed that he did not need to do so and Mr Wilson no longer claims for this;

xv) he will require walking aids and have agreed the type and reasonable costs of walking sticks and a walking frame although there is some discrepancy in the frequency of renewal of equipment and from what age the walking frame will be required;

xvi) they disagreed on the need for a standing frame but Mr Wilson has not claimed for it;

xvii) Mr Wilson will need a few small items of equipment to complete his home based exercise although he is likely to participate in exercise mostly in a gym-based environment, and agree that an annual allowance of £25 is reasonable to allow for this;

xviii) Mr Wilson requires one piece of large equipment in his home environment to enable him to access home based cardiovascular exercise, such as a cross-trainer or rowing machine or static bike, although they disagree about the cost and replacement period. Ms Bochkoltz recommends it is replaced every 5 years; Ms Keech says every 8. Ms Bochkoltz further recommends a Nu-Step Device from age 50 and replacement once in his lifetime, which will exercise his four limbs simultaneously without overloading his joints as he will be sitting as he is using it. Ms Keech disagrees and says the same physical benefits can be obtained from using a recumbent bike as his piece of large equipment at home in the later years of his life;

xix) Mr Wilson will require lifelong access to a lightweight wheelchair and a power assisted device such as a Tri-ride, but they defer to the care and OT expert about this.

68. The physiotherapy experts have seen the surveillance footage from January and February 2024.

69. Mr Wilson's expert Ms Bochkoltz in her supplemental report of 17 April 2024 notes that the video footage shows Mr Wilson walking for very short distances between his car and the front door or around his car, without walking aids, which she says is as she would have expected as he only uses his stick when walking long distances and at speed, for safety, balance and to reduce fatigue levels as his spasticity levels increase the longer, the further and the quicker he walks. She says that the videos do not alter her opinion. She notes that in video ET01 Mr Wilson can be seen using his arms to balance to get into his car, and that to get his right leg into the car he needs to lift himself up with his arms as he struggles to fully weight bear on his left leg, as expected with the level of spasticity and weakness that he has. She notes that in videos ET 01, 03, 04, 05 and 06 his left leg does not move as well as the right leg when walking, particularly during his swing phase, and analysis each video. She notes, for example, that in ET 03 Mr Wilson loses his balance when he gets close to the passenger door. She says the features she identifies are consistent with what she saw when she assessed him.

70. The Defendant's expert Ms Keech in her supplemental report of 19 April 2024 notes Mr Wilson's lack of use of walking aids, use of upper limbs for support on occasion and good strength and stability in his right leg in the videos. She notes in relation to ET 04 that he mobilises with a limp and in relation to ET 07 that he presents with a mild limp with a steady gait pattern, and notes that he weight-bears on the left leg without observed clonus or shaking in both ET 07 and ET 06. She opines that Mr Wilson has *"made significant improvements in his physical abilities and presentation since my assessment with him on 19 January 2023. He is observed being able to take steps outside of his home, steadily and safely, without the use of a walking aid. He is able to transfer weight to his left and right leg, and step freely, achieving hip and knee flexion without any apparent signs of clonus, muscle spasms or shaking of his limbs. He did not fix his left knee into extension and circumduct his hip to achieve foot clearance as he did during my assessment with him, and demonstrated stability and control at both of his knees and hips when walking and standing"*. She describes his gait pattern as appearing *"more natural and fluid"* in the last video compared to the first, although acknowledges that there are still some abnormalities within his mobility and gait pattern and that the footage does not demonstrate him mobilising over longer distances and is only a snapshot of his

presentation. However she describes Mr Wilson's improvement as *"remarkable… especially in relation to his mobility, gait pattern and stability over the past fifteen months. He remains at risk of falls, but this risk has reduced and the evidence provided indicates that he has been able to complete stairs, to access a property on the first floor, although there is no footage to demonstrate how… well, or safely he managed this"*. She reviews her recommendations for Year 1 such that she now opines that the physiotherapy and personal training recommendations made for the initial period of 12 months are no longer required, as he has demonstrated that he has made improvements without structured physiotherapy intervention, and the focus should be on supporting him with a self-led rehabilitation model. She also says that 12 month seating reviews are not required, and nor is an ankle/foot orthosis given the improvements she observed with his gait pattern.

71. I doubt that Ms Keech enjoyed her cross-examination. She accepted that in ET01 Mr Wilson is doing all he can to keep his weight off his weaker, left leg, but that she had not said so. She accepted that although she had said in respect of ET03 that Mr Wilson was walking independently without the use of walking aids, it was not possible to see how he was walking as his legs were obscured. She said in relation to ET05 that Mr Wilson shifts his weight and picks something up "*without appearing unsteady*", when she accepted that in fact as he goes through the front door he loses balance and leans on the door frame. She first said that she did not think that was important enough to mention as she would expect him to lose balance at times because of his reduced sensation in his lower limbs, and then said that she had not picked that up when viewing the video, and finally said "*It was not significant enough to change my view even if I had spotted it*". She further accepted that in relation to ET06, when he puts weight on his left leg, he loses his balance and his elbow shoots out to balance on the door frame, but she did not mention that, choosing instead to note that he had no clonus or shaking. She said "*I chose just to summarise the main findings of my assessment*" and said it was more important to note that he sustained weight on his left leg without shaking than to note he had lost his balance. This is difficult for me to accept, given that one of her conclusions following the video surveillance was that he was at reduced risk of falls, yet the short surveillance clips show on two separate occasions him losing his balance. I do not accept it. Another of her conclusions following the surveillance evidence was

that Mr Wilson had reduced reliance on a self-propelled wheelchair. She was asked how she had come to this conclusion when there was no use of a self-propelled wheelchair in any of the video clips and Mr Wilson had only taken a few steps in each of those clips, and she said that she was looking at the "*general picture*" of how he presented at her assessment in January 2023 and how he presented in the video surveillance. Of course she did not assess him outside in January 2023 and so did not see him use a wheelchair then either, and only assessed him inside his own flat when on her own admission he walked similar distances to those which he can be seen walking in the video surveillance, i.e. a few meters. I do not consider that was a conclusion which it was fairly open to her to reach. It seems to me, although she denied it when it was put to her in different terms, that Ms Keech was cherry-picking what she mentioned and what she failed to mention in order to paint a positive and improved picture of Mr Wilson which was not one that could fairly be drawn from the video surveillance. It seems to me that Ms Keech in producing this report has departed from her fair and independent approach to Mr Wilson's case as illustrated by her initial report and joint statement, to one which veers into a partisan approach. This, worryingly is a similar conclusion that I have come to in relation to the Defendant's accommodation expert Mr Burton, as I will come to explain. On balance, I reject Ms Keech's evidence in relation to the video surveillance and prefer that of Ms Bochkoltz which is in my view a more objective and fairer assessment of the surveillance evidence.

72. I accept the physiotherapist's jointly held opinions where they are in agreement in the joint statement. I will address the areas where they are not when dealing with the specific heads of loss to which they relate.

Pain experts

73. The pain experts attended Court and were cross-examined. They seemed to be a significant distance apart in their joint statement but as I have mentioned above and set out below, Dr Edwards significantly altered his stance in cross-examination to reach a position much closer to that of Dr Valentine, such that by the end of it there was little to no dispute remaining between them. To the extent that there is, I prefer the evidence of Dr Valentine who seemed to me to be more considered in reaching his opinions which were, consequently, clearer and more consistent.

74. In the joint statement the pain experts agreed only on the following:

i) Mr Wilson's current chronic pain condition is likely due to a combination of the effects of his physical injuries, physical deconditioning, psychological and motivational issues;

ii) Invasive pain medicine interventions are not recommended in this case;

iii) Good rehabilitation and maintenance of physical fitness are of key importance;

Pharmacology

iv) Analgesic medication should only be prescribed where there is good supporting evidence of benefit in terms of pain reduction and increase in physical function;

v) His Tramadol use should be reduced and stopped in the absence of good supporting evidence of benefit from it;

vi) Pregabalin is reasonable and appropriate in this case, although Dr Edwards thinks it is reasonable to continue only over the medium term, with every effort being made to reduce and stop it over the long term. Dr Edwards sees no place for additional medication prescribing.

75. They disagreed on the following points:

i) Dr Valentine's view is that the muscle spasms with which Mr Wilson has presented are a consequence of his SCI and/or are non-functional in nature. They are a matter for experts of other disciplines, as is the role of Baclofen in the management of this aspect of Mr Wilson's condition. Dr Edwards accepts that muscle spasms are well known to occur in SCI patients and Baclofen is commonly used to treat them, but he agrees with the comments of treating clinician Dr Alexander-Williams regarding the functional (non-organic) nature of Mr Wilson's reported leg spasms. Accordingly, Dr Edwards would advise that treating clinicians look towards reducing Mr Wilson's use of Baclofen;

ii) Dr Valentine recommends that Mr Wilson have the input of a consultant pain specialist to oversee and optimise the range of medications used for the

management of his current chronic pain, and that it would be reasonable for Mr Wilson to consult a consultant pain specialist in the future as new specialist drugs and therapies may become available. Dr Edwards' view in the joint statement is there is no place for additional medication prescribing and the input of a consultant pain specialist is not recommended. In cross-examination however he agreed that whether there was a focus on managing Mr Wilson's pain in a chronic pain clinic or on improving his psychological and psychiatric issues so that he can manage his pain better that way, as it will be less intrusive and bothersome, "*the money still needs spending*".

iii) Dr Valentine's opinion is that Mr Wilson will experience chronic pain into the long-term, and psychological therapies focusing on acceptance and the long-term management of his chronic pain are appropriate. He proposes 10 – 15 sessions, but in the joint report he defers to the psychiatric experts as to how pain management focused psychological treatment might fit in with other treatment and the number of sessions required. Dr Edwards opines in the joint statement that Mr Wilson's condition should not be considered a problem of chronic pain, more a problem of spinal injury in an individual with very difficult psychosocial circumstances, which is difficult to reconcile with the fact that he agreed with Dr Valentine in the joint statement (and confirmed in cross-examination) that Mr Wilson does suffer from chronic pain. Although Dr Edwards disagreed with the need for such sessions in the joint report, again, in cross-examination he accepted that there could be a role for pain management.

iv) Dr Valentine defers to physiotherapy experts on further physiotherapy assessments and treatments, and in relation to future hydrotherapy/ personal training and gym membership and any requirements for physiotherapy and exercise equipment. Dr Edwards accepted in the joint statement that there are ongoing psychosocial issues, but noted, in a rather dismissive way, that Mr Wilson "*has had multiple input from psychologists*". He was less glib and more thoughtful in cross-examination, and altered his position. Dr Edwards' view in cross-examination is that if Mr Wilson can improve his psychological and psychiatric issues, he will manage his pain better as it will be less intrusive

and less bothersome. He also said that overcoming the litigation will have significant benefits.

v) Similarly, in cross-examination Dr Edwards' refined his opinion in the joint statement that rehabilitation in a gym environment, which Mr Wilson has enjoyed previously, would likely have "*far more psychological benefit than he seems to have received from multiple psychological therapies*" to accept that psychological and psychiatric therapies would assist Mr Wilson in managing his pain. In the joint statement he recommended a rehabilitation programme in a gym close to his home with a personal trainer, opining that there is little benefit to be gained from further specific physiotherapy input other than to help guide the rehabilitation programme, and no place for hydrotherapy treatments. Of course Dr Edwards is not a physiotherapist and so this opinion outsteps his area of expertise, which is pain. However, he once again altered this view in oral evidence. He expressed the view that Mr Wilson needed a proper, small multidisciplinary team working with him, made up of good, experienced people working to a plan with the same voice, unlike what he described as a 'scattergun' approach so far. I think that is an unfair assessment of what Mr Barclay has tried to do over the years he has been involved, which is seek to find therapies with which Mr Wilson is able to engage, and when the type or frequency of therapy or personality or therapist involved has not worked for Mr Wilson, put in place different arrangements in the hope that those work for him better. Dr Edwards said that he was particularly impressed by the way that Ms Bochkoltz worked with Mr Wilson in her outdoor assessment video, which he said was exactly the sort of positive encouragement and reinforcement that Mr Wilson needed. He thought that Mr Wilson would do well with the right support.

vi) In relation to prognosis, Dr Valentine's opinion is that the chronic post-traumatic pain and chronic neuropathic pain will now be permanent, and the recommended treatment will help him manage his chronic pain and optimise his functional capacity, but not greatly reduce his chronic pain. He considers the impact of the ongoing chronic pain might be reduced by his engagement in psychiatric and psychological treatment to reduce his ongoing mental health

symptoms and optimise his capacity to self-manage his chronic pain condition. This was also the opinion of Dr Edwards expressed in cross-examination. In Dr Valentine's opinion, a poor psychiatric prognosis would have an adverse impact on the prognosis within the pain management domain;

vii) Dr Valentine notes and agrees with Dr Ramanju's opinion that PTSD and persistent pain after a traumatic injury are highly co-morbid, and he notes Dr Ramanju's opinion that *"PTSD will complicate management of his pain and worsen prognosis of its improvement"*. I do not understand Dr Edwards to disagree with that. In his report Dr Valentine notes that people with spinal injuries such as Mr Wilson will inevitably have some chronic/persistent pain, and opines that his reported pain at the time of the report (April 2023) is likely to be due to a combination of the effects of his physical injuries, particularly the SCI, and physical deconditioning, but that psychological factors are also important. He notes that Mr Wilson is someone with psychosocial, psychological and psychiatric difficulties, which are likely to be influencing his perceived symptoms and recovery from his injuries, and "*will inevitably have resulted in significant amplification of his perceived/reported pain and disability*". He points to Mr Wilson's increasing symptoms after being released from prison, as his mood deteriorated, as evidence of that. In cross-examination he accepted that he is psychologically vulnerable.

viii) Dr Edwards' opinion in his report and the joint statement is that if Mr Wilson is able to engage with the treatment suggested and avoid getting into social difficulties (further crime and drugs), then significant further progress can be achieved and he should improve to such baseline activities as would be reasonably expected from his physical injuries, as determined by the spinal surgery experts. In essence, Mr Wilson will adjust to his condition and find that his pain becomes significantly less intrusive.

ix) Both experts appear to agree that pain per se is not an additional burden to work now. However Dr Valentine's opinion is that chronic pain will have an impact on his ability to engage in even sedentary work in the future, depending on its intensity and impact, both of which are variable, and potential side-effects of analgesic medication. His opinion is that Mr Wilson's chronic pain

condition is long term and permanent, and its impact *"probably does have a substantial adverse effect on his ability to carry out normal day-to-day activities and the disability associated with his chronic pain will probably affect the type and amount of paid work he is able to do".* Dr Edwards' opinion is that work is therapeutic and to be encouraged. I prefer Dr Valentine's opinion. Taking this into account together with Mr Selmi's opinion as an SCI expert and that of the psychiatric experts I am satisfied that Mr Wilson is unlikely to be able to carry out paid work

x) In respect of care, Dr Edwards' opinion in the joint report is that Mr Wilson has no care requirements from a pain medicine perspective, but his movement in cross-examination on key issues relating to physical, psychological and pain treatments and therapies alters this. Dr Valentine's opinion is that Mr Wilson's chronic pain will result in some care needs, and he defers to the occupational therapy/care experts on quantification of care needs and any aids or appliances that may assist him.

Single Joint Expert Urologist

76. Mr Shah was instructed by the parties to investigate Mr Wilson's urological condition related to injuries caused in the index event. He had full access to Mr Wilson's medical records (including urodynamic bladder pressure studies) and the witness statements and expert reports in this case, and summarises the salient information within them. Mr Shah met with and examined Mr Wilson on 16 January 2024. He notes that Mr Shah told him that he passes urine 3-4 times a day with normal flow and without difficulty, and twice at night. He has some urinary incontinence. He wets the bed at night and wears pads. In consequence of the incontinence, he has developed rashes with ulceration on his scrotum and upper thighs. He also has ulcers on his legs.

77. In Mr Shah's opinion the cause of Mr Wilson's bladder dysfunction is likely to be the SCI component of his injuries. He says that the urodynamic bladder studies demonstrate that he has a significantly overactive bladder with high bladder filling pressures, which give rise to incontinence and can be considered to be neurogenic bladder overactivity. His treating urologist, Mr Ockrim, has suggested that he should

have Botox injected into the bladder wall as medication has been ineffective, but he has not yet had this treatment, which Mr Shah also recommends. He says that it will stabilise his very overactive bladder and make him continent, which is also likely to improve the skin condition affecting his scrotum as part of the problem is likely to be the effect of the urine on the skin. He recommends at least 200 units of Botox and possibly 300 units will be required. At the lower dose, he has about a 20% likelihood of having to self-catheterise afterwards to deal with retention of urine. At the higher dose he is more likely than not to need to self-catheterise.

78. If a 200 unit dose of Botox worked, that would need to be repeated about every 6-12 months depending on response. If it does not work, he should have 300 units. Each treatment if private is about £2500.

79. An alternative treatment is augmentation ileocystoplasty which Mr Shah recommends Mr Wilson seriously considers as it is in his opinion a very effective procedure which should resolve Mr Wilson's hyperreflexic neuropathic bladder such that he would not be incontinent, but he would more likely than not need to self-catheterise indefinitely afterwards. That would cost about £2500.

80. Mr Shah was asked Part 35 questions by the Defendant, which he answered. I will refer to these further when dealing with the urology-related heads of loss.

Care/ Occupational Therapy experts

81. I heard only from Ms Way, the Defendant no longer relying on Mr Lenfield. She presented to me as a careful, thoughtful witness who was careful not to overstep her expertise. For example she was questioned about the presentation of Mr Wilson on her assessment of him on 3 December 2021, including the leg spasms she witnessed, and questioned about whether he had improved in the video surveillance clips she had seen. She was clear that physical ability and spasm is not her area of expertise, that it was not for her to be able to assess, describe, or measure his gait and how he moves his leg, but to assess his functional abilities and what needed to be put in place to enable him to return as close as possible to his pre-index functionalities. She agreed with the observation of really all the other experts Mr Wilson had a variable presentation with good days and bad days and this affected the level of care he would require. For example she said that on a good day, in an accessible

environment with appropriate equipment, he could safely shower by himself. On a bad day, he needs some assistance to be available to him.

82. Ms Way was also clear that she considered Mr Wilson had additional care needs arising out of his ADHD and PTSD. She said "*He needs care with a view to increasing his community access, activity levels, vocational skills and activities. There is additional administration that comes with his PTSD and ADHD which makes things difficult for him. He needs someone consistently available to him*". In the joint report, she and Mr Lenfield agreed that without professional support and specialist advice Mr Wilson would struggle to address his housing, equipment, care, therapy and transport needs.

83. In terms of their reports (and I have not seen Mr Lenfield's report but only the joint statement of these experts), Mr Lenfield was not instructed to value past gratuitous care provided to Mr Wilson by his family and ex-partner up to 3 September 2023. Accordingly Ms Way's costs under this head are unchallenged.

84. Mr Lenfield agrees in his joint report with Ms Way's recommendations for future costs in respect of rehabilitation assistants, domestic support, case management and live-in care, which she has provided in the alternative depending on whether the opinion of Mr Selmi or Mr Kumar is accepted. I have accepted Mr Selmi's opinion and these are the figures I will consider.

85. Both experts agree that Mr Wilson has benefitted from some case management intervention in the past, and that due to his complex and interrelated needs, without professional support and specialist advice he would struggle to address his housing, equipment, care, therapy and transport needs.

86. In respect of Therapy and Rehabilitation in-patient future costs, Ms Way estimates these at £58,950 and Mr Lenfield defers to the SCI experts. Both defer to the psychiatrist experts in relation to further psychological therapy, to the pain management experts in respect of further pain management costs, and physiotherapists in relation to future physiotherapy costs.

87. In relation to occupational therapy costs for the first two years and in future years, they both agree the need, but differ on the amount of such care. Their rates differ but

both agree the other is within a reasonable range.

88. In relation to podiatry, continence management, dietician, a single wheelchair skills course, psychosexual future costs and the future costs of alternative therapies, future costs of a suitably adapted vehicle and related costs, and a raft of other aids and equipment, they both are agreed on both need and costs. Ms Way recommends a more expensive boiling water tap and an additional domestic equipment. In relation to equipment, Ms Way recommends a sports wheelchair which Mr Lenfield does not, and certain equipment he says is better identified and costed when it is needed (such as a powered wheelchair). He does not agree with the need for a portable ramp, assuming that Mr Wilson will live in accommodation with level access, and does not agree with Ms Ways proposed holiday costs, or the office and kitchen equipment related costs for the support worker, including computer equipment.

89. Mr Lenfield identifies a need for future dermatology costs due to sores on Mr Wilson's legs as a result of incontinence, at a frequency of an initial consultation plus six follow up consultations a year.

90. They defer to accommodation experts in respect of Mr Wilson's long term accommodation needs.

91. I will address all of this when looking at the various heads of loss claimed.

Accommodation

92. The Accommodation experts met and produced a joint statement dated 26 October 2023. There was a very large measure of agreement between them. Mr Burton accepted in cross-examination that he was entirely happy with it. However Mr Burton was then asked by the Defendant to consider whether a different assessment of Mr Wilson's reasonable pre-incident property expectations and/or view of his mobility (along the lines of Mr Kumar's report) would change his conclusions or assessment of costs, and he produced a supplementary report on 1 March 2024 addressing this. Mr Nocker then produced a supplementary report on 17 April 2024, having reviewed Mr Burton's supplementary report.

Overview of the joint statement

93. The experts agree in the joint statement that having regard to Mr Wilson's disability and the complexity of his residual difficulties, his existing 2-bed property at Stanley Road, Grays, is unsuitable as it is too small and has no meaningful security of tenure. They agree that his immediate and longer-term accommodation needs would best be met by a suitable bungalow which can be appropriately adapted, and that this should be privately owned and not rented.

'But for' accommodation requirements

94. The experts were asked to consider the likely accommodation that Mr Wilson was likely to have occupied 'but for' the index attack. They agree in the joint statement that as Mr Wilson has a daughter and his partner a son, it seems reasonable to assume he would have aspired to occupying a property with two or three bedrooms.

95. In the joint statement, Mr Nocker opines that given Mr Wilson's likely earning capacity and chequered history, and the difficulties in obtaining a sufficiently large deposit to purchase a property, he would be likely to rent such a home rather than buy with a mortgage. He said that if the Court considers that Mr Wilson would have continued to rent, his opinion is that a range of £1,100 to £1,800 per month would be a reasonable budget for a 2-3 bedroom flat, and a range of £825-£1050 per calendar month would be a reasonable budget for a 1-2 bedroom flat.

96. Mr Burton notes that whether Mr Wilson would have been able to borrow money to purchase a property would have depended on the bank's opinion on risk and affordability. In the joint statement he expresses his opinion that Mr Wilson would be likely to have purchased a property with three bedrooms at a cost of £290,000 with mortgage repayments falling within Mr Nocker's range of £1,100 to £1,800 per month. In his supplementary report of 1 March 2024 he amends that opinion, saying that it would be unlikely that Mr Wilson would have obtained a mortgage advance at a sufficient level to allow him to purchase a property, and so he now agrees with Mr Nocker that rental would have been more likely for him.

97. However Mr Burton says in his supplementary report that the most likely option would have been for Mr Wilson to have rented a one-bedroom flat from a social housing provider, as a two bedroom option would likely not have been offered to Mr

Wilson as a single man, and it would have attracted an 'under-occupation' penalty (bedroom tax). He provides details of the lowest-priced privately rented properties that he could find on the Property Data website. Some are in Kent. Two are in Grays, at £795 and £975 per calendar month. He concludes that a one-bedroom flat would have a monthly rent of £913 per calendar month and running costs of £3099.84 per annum. These are within Mr Nocker's range for a 1-2 bed flat and in his supplementary report Mr Nocker says he is comfortable to agree the £913 rental figure.

98. They agree that the financial contribution likely to have been advanced by his partner will have to be taken into account when predicting the cost of this 'but for' property.

Lifetime accommodation requirements

99. The experts agree in the joint report that a three bedroom bungalow should be purchased, and have agreed the number of rooms and the range of room sizes. They envisage a living room, dining kitchen, utility, modest store, WC, bedroom and adapted shower room for Mr Wilson, exercise room, two additional bedrooms, family bathroom and internal circulation areas, amounting to between 137-146 sqm, plus a low maintenance garden and an attached garage or car-port. Mr Nocker notes that the bungalow to be purchased will likely have two reception rooms, one of which will need to be knocked through to the kitchen to make a kitchen-diner that meets the agreed room size.

100. Mr Burton notes in the joint statement that his agreement with the above assumes the Court finds that Mr Wilson would have had a 3-bed property as 'but for' accommodation. In his supplementary report he notes that the equipment that Ms Bochkoltz recommends would "*usually be provided in a 'therapy room' but could equally be accommodated in a second bedroom or other areas of future accommodation*". He revisits the space requirement on the basis that "*the Claimant is likely to require accommodation that is accessible to wheels at an earlier stage*" and on the basis that:

i) Mr Wilson would have had 'but for' accommodation comprising a 1-bed property; and *either*

ii) what he requires, in Mr Burton's opinion, if no therapy room is required (Option 1); *or*

iii) what he requires, in Mr Burton's opinion, if a therapy room is required (Option 2).

101. He reduces the space requirement to 71 sqm for Option 1 and 86 sqm for Option 2. He says that this can be addressed by a flat rather than a bungalow. He puts forward as a possibility a 3-bedroom flat in Stonham Court, for which I have seen the floorplan. He then moves to addressing the space requirement if the more optimistic view of Mr Wilson's future prognosis as put forward by Mr Kumar was accepted by the Court, but I have rejected that already so will not consider it further.

102. I note that Mr Mooney asked Mr Burton in cross-examination if he had seen any additional evidence before writing his supplementary report, and he denied that he had. However, although Mr Burton's supplementary report is dated 1 March 2024, it is clear that he had been provided with at least a draft or unsigned version of Mr Kumar's Inadmissible Expert Report signed on 13 March 2024, as he had quoted from it in his supplementary report. Mr Burton was evasive and uncomfortable when asked by Mr Mooney in cross-examination whether he had seen a draft, saying "*I can't tell you*", and when asked if he had read the line after the one he had quoted (in which Mr Kumar said "*I do not believe he would need an adapted bungalow*") he simply answered "*Unclear*". Mr Mooney put it to Mr Burton that he had based his supplementary report on the inadmissible opinion of a spinal surgeon, to which he answered "*If that is what you are telling me*". I take that as an admission. I find that Mr Burton knew that he had been shown the draft or unsigned Inadmissible Expert Report before producing his supplementary report, and in providing the evasive answers that he did, was seeking to hide that fact from the Court. That is disappointing. Mr Burton should not have allowed his initial assessment of Mr Wilson's accommodation needs as summarised in the joint statement, which I am satisfied was both independent and fairly arrived at on the evidence before him, to be corrupted in this way and the solicitors in the Government Legal Department should not have asked it of him. I consider that there should be some introspection on the part of the Government Legal Department about this, and about whether Ms Keech was also placed under any pressure to move away from her initial

independent and fair approach as set out in her initial report and joint statement, to the more partisan and, in parts, unfair analysis of the video surveillance that she produced.

103. Mr Nocker notes in his supplementary report that Mr Burton's new options on the 'pessimistic' Selmi/Bochkoltz prognosis remove the utility room, two bedrooms (as Option 1 has only 1 bedroom and Option 2 uses the second bedroom as a therapy room), a family bathroom and extra internal circulation. He notes that an appropriately sized kitchen-diner cannot be obtained out of Option 1 or Option 2. He says the acquisition of a flat rather than a bungalow is possible in theory, but in practice the dearth of appropriately sized apartments must not be understated, and describes adapting the communal areas of an apartment building is "*fraught with difficulty*". In respect of the Stonham Court flat, Mr Nocker in his supplementary report described the main bedroom as "*much, much too small*", pointing out that there was no emergency access out of bedroom and to get egress quickly was impossible, the ensuite as too small, he agreed the second bedroom was sufficient for a therapy room, he noted there was no utility and no storage save in bedroom 3, he said the floorspace in the kitchen was inadequate, being needed for circulation as it was the link between the door to the kitchen and the living area. He said it was entirely unsuitable. He says that he "*has not read anything within Mr Burton's Addendum Report which would encourage me to revisit my views on the best route to resolving the Claimant's immediate, medium and longer term housing needs. To reiterate, the Claimant is "ambulant-disabled" with compromised mobility and poor balance – consequently my assessment of his current and future housing requirements is built from this foundation and certainly does* <u>*not*</u> *provide for a wheelchair dependent individual*." I accept his evidence and agree with his conclusions.

104. Mr Nocker's view is that even if the Court finds that the 'but for' accommodation is a modest-sized flat with one bedroom, if it considers the provision of an additional bedroom (for others to stay overnight) is a reasonable amenity given Mr Wilson's residual difficulties and as a post-injury requirement, then he would still support the purchase of a three-bedroom bungalow as per the joint statement.

Acquisition costs

105. Mr Nocker says that the likely cost of a suitable three bedroom bungalow will be between £550,000 to £650,000, so says about £600,000. Mr Burton's opinion is that the likely cost is £546,700 but both agree that these figures are within an agreed range for the likely cost of purchasing a suitable 3-bed bungalow. They have provided ancillary cost of purchase figures in para 4.6 which are about £1,000 apart, Mr Nocker at £16,519 and Mr Burton at £17,549. They agree these form an agreed range with the difference broadly attributable to the different purchase prices.

106. In his supplementary report, Mr Nocker says that if the Court is not satisfied that an additional bedroom for use by visitors is a reasonable amenity, then he would support the purchase of a two bedroom single-storey dwelling at a cost of £400,000 to £500,000.

Adaptation costs

107. Mr Nocker's opinion is that the total base cost of adaptation works for a three bedroom bungalow likely to be required is £318,167 inclusive of VAT, fees, exercise pod and reinstatement costs. Mr Burton in the joint statement puts this at £303,481 but they agree that these figures form the range of likely base costs of the adaptations. Both agree that the exercise pod amounts to betterment with a value of £10,000, but Mr Nocker's view is that an allowance of much the same will need to be set aside for the reconversion works required when the dwelling is sold.

Additional running costs

108. The experts have also provided the likely increase additional in running costs of such a property, based on the difference between the three-bedroom bungalow recommended and a three bedroomed family home assumed to be occupied by an able-bodied Mr Wilson on the 'but for' case. Here they have arrived at broadly similar figures (£7584 for Mr Nocker, £7185 for Mr Burton), albeit in quite different ways.

109. Mr Nocker also allows for replacement of certain equipment which Mr Burton considers would always have been incurred: for an intruder alarm system with smoke, heat and carbon monoxide detectors; an electric shower, body dryer, visual door entry system and electronically operated garage door. I will come back to that.

V. Principles of quantum assessment

110. I do not understand there to be any dispute about the general principles of assessment of damages for the commission of a tort, which are well known. Lord Blackburn in *Livingston v Rawyards Coal Co* (1880) 5 App Cas 25, at 39 said: "*where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong…*". Lord Woolf MR giving judgment for the Court of Appeal in *Heil v Rankin et al.* [2001] 2 QB 272 cited that passage at [22] and went on to say at [23]:

> "This principle of 'full compensation' applies to pecuniary and non-pecuniary damage alike. But… this statement immediately raises a problem in a situation where what is in issue is what the appropriate level of 'full compensation' for non-pecuniary injury is when the compensation has to be expressed in pecuniary terms. There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial."

The aim, of course, is to achieve fairness not only in terms of being fair compensation for the claimant, but as Lord Woolf went on to note at [27] of *Heil v Rankin*, the level of damages arrived at "*must also not result in injustice to the defendant, and it must not be out of accord with what society as a whole would perceive as reasonable*". The Defendant relies on the dicta of Swift J in *Whiten v St George's Healthcare* [2011] EWHC 2066 (QB) who after citing *Heil v Rankin* noted at [5] that "*The claimant is entitled to damages to meet his reasonable needs arising from his injuries. In considering what is 'reasonable' I have had regard to all the relevant circumstances, including the requirement for proportionality as between the cost to the defendant of any individual item and the extent of the benefit which would be derived by the claimant from that item*". I have adopted the same approach.

VI. General damages - PSLA

111. The parties agree that the appropriate Judicial College Guideline is Chapter 7 (Orthopaedic Injuries) B(a)(i) (Severe Back Injury): "*Cases of the most severe injury involving damage to the spinal cord and nerve roots, leading to a*

combination of very serious consequences not normally found in cases of back injury. There will be severe pain and disability with a combination of incomplete paralysis and significantly impaired bladder, bowel and sexual function." Mr Wilson submits that his severe pain, level of disability, impairment of bladder bowel and sexual function, marked cognitive and psychiatric symptoms and a diagnosis of PTSD puts this towards the middle of the range. He seeks a sum of £125,000 from the 16th edition Judicial College Guidelines range of £91,090 to £160,980, uplifted to reflect RPI from the date of preparation of the 16th edition in September 2021 to September 2023, being £153,250.00. Since the trial the new 17th edition of the Judicial College Guidelines has been published and the range is now £111,150 to £196,450, by reference to the RPI figure of August 2023.

112. The Defendant puts the correct award at the very bottom of the 16th edition range at £91,090, uplifted for inflation to £103,177. In the further updated counter schedule of loss the defendant relies on Mr Kumar's assessments of Mr Wilson as fully independent in transfers and mobility, with no bowel issues, and "*substantially better than the average T10 ASIA D paraparesis patient*", all of which I have rejected. The narrative in the counter schedule is sceptical in relation to Mr Wilson's bladder impairment (and pre-dates the urology report which makes clear that he does have such dysfunction arising from the index attack). By placing it at the bottom of the range it seems to me that the Defendant's suggested award also fails to compensate for Mr Wilson's significant psychological injuries, for which the Judicial College Guidelines (17th edition) suggest in Chapter 4(B) (PTSD) that a moderately severe diagnosis of PTSD has a range of award from £28,250 to £73,050 with the majority of awards falling within £35,100 and £45,300.

113. I agree with Mr Wilson that his level of pain, ongoing disability, bladder dysfunction requiring further surgical procedures and causing dermatological injury and pain, less severe bowel and sexual dysfunction, significant psychiatric symptoms and a diagnosis of PTSD puts this fairly squarely at the middle of the range. In my judgment, and using the 17th edition guidelines, an award of £153,000 is appropriate. This should be uplifted for RPI from August 2023 to the date of handing down of this judgment.

VII. Past Losses

Past Loss of Earnings

114. Mr Wilson's evidence is that he can't remember the extent to which he was working. He says that he carried out scrap metal collecting, gardening and other odd jobs before the index accident, when he was not in prison, and that he was fit, healthy, and willing to carry out such physical work, but cannot remember when that stopped. I note that he was abusing cocaine before his imprisonment. He first said in cross-examination that before his imprisonment he wasn't working, but then said he was "*scrapping, picking up iron, I was an odd jobs man, bits & bobs. Garden, clearance work. I was doing little jobs here and there. How do you do drugs if you can't pay for them*?". I note that although Mr Wilson says that some of this work was "*scrapping*", he has two convictions for theft of scrap metal from people's properties and this may well have been how he was paying for drugs. I accept the Defendant's submission that in light of this evidence, this scrap metal dealing was unlikely to be legitimate work.

115. Mr Wilson agreed that his odd-jobs work was inconsistent, saying "*It wasn't me in control. People would call me up. I was doing odds and sods*". Mr Wilson is recorded as telling Mr Burton that he was earning up to £800 per week, but in cross-examination he said "*Some weeks, some weeks £200 per week. Figure of speech. One day I was out of pocket £20 in diesel*". He cannot document any such earnings. Documentary evidence from HMRC shows declared earnings of no more than several hundred pounds in any given year, and only in a few years.

116. Mr Wilson submits that but for the accident, it is likely that he would have returned to working in a manual labour role within a few months of his release from prison in June 2021. Mr Wilson seeks past loss of earnings at the average gross annual pay for full time male employees working in Elementary Occupations at £25,000 gross per annum from 1 September 2021 plus interest, but: (a) there is no evidence he ever worked full-time; (b) there is no evidence to support a contention that such legitimate odd-jobs as he did have produced anything like £25,000 per annum and it seems inherently unlikely that they did; (c) it seems unlikely that, even if he secured a job at this salary, given his issues with ADHD he would have been able to maintain full-time work at this level for any significant period; and (d) on his own estimate he spent a third of his life in prison. The seriousness of his offences appears

to have been escalating and although I hope it would have been the case, he has not satisfied me that it is more likely than not that after this imprisonment for aggravated burglary had ended, he would have managed to keep out of prison thereafter. Mr Mooney in closing submissions accepted that what is sought is optimistic, but submits that for the Court to find that Mr Wilson would have had no work at all after leaving prison would be both unfair and pessimistic. He asks me to take into account: Mr Wilson's stated desire to work, which I accept as Mr Barclay and other expert witnesses support it; the fact that he has worked in the past, which is more difficult for me to assess, given the lack of evidence; and the fact that it is the Defendant's role to seek to rehabilitate offenders, which I accept; and to make such award for both past and future loss of earnings as the Court considers fair.

117. The Defendant relies on Mr Wilson's criminal record with over 31 convictions and 22 cautions from 1999 to 2018. It notes that past court sentences included unpaid work requirements and the evidence suggests that he was disruptive or did not complete the hours. It notes that Mr Wilson told his expert psychiatrist Mr Ramanuj in April 2022 that "*he has not worked since 2016*" and is recorded as telling Mr Kumar that he had not worked since 2013. It notes the convictions for theft and that in a pre-sentence report from 2011 in relation to one such theft of a washing machine and two alternators from the front garden of a property, he said he was "*scrapping at the time of the offence and intended to sell the items*" and believed he was doing the owners a favour.

118. The Defendant makes no allowance for past loss of earnings, and submits that if the index accident had not happened then on his release from prison Mr Wilson would more likely than not have continued a criminal lifestyle with no legitimate employment, or if he did secure legitimate employment, it would more likely than not have ended within a matter of weeks.

119. In my judgment, Mr Wilson's contention that he would have returned to working in a manual labour role within a few months of his release from prison in June 2021 fails to take account of the fact that Mr Wilson's sentence for aggravated burglary was reduced by 2 years and 6 months on account of his injuries in the index attack, so 'but for' the attack he would have been sentenced to 9 years in prison, and served 1 year and 3 months more in prison than he did (assuming he was released, after

serving half his sentence, in September 2022). Allowing a few months to find work as Mr Wilson concedes I should, takes us to the beginning of 2023 and so the question is whether, and to what extent, he has satisfied me he would have carried out legitimate work since then.

120. I have considered this carefully and although I am willing to accept that Mr Wilson has on occasion carried out legitimate manual labour for cash, given his evidence to Mr Ramanuj and Mr Kumar that he had not worked at all for some years before his incarceration in 2019 and the evidence of Mrs Jayasegaram that such work as he carried out for her was also some years before that, and considering that his scrapping work appears to have resulted in at least two convictions for theft, and that his criminal behaviour was escalating which I am satisfied was more likely than not driven in part by his increasing use of class A drugs, I find on the balance of probabilities that he had not worked legitimately on any sort of consistent basis for some years before his imprisonment. That is not to say that he would not have found some work after leaving prison, but it is likely to have been minimal and sporadic given his work history, his difficulties in focus resulting from his ADHD, and the risk of recidivism resulting in further imprisonment and relapse into drug use. On balance, I make no award for past loss of earnings.

Past Care and Assistance

121. I have set out the various friends, family and partners who have assisted Mr Wilson with care, supervision and assistance. Mr Wilson submits that his need for personal care is supported by Mr Selmi who says he needs supervision and assistance with most activities of daily living, the psychiatry experts who say he has a greater need for support and care for his functional and physical impairments due to his psychiatric injury, and by Ms Way, the care and OT expert. There is no other care/OT evidence to gainsay her opinion.

122. Mr Wilson has used the Local Authority spinal point 8 rates until 31 March 2018 and spinal point 2 from 1 April 2019 when the NJC pay spine was restructured, with a 25% discount to reflect gratuitous care. He claims for 20 hours a week from 2 July 2018 to 15 August 2018 (while in hospital after the index attack), 18 hours a week from 16 August to 16 January 2019 (while at Askham), three hours a week from 17

January 2019 to 21 June 2021 (prison visits at HMP Peterborough) and 25 hours a week from 22 June 2021 (his release date) to date, which at the time of trial amounted to £56,263.60 discounted for gratuitous care to £42,197.70, plus interest. The claim is supported by the report of Ms Way which addresses past care.

123. The Defendant denies the gratuitous care claim entirely until Mr Wilson's release from prison on 22 June 2021. It notes that he was in hospital and then Askham until transferring to HMP Peterborough in January 2019. It relies on *Evans v Pontypridd Roofing Ltd* [2001] EWCA Civ 1657 for the principle that a care claim based on attending a relative in hospital as part of normal hospital visits arising from family affection is not recoverable. In fact the principle comes from the case of *Havenhand v Jeffrey* [1997] EWCA Civ 1076 which was approved in Evans v Pontypridd. In *Havenhand*, Beldam LJ accepted that no allowance could be made for "*normal hospital visits arising from family affection and not for the purpose of providing services which the hospital did not provide*". The latter part of that quote is important, as the Courts have been careful to consider the purpose of such visits and have, on occasion, allowed claims for gratuitous care in hospital by family members. One example is *Welsh v Walsall Healthcare NHS Trust* [2018] EWHC where the family member visited to assist with what was accepted to be deficiencies in care provided by the hospital, such as pressure sore management.

124. Ms Way relies on information that Mr Wilson's girlfriend, who she does not name but was Ms Lane, visited for 2 hours every other day by train and underground from Clacton which took three hours each way. She opines that the "*emotional support and encouragement that his girlfriend provided [were] vital to Mr Wilson's recovery.*" I do not know where this information comes from as it is not in the documentation that she lists at 1.4 of the case, which includes the witness statements from Mr Wilson's witnesses. None of those contain it. Ms Way also spent three hours talking to Mr Wilson, but if it came from him then it should have been in his witness statement so it could have been tested in cross-examination. In the absence of evidence am unable to make a finding of fact about the visits, travel time and emotional support provided and so I do not accept this element of Ms Way's report. In relation to other family members, Ms Way just notes that they "*also visited*". For those reasons, I accept the Defendant's submission in respect of the periods that Mr

Wilson was in the Royal London Hospital. I accept his mother, girlfriend and family members visited him, but I make no finding that that those visits were for the purpose of providing services which the hospital did not provide and so I make no award for this period.

125. In relation to Askham, Mrs Wilson says that she, family and Ms Lane visited Mr Wilson, and that the return journey took about 8 hours, but she does not suggest those were for the purpose of providing services which the care home did not provide. Ms Way merely notes that they visited twice a week for 3 hours at a time but there is no evidence before me that that those visits were for the purpose of providing services which the care home did not provide and so I make no award for this period.

126. Once at HMP Peterborough, the Defendant notes that Mr Wilson's evidence is that he had 31 prison visits, 20 from Samantha Lane, but submits there is no supporting statement from Ms Lane and no evidence from witnesses of fact that these visits went beyond what she would have done in any event. I also accept these submissions. Mr Wilson has provided no evidence about the level of prison visits he received before the index attack, or that these prison visits amounted to care rather than the usual social visiting. Ms Way's opinion, presumably based on her discussions with Mr Wilson, is that he continued to receive weekly visits from Ms Lane, but that this was part of her regular visiting. Ms Way says that her travel time increased from 2.5 hours each way from 1 hour each way, and so there was additional travel time of 3 hours per week, but I do not see evidence that this is caused by the index attack. Mr Wilson could have been moved to a different prison anywhere in the country at any time. I make no award for this period.

127. On release from prison the Defendant says that it allows 4 weeks of care provided by Mrs Wilson at 2 hours per day to enable him to settle into life outside prison, and denies that it was necessary from the care point of view for her or anyone to stay with him overnight, but later in this section of the counter schedule it says that it allows 25 hours a week for the first 4 weeks. It further allows a lump sum for any additional help provided since then, amounting in total (with the care for the first 4 weeks) to £5000, discounted by 25% for gratuitous care to £3750. This must relate to care by Darcy O'Brien and Rachel Darby, and ongoing care by Mrs Wilson, as

the Defendant denies that care provided by Dylan is recoverable as it amounted to going to the shop and collecting takeaways, which he would have been doing anyway to feed himself, and because they fell out as Mr Wilson was not happy that he was providing him with adequate care.

128. Ms Way's assessment is that the gratuitous care contributed by Mrs Wilson and Dylan is the equivalent of a home carer working on average 25 hours per week. I have looked at her breakdown and I have no hesitation in accepting it in respect of Mrs Wilson's initial 4 week period from 22 June to 20 July 2021. In respect of Dylan, Mr Wilson's oral evidence is that Dylan was 18 or 19 years old and moved into his flat with a cannabis habit and a supply of cannabis which he shared with Mr Wilson. He said that Dylan was lazy, but said that he did cooking and cleaning, took him shopping, fetched takeaways, helped him put on his socks, put towels out for his shower, did the washing up, laundry, and hung up clothes. That doesn't sound too lazy to me for a 19 year old and it broadly accords with the breakdown that Ms Way sets out in her report. Mr Wilson said Darcy did more than Dylan, but he said that he totally relied on Darcy, and took her kindness for granted, so that he did not appreciate all that she had done for him until she had left. I accept Mrs Wilson's evidence that even after her initial 4 week period and throughout this time was also providing administrative assistance with Mr Wilson's finances, ordering his online shop, driving him when required, and doing such other things as he needed, and this is within those 25 hours per week. On balance I accept the claim for care after the initial 4 week period, when Dylan was living there, as sought.

129. In respect of care by Mrs Wilson, Darcy and Rachel, Ms Way also assesses that as equivalent to a home carer working 25 hours per week. She notes that he continues to require assistance to shower each day, putting on shoes and socks, managing medication, shopping, cleaning, cooking and laundry, additional administrative support and emotional encouragement. I have heard evidence from Mr Wilson, Mrs Wilson and Rachel Darby and have read the witness statement of Darcy O'Brien to which I give some weight, and I accept Ms Way's assessment which is supported by that evidence, in my judgment. I accept this element of the claim for past care as sought.

130. I believe that totals £46,489.31 to the date of trial, discounted by 25% for gratuitous care to £34,866.98, plus interest as sought. These sums will be held on trust for those who have provided the care awarded until distributed to them.

Past Paid Support

131. Mr Wilson claims for the cost of training Dylan and his stepsister Jenny to provide care and employing them via an agency to formalise the support package. The claim is supported by invoices from Home Care Direct amounting to £2,135.41. The Defendant submits that there is inadequate explanation in the witness evidence to support expenses incurred in training these family members, or why steps were taken to formalise the support package, particularly for Jenny who only provided care for a brief period as she could find no childcare. I am with the Defendant. The assistance that Mr Wilson required was assistance with general domestic tasks and housekeeping, very limited personal care and almost no medical care save for managing medication. I consider that Mr Wilson has put inadequate evidence before me to satisfy me that these sums were reasonably incurred. I do not make an award for past paid support.

Past Paid Services

132. This is agreed in the sum of £464.00 plus interest.

Past Case Management

133. These are the costs associated with the employment of Mr Barclay as case manager since Mr Wilson was at Askham, after his initial hospitalisation. Mr Wilson seeks full recompense of these costs which are supported by invoices, amounting to £45,826.86 up to trial, plus interest. These costs are ongoing.

134. The Defendant submits that I should award only half the costs, in reliance on Dr Edwards view that there had been a "*scattergun*" approach to Mr Wilson's rehabilitation, which criticism I have already rejected, and on Mr Kumar's view that Mr Wilson had a "*minimal neurological impairment*", which evidence I have not accepted. The Defendant submits that Mr Wilson did not want and did not comply

with much of the provision made by Mr Barclay, and submits that in the circumstances the extent of case management has been unreasonable.

135. The non-attendance by Mr Wilson at appointments made by Mr Barclay is a matter which I will look at further when it comes to the cost of such appointments. I reject the submission that Mr Wilson did not want such provision. The evidence is that when he was engaged, he worked hard at his therapies, but that he had barriers to engagement not least because of his ADHD and PTSD. I have found that Mr Barclay was constantly having to organise, re-organise, re-plan and vary the type and frequency of Mr Wilson's therapies in light of the real challenges which Mr Wilson's ADHD, PTSD, depression and low mood provided, and I am satisfied that he did so professionally, creatively and with Mr Wilson's best interests at heart. I accept the Defendant's submission that a good deal of Mr Barclay's time was spent cajoling Mr Wilson into engaging with therapies, but in my judgment that is a function both of Mr Wilson's pre-existing ADHD and the additional barriers caused by the psychological injuries resulting from the accident. I find on the balance of probabilities that the overall provision was reasonable. I award those costs in full, plus interest as sought.

Past Psychology and ADHD

136. Mr Wilson seeks the costs of past psychological and psychotherapy treatment and the costs of seeking specialist ADHD support, all of which is supported by invoices. In relation to the former, the psychiatry experts agree that Mr Wilson has been treated with the appropriate psychological and pharmacological therapy for his PTSD for an appropriate length of time. In relation to the latter, Mr Wilson missed three ADHD assessment appointments before finally attending an online assessment in September 2023.

137. The Defendant accepts that it should pay these costs save that it submits that it should not have to pay for the costs of missed appointments, which it characterises as an unreasonable failure by Mr Wilson to mitigate his loss. It submits that he has a history which pre-dates the index attack of missing appointments, and that his probation record discloses that "*he has been chronically unable to meet his*

commitments since adolescence". Mr Wilson agreed that was the case in cross-examination, saying "*Yes, that is why I need people to remind me*".

138. In my judgment, the Defendant must take Mr Wilson as it finds him, and that is, as they acknowledge, as somebody who before the accident was chronically unable to meet his commitments which I am satisfied is because of his ADHD, and who because of the index attack has been subject to further psychological barriers to meeting such appointments because of his PTSD, depression, low mood and sleep disturbance which the psychiatry experts agree affects his motivation to engage in physical treatments and are a significant barrier to the management of his physical injuries.

139. For those reasons I make a full award of the sums sought, amounting to £11,204.00 plus interest as claimed

Past Physiotherapy, Past Hydrotherapy & Gym

140. Mr Wilson seeks the cost of physiotherapy at the Royal Buckinghamshire Hospital and in the community at Benfleet Physiotherapy, amounting to £16,436.50, all of which is supported by invoices. He further seeks the cost of gym membership and hydrotherapy sessions at SPIRE Hartswood Hospital. These too are supported by invoices and amount to £3,820.25.

141. The Defendant accepts the gym membership and does not dispute the physiotherapy and hydrotherapy treatment provided, but objects to paying for missed appointments. For the same reasons as in respect of Psychology and ADHD assessment, I award Mr Wilson the sums and interest sought in full.

Past Spinal Injury Rehabilitation

142. Mr Wilson seeks the cost of his assessment at the Royal Buckinghamshire Hospital in January 2022 and the 4 days per week 4-week rehabilitation programme in June 2022, which the Defendant agrees at £6,156. The dispute arises because although it was a residential programme, Mr Wilson did not wish to stay in the hospital. Mr Barclay said that Mr Wilson was "*hesitant to attend as an inpatient as it reminded him of a prison setting*" and so he booked him into a Holiday Inn or Travelodge

nearby at a further cost of around £2,714. Mr Wilson seeks the costs of those hotel stays.

143. The Defendant submits that staying in a hotel was not a reasonable mitigation of loss, and the fact that Mr Wilson did not want to be reminded of prison is a consequence of his past offending.

144. I am with the Defendant in this matter. Mr Wilson has not satisfied me that his preference not to stay in the hospital was reasonable and arose from the index attack or its aftermath. I think it is more likely than not a consequence of his past offending. I award only £6,156 (plus interest on this amount as sought) under this heading.

Past Occupational Therapy, Urology, Podiatry/Chiropody

145. The sums sought are all supported by invoices. The Defendant accepts the assessments and treatment provided but objects to paying the cost of Mr Wilson's missed appointments.

146. I make an award in the full amounts sought, for the same reasons as before. These are: OT £5743.72; Urology £4828.00 and Podiatry/Chiropody £200, Dermatology £1495.00; all plus interest as sought.

Past Dermatology

147. Mr Wilson claims for the cost of obtaining dermatological opinions and investigations in relation to breakdown in his skin's integrity in the groin/scrotal area as a result of urinary leakage, being a total of £1495. These are supported by invoices.

148. The Defendant submits that he has not proven that they are related to injuries caused in the index attack, as when Mr Wilson was examined by a tissue viability nurse on 12 October 2023, she found multiple wounds on his lower back, buttocks, legs and feet for which she was unable to identify a cause, but felt they were traumatic and possibly self-inflicted.

149. The single joint urologist Mr Shah notes that Mr Wilson had been complaining about rashes in the perineum since March 2021, when he was back in HMP Peterborough, and had consulted Mr Ockrim in March 2023. He describes Mr Ockrim as "*an expert in this field*" and recommends that he continues under his care. Mr Ockrim found that the skin of his anterior scrotum was markedly thickened with areas of breakdown, and advised the use of a barrier cream. Mr Ockrim saw him again on 11 October 2023, when he found skin excoriation around the scrotum and upper thighs. He was reviewed on 12 October 2023 when it was assumed that his wounds were caused by urinary leakage but there were concerns it might not have been. Mr Shah's opinion in his report is that he has suffered from urinary incontinence "*The consequence of the incontinence is that he has developed rashes on his scrotum and upper thighs. These have been treated on occasion with creams but he still has considerable thickening of the scrotal skin with ulceration*." In answer to Part 35 questions his notes that Mr Ockrim carried out urodynamic studies in May 2023 which found that he had a neuropathic bladder with high pressure detrusor overactivity, and it was likely to be the detrusor overactivity that gave rise to his incontinence of urine, and the incontinence which was the case of or exacerbation of the skin excoriation. He states clearly "*It is probable that the incontinence has caused the problem with his skin*".

150. I am satisfied that the seeking of a dermatological opinion, given this history, was reasonably required. I award the amount claimed in full, plus interest as sought.

Past Pain Management

151. This relates to the assessment of Mr Wilson by Dr Alexander-Williams, a Consultant in Pain Medicine, in April 2022 and is agreed at £250 plus interest as sought.

Past Equipment

152. Mr Wilson claims for the costs of purchase or hire of a list of equipment which he says was to help him manage his difficulties following his injuries. Three of those are estimated costs for a perching stool, shower stool and raised toilet seat, but Mr Barclay's witness statement of June 2022 makes clear they were eventually provided by the council, and so I deduct £170 in respect of those.

153. The Defendant accepts all of the remaining costs save the following:

i) in respect of certain estimated costs it deducts 50% as being a more reasonable estimate:

a) Non-slip mat (£20 sought, £10 allowed) for the shower. Most such mats can be bought for £15. I allow £15.

b) Wobble board (£15 sought, £7.50 allowed). The sum sought appears to be reasonable.

c) Walking stick (£50 sought, £25.00 allowed). I allow £25 which appears to be reasonable given what is on the market.

d) Tens machine (£100 sought, £50.00 allowed). The Defendant notes that in future losses the Claimant puts the value at £34. I allow £50 as reasonable.

ii) Double profiling bed (£2335.00 sought, nil allowed) and memory foam mattress (£582.00 sought, nil allowed). Mr Barclay's evidence, which I accept, is that this was purchased following an assessment and recommendation by an Occupational Therapist, Ms Roberts, to support his comfort, pain management and posture at night. I do not know what the Defendant's objection to this is, save that it notes that these are not reasonably required, but I am satisfied that the expenditure, made after professional advice, was reasonably required and I include the sums as claimed in the award.

iii) Rise recliner armchair and sofa (£2793.85 sought, nil allowed). The Defendant says that these are not reasonably required. Once again, Mr Barclay's evidence, which I accept, is that this was recommended by an Ms Roberts, to support his posture and comfort at home. I allow these sums as claimed in the award.

iv) Watt bike (£2274.88 sought) (the Defendant disputes this but accepts that it would be reasonable for Mr Wilson to purchase a recumbent exercise bike costing £599.00). Mr Barclay's evidence is that he was advised to purchase a static bike by his physiotherapist at Benfleet Physiotherapy to help with his

physical rehabilitation at home, and he helped him to buy the Watt bike which is Bluetooth enabled to allow him to utilise online training packages, such as Zwift, which provides a structured, community based exercise programme to follow. Mr Wilson's evidence, which I accept, is that when it first arrived in January he was using it quite often, about twice a day in the first few months. He says that then the tablet screen broke and the bike doesn't feel with same without that visualisation. He said he is using it less as a consequence, about once, twice or three times a week, but not every day. That evidence seems to support Mr Barclay's evidence that by having the structured community based program on the tablet element, Mr Wilson was more likely to engage with it. I am satisfied on the balance of probabilities that it was reasonable to purchase it, but would suggest that the tablet be repaired so that it can continue to carry out its advanced functions. I allow the sums and interest sought.

v) Two televisions (£554.98 sought, nil allowed). The Defendant submits that absent the index attack, Mr Wilson would likely have purchased televisions in any event. I agree and make no award.

vi) Tri-ride wheelchair and Kuschall L-series lightweight wheelchair (£4,500.00 and £3,251.00). The objection appears to be on the basis of Mr Kumar's statement in his report that Mr Wilson told him that he did not use a wheelchair, which I have found to be mistaken. I accept Mr Wilson's evidence that he does use his wheelchairs when necessary but that he has to store them at his mother's house as there was no room at his flat. He told the Court that he sees his mother regularly, she lives nearby, and if he needs his wheelchair he goes and picks it up. He says that he wants not to use his wheelchairs, so he will walk as best he can, but if he needs to use them he will. The physiotherapists agree he needs both a lightweight wheelchair and a Tri-ride wheelchair. They defer to the care expert who also agrees. I am satisfied that they are a reasonably required expense for which the Defendant must pay and I award accordingly.

vii) The total under this head of loss awarded is therefore £17,782.67 plus interest.

Past Travel Expenses

154. Mr Wilson claims these under a number of heads:

i) **When he was in hospital after the index attack, his former partner Ms O'Brien and his family incurred increased travelling costs in visiting him. £1,000 is claimed.** Mr Wilson gives little evidence about hospital visits, which is perhaps unsurprising, given his state of health and consciousness at the time. His mother Mrs Wilson says in her witness statement that she used to visit him in the Royal London Hospital, but others used to drive her. However she said that she stopped going as Mr Wilson would get upset when she left. She says that other family members would visit him, but does not say how many times or how they got there. She says that his girlfriend at the time, Samantha Lane, regularly visited him. The Defendant submits that this claim is unparticularised and unsupported by documentation, that Mr Wilson is no longer with Ms Lane, and there is no evidence he will pay any money for her travel costs over to her. It allows £250. Mr Wilson was not asked in cross-examination if he would pay any sums awarded on this head to Ms Lane, so I do not accept this submission. However I agree that this is unparticularised. I do not know whether those who drove Mrs Wilson to hospital expected or would accept any money for their assistance at this stage. The Claimant has not satisfied me that an award above that which the Defendant has conceded is appropriate. I award £250.

ii) **Following his release from prison, Mr Wilson says he relied on taxi accounts to travel to his medical appointments and for access to the community. He has also continued to use a taxi account on an ad-hoc basis. These are all supported by invoices dating from August 2021 to 5 June 2023 and amount to £12,302.70.** The Defendant accepts these costs save that it submits that £893 of these costs amount to periods after Mr Wilson had purchased a car on 24 April 2022, which should be disallowed. I am with the Defendant. I allow £11,409.70 under this head.

iii) **Upon receiving confirmation from the DVLA that he could return to driving and automatic transmission car only, he hired an automatic vehicle to allow him a greater degree of flexibility and independence, for various periods from 27 January 2022 to 24 March 2022, amounting to**

£5,501.04. These periods of hire are supported by invoices. The Defendant submits that there is no explanation as to why Mr Wilson chose to hire a vehicle rather than buy one, as he later did. It submits that the cost of the periods of hire significantly exceeded the cost of buying a car on 24 April 2022, and also exceeded his monthly expenditure on taxis before the periods of hire. I do not accept that latter point, as his average monthly expenditure on taxis from 16 October 2021 to 16 January 2022 was £2452 (£7356/3months) whereas he spent £5501.04 or roughly £2250 per month on hire vehicles from 27 January 2022 to 24 March 2022. In relation to the former point, it was not put to Mr Wilson in cross-examination that he could and should have bought a car earlier than he did, and so I do not know what he would have said in answer to that point. For those reasons I award the hire charges as to £5,501.04, plus interest on that sum as sought.

iv) **He applied for a Motability vehicle which was significantly delayed in being delivered so he bought a car to use in the interim which he later sold. The purchase price was £2,990 but details have not been provided of the sale price ("TBC") and so the sum claimed is not known.** The Defendant does not appear to object to this head of claim, subject to that evidence being provided. I award the difference between the purchase and the sale price if that can be evidenced to the Defendant's satisfaction by the date of handing down, otherwise no award.

v) **Mr Wilson received a Motability vehicle but following involvement in road traffic accidents he has had periods where he has either had to use a courtesy car or a hire car whilst his Motability vehicle was being repaired. He seeks the advanced payment for his vehicle of £1,245.00 (supported by an invoice), the Motability component surrendered as part of the Motability scheme of £6,554.12, and additional hire charges of £1,016.81.** In cross-examination Mr Wilson said that his Motability vehicle was an excellent Ford Puma, but he had an RTA in Ockenden in November 2022 which damaged the vehicle. This was repaired and returned to him but he had another accident in Basildon which wrote the car off. Mr Barclay's evidence is that "*due to erratic driving and repeated car crashes, Motability refused to*

provide another vehicle". Mr Wilson accepted in cross-examination that he was not eligible for another Motability car, but denied that was the reason. I am satisfied nothing turns on it. He has since bought a used Mercedes C class in relation to which no claim is made. The Defendant allows the Motability costs, but denies that the Court should award the additional car hire costs arising from road traffic accidents for which it has no liability. I agree. I award £7,799.12 under this head, plus interest as claimed.

vi) **He is reliant on driving to access the community and attend appointments and seeks the increased costs of petrol that he has incurred at an estimated £200 per month from the date of the first hire vehicle, being £5,388.00**. The Defendant submits that this should not be allowed as it is undocumented and unparticularised. I agree that Mr Wilson has provided no evidence of his petrol costs, or mileage incurred in his Motability or hire cars and that the burden is on him to prove his claims. However it is undoubtedly the case that he has been put to the cost of petrol in running those cars, which are necessary for him to move about because of his injuries. It seems to me more likely than not that he would have spent a minimum of £80 per month on petrol. He has not satisfied me of any higher expenditure, however, particularly given his evidence that he uses his car locally but generally stays at home a lot, and his mother's evidence that she often drives him where he wans to go. I award £80 per month from 27 January 2022, the date of first hire, to the handing down of this judgment, plus interest as sought.

155. Accordingly the award is £27,115.06 plus such sum as can be evidenced pursuant to paragraph 154 (iv) above, plus interest.

Past Accommodation Costs

156. Mr Wilson claims the cost of renting a two-bedroom ground floor flat in Grays Essex at £1,000, less his pre-incarceration rent of £230, from July 2021 to date (being £27,948 to trial), plus decorating and furnishing costs of £5,500. In his witness statement he said that he was living rent free with his girlfriend Samantha Lane at the time of his imprisonment. In his schedule of loss he says he was living with her in Clacton and paying her £230 per month towards rent. He was imprisoned

in December 2017. The Defendant submits that Mr Wilson's evidence is contradicted by contemporaneous documentation. It points to a probation record of July 2017 which notes that he was street homeless, a probation record of October 2017 which notes that he was sofa surfing, and the police record of him as being of 'no fixed abode' on his arrest in December 2017. The Defendant submits that on his release from prison he would have needed accommodation in any event, and that his relationship with Ms Lane appears to have been over by then. It submits that he would have incurred the costs of accommodation by way of rental or council provision. It further denies that Mr Wilson required a two-bedroom property. It offers nil award.

157. I think the question of whether he was paying rent or not to Ms Lane is a red herring, not least because the contradiction between his witness statement and his statement of loss was not put to him in cross-examination. He said in cross-examination that he had been living with Ms Lane for about a year or a year and a half before his incarceration but that he had told the police that he had no fixed address when he was arrested because she did not want her address to be given. He said it was not a stable address, because they used to argue, and she had four children who did not like him. He said that if he had not been injured in the index attack he would have taken a single room in a shared house, or taken a flat or a caravan on his release from prison. He was taken through some HMRC documentation which showed that he had on occasion rented rooms in shared flats, or stayed with family. I accept that evidence. The point is, however, that irrespective of how he had chosen to live before his injuries, after the index attack, those choices were removed from him. He could no longer live an ad-hoc life, staying with girlfriends or sofa-surfing or staying in a caravan. It is undoubtedly the case that on his release from prison, because of his physical and psychological injuries, he needed suitable stable accommodation. Mr Barclay and Mrs Wilson provide evidence, which I accept, about the difficulties they had in finding suitable accommodation.

158. It is in fact the agreed view of the accommodation experts that his current accommodation is not suitable for Mr Wilson, because it is too small, and so the Defendant's submission that he did not need a 2 bed flat appears to be ill-founded.

He needs space to move around the flat, store his necessary equipment etc. I accept his evidence and that of his mother that he has to keep his wheelchairs at his mother's home because he lacks storage space in the current property. I am satisfied that the expense of renting the property was reasonably incurred and I award the sums and interest sought.

Past Miscellaneous Expenses

159. The Defendant allows the claims for mattress toppers x 2 at £123.94 and disputes the rest.

160. Mr Wilson seeks recompense for additional heating costs, arising from him spending more time indoors than he would have if not injured, additional laundry costs, arising from his issues with continence, Tesco delivery fees, as he cannot lift heavy bags and needs his groceries delivered. The Defendant denies the claims to additional heating and laundry and is silent as to Tesco but does not include it in the sums it accepts. It submits that there is no evidence as to pre-incident expenditure or post-incident expenditure. In relation to heating I am unable to find that that but for the accident he would have spent on average £400 per year less on heating particularly given his evidence that for much of the last 18 months or so he has been spending his weekdays at Rachel's house. I do accept the claim for additional laundry as I am satisfied that his incontinence means extra washing, and the claim of 98p per week is modest. I also allow the Tesco delivery fees which I am satisfied are reasonably incurred given his injuries, and Mrs Wilson's evidence that he does have supermarket deliveries, which she assists in putting together online.

161. Mr Wilson further seeks £1000 per year in clothing which he says is workout clothes to wear during therapy sessions and when exercising, and loose fitted clothing which is comfortable and easy to put on. The Defendant allows nothing for this, submitting that he would have to have bought clothes anyway. I allow a sum of £200 a year for workout clothing, which I accept he has a greater need of than he would have done but for the accident, but reject the remainder of the claim. There is no evidence before me that loose fitted clothing is different to, or any more expensive than, the clothing he would have bought for himself anyway, but for the accident.

162. Mr Wilson seeks the cost of a laptop, a vacuum cleaner, a humidifier, wireless, waterproof doorbells, a security camera and a ring doorbell screws and screwdriver kit. He does not provide any justification for the first three items in his schedule of loss and I cannot make any finding that they are reasonably required as a result of the index attack. He says that he bought the doorbells and security camera as he was concerned about security at the rental property. In his witness statement he said that he was concerned about security as he would be unable to respond quickly should anything happen. I allow those elements of the claim amounting to £202.97 plus interest as sought.

163. The total award under this head is £786.65 plus interest.

VIII. Future Losses

Future Loss of Earnings

164. Mr Selmi's opinion is that although physically it may be possible for Mr Wilson to engage in sedentary work, he is unlikely to be able to undertake any form of consistent renumerated employment or work. Dr Valentine considers that Mr Wilson's chronic pain will impact his capacity to engage even in sedentary work in the future. The psychiatry experts agree that his psychiatric condition has adversely affected his ability to find meaningful work, and that his ADHD limited the type of work he was able to do prior to his injury and his PTSD would prevent him from working in sedentary roles.

165. Mr Wilson has claimed future loss of earnings based on an annual gross salary of £25,000 to age 60. Again, Mr Mooney in closing accepted that this may be optimistic, and his alternative position is that the Court awards him a lump sum to reflect his physical ability to undertake work prior to the index attack and the number of remaining working years before him, of the type upheld by the Court of Appeal in *Blamire v South Cumbria Health Authority* [1993] PIQR Q1, [1992] EWCA Civ 20. He submits that there is no evidence that Mr Wilson has reverted to crime, that the evidence is that he has given up cocaine and broken that addiction, and that it would be "*entirely wrong*" to "*write him off*" and make no award as the Defendant seeks the Court should do.

166. The Defendant denies this claim for future loss entirely for the same reasons that it denies the claim for past loss.

167. In my judgment, there is insufficient evidence before me to reach a conclusion about Mr Wilson's likely 'but-for' earnings, as there are too many imponderables, including the extent to which, after his release from prison, he would have continued to use class A drugs; or continued in criminality rather than legitimate work; or been subject to further periods of imprisonment; or found employment which he was able to maintain despite his ADHD and other psychosocial issues. There is also little to no evidence of his pre-imprisonment earnings to use as a starting point. Accordingly, as Mr Mooney really acknowledges, a traditional multiplier/multiplicand approach is not appropriate in this case.

168. *Blamire* provides authority that there are some circumstances where it may be appropriate to award a lump sum by way of damages for loss of earnings where it is difficult to quantify loss more precisely. However the burden is still on Mr Wilson to satisfy the Court on the balance of probabilities that the injuries arising from the index attack gave rise to some loss of earnings. If he cannot, then as Chamberlain J noted in *BXB v Watch Tower and Bible Tract Society of Pennsylvania & Anor* [2020] EWHC 156 (QB) *"[Blamire] does not suggest that it is ever appropriate to award damages absent evidence that the injury gave rise to some loss of earnings. …If she cannot [establish that] then it is no more appropriate to make an award on a lump sum basis than on the traditional multiplier/multiplicand approach*."

169. I have considered this very carefully. It seems to me that in the absence of any material history of legitimate earnings, and in light of Mr Wilson's escalating use of drugs and criminality and his increasing periods of incarceration before the index attack, the suggestion that he would have earned legitimately after his imprisonment but for the attack amounts to little more than speculation. He has not satisfied me that it is more likely than not that the index attack has caused him loss of earnings and so I decline to make any award under this head.

Future Care and Assistance

170. Mr Wilson relies on Mr Selmi's opinion, which I have accepted, that his care needs, due to the effects of ageing on his physical and functional ability, will increase from

age 40 – 45 such that he will require more help with personal care, the activities of daily living and equipment; that this will get progressively worse so that Mr Wilson will require mobility aids indoors and further support with personal care, day to day activities and adaptations at age 55 years, due to complications of the SCI and further deterioration in his mobility; and that from age 60 Mr Wilson is likely to require and full-time use of a wheelchair for mobility both indoors and outdoors with difficulty with transfers and help with personal care and likely skin care at night. He also relies on the psychiatrist experts' opinions that his ADHD and PTSD are barriers to increasing his levels of independence and rehabilitation potential causing a greater need to support him with his functional and physical needs, as well as a great deal of emotional and practical support.

171. Ms Way on the basis of this evidence recommends that Mr Wilson employs a specialist rehabilitation assistant to support him: to better understand and manage his condition; to increase his activity levels and reintegrate into the community; and to provide an individualised exercise programme and increase his living skills and domestic activities, working closely also with Mr Wilson's psychologist to try to manage his PTSD and ADHD. In her opinion he will require live-in support for times of illness, following any surgery/medical treatment and when away on holiday. Ms Way considers that from age 50-60 he will be increasingly reliant on his wheelchair and require an increased specialist care provision. From age 60 she considers that a live-in carer will provide the most cost-effective and flexible means of meeting Mr Wilson's needs. I remind myself that Mr Renz Lenfield, who was the Defendant's care and OT expert until he was disinstructed, agreed with the recommendations and costings made by Ms Way in their joint statement.

172. The Defendant objects to the scope of this claim for the same reasons as it objects to past loss, namely that it is likely that he will not comply with future provision in the same way that he has complied poorly with the rehabilitation provision since his release from prison, having missed 50% of physiotherapy and hydrotherapy appointments and many other medical and other appointments.

173. It submits that the evidence suggests that Mr Wilson does not want "strangers" assisting him and so will not accept paid care. In its further amended counter schedule it allowed nil for care up to the age of 60, but in closing Mr Wheeler

submitted that the Defendant would also allow a £50,000 lump sum for gratuitous care up the age of 60. It further allowed a cleaner for 2 hrs a week from age 60 to 63 and 3 hours a week thereafter, with care only beginning from the age of 63 rising from 7 hours a week to the age of 66, 14 hours a week from 66 to 69 and at 28 hours a week from age 69 to end of life. It also allowed for a contingency of 12 weeks live in care over his lifetime for periods of ill-health.

174. Mr Wilson was questioned about his willingness to accept outside help in cross-examination and says that he understands that the time will come when he will have no option but to accept paid care in the home. He said that once he gets to know somebody he is willing to accept care from them. I accept his evidence.

175. The Defendant in its further amended counter schedule relies on Mr Kumar's opinion in relation to Mr Wilson's likely need for care, but Mr Kumar is not a care expert, I have found him to be a partisan witness whose evidence on disputed matters I give no weight, and the Defendant has no care/OT expert evidence to gainsay that of Ms Way.

176. I agree with Mr Mooney's submission for Mr Wilson that Ms Way has done the work for me in relation to care. Having looked closely at her assessment of need and calculations against my findings in this case, and noting also that Mr Lenfield agreed with her in the joint statement, I accept Mr Wilson's claim for future care and assistance as pleaded, which totals £2,471,252.03.

Future Case Management

177. Mr Wilson seeks the cost of 60 hours of case management per annum, plus travel, along the lines of that which has been provided by Mr Tom Barclay to date, to manage his support package and address housing, equipment, transport and therapy needs as well as to set up regular multi-disciplinary meetings of professionals (such as physiotherapy and psychology professionals) to ensure progress and standards are maintained. The Defendant relies on Mr Kumar's opinion as to the level of care required in the future to submit that case management should now end as it is not reasonably required and Mr Wilson does not want it, and should not be reintroduced until the last 2 years of Mr Wilson's life. However, I have rejected Mr Kumar's opinion on care, he not being qualified to give it, and Mr Wilson's evidence is that

he relies on Mr Barclay to manage these matters, and to remind, encourage and cajole him into engaging with his support needs, which he needs because of his ADHD and his psychological issues arising from the index assault. Ms Way and Mr Lenfield in the joint statement also support the need for such assistance.

178. I have already set out how valuable I consider Mr Barclay's input to have been to date, and I am satisfied that Mr Wilson's need for case management because of his complex physical and psychological support needs and need for support with the activities of daily living and personal care, is likely to continue for the whole of his life. For those reasons I accept Mr Wilson's claim in full at £269,001.00.

Future Services

179. Mr Wilson seeks £136,935.80 for the cost of buying services to carry out car valeting, decorating (to age 75), DIY (to age 75), gardening and window cleaning. In fact, the cost of maintenance of the property is included in the increased running costs of a suitable property assessed by the accommodation experts, so this appears to be double-counting. In relation to car valeting, the Defendant says there should be a nil award as Mr Wilson has not proved that he cleaned his car regularly before the index assault, and if the Court thinks this is appropriate, it should allow a valet every three months and not every two weeks.

180. I am satisfied that Mr Wilson is not able to clean his car because of the injuries he received in the index assault, and he would have been able to do so himself, when required, before he was injured. I have no evidence about whether he even had a car before the index assault, but it is accepted by the Defendant that he needs one now in order to access the community, and in my judgment such a car would need to be cleaned on occasion. I see no reason why it should be valeted every two weeks which strikes me as excessive. I agree that three-monthly is sufficient. I award the sum of £3645 (annual cost of £100 x 36.45 multiplier).

Future Physiotherapy

181. The main dispute between the parties is in relation to the year 1 physiotherapy provision.

182. The physiotherapy experts in their joint statement agreed that Mr Wilson will require lifelong access to neuro-physiotherapy, with increased provision over the first 12 month period in order to optimise his recovery, and support him through a transitional period from clinic-based physiotherapy to a community based approach, with a focus on land and water, gym-based exercise and supported self-management. They agreed that he should have, in the first year, 30 sessions of neuro-physiotherapy at £185 per session, 94 sessions of personal training at £45 per session and should participate in a Back Up Wheelchair Skills Course to improve his wheelchair mobility, independence and safety to enable him to use a wheelchair sufficiently to access the wider community. Ms Keech has resiled from that following the video surveillance but I have rejected this evidence. The wheelchair course is also supported by Ms Way and Mr Lenfield in the joint care and OT statement.

183. The Defendant in the further amended counter schedule submits that because, subsequent to the joint report, Mr Wilson stopped all physiotherapy of his own volition, it makes no allowance for 12 months of further physiotherapy or physical training. Should the court be minded to make an award for year 1 provision, it submits that on the balance of probabilities Mr Wilson will continue to fail to keep appointments and so it should apply a discount of 50% to account for the likely failure to mitigate via wasted appointments, or not taking up the treatment, or not all of it. The Defendant is silent on the Back Up Wheelchair Skills Course. I am satisfied that this course would be valuable to Mr Wilson, as it is clear from Mr Selmi's evidence, which I accept, that if he were to use his mobility aids including his wheelchair consistently, that might help prevent loading on his joints and slow his deterioration, and the course my well provide him with the skills and confidence to use his wheelchair more consistently, and because Ms Way recommends it.

184. In relation to the first year sessions, I note the real difficulties in Mr Wilson engaging with this provision because of the barriers provided by his ADHD and his psychological issues arising from the index attack, which both the psychologists and physiotherapists identify. I also note the psychology experts agreed view in the joint statement that Mr Wilson would benefit from treatment of and focus on his ADHD to enable him to better deal with the barriers to engaging with, *inter alia*, physical

treatment, and Mr Wilson's evidence, supported by that of Mr Barclay, that frequent psychotherapy, physiotherapy and hydrotherapy appointments make him feel that he does not have any time for living. Although I accept that in an ideal world Mr Wilson would engage with the extensive 1st year physiotherapy and personal training sessions that the physiotherapists agree would benefit him, in my judgment, given the need to focus on Mr Wilson's ADHD so that he can properly engage with those therapies, I think it is more likely than not that he will not manage 124 physical therapy sessions in a year plus the ADHD therapy and treatment recommended. In my judgment, and listening carefully to Mr Barclay's evidence on engagement, reducing these sessions by 30% will more likely than not *increase* Mr Wilson's overall engagement as it will give him room to feel like he has a life outside treatments and therapies, and together with the agreed provision for year 2 and thereafter, including the 2-weeks per annum outpatient spinal therapy rehabilitation stays, should enable him to transfer to community-based physical therapy as the physiotherapists envisage.

185. Accordingly I award for Year 1: £6,855 for 21 sessions of neuro-physiotherapy and 66 sessions of personal training and £700 for the Back Up Wheelchair Skills Course.

186. From Year 2 onwards, the parties agree that Mr Wilson should have:

i) 6 neuro-physiotherapy sessions per annum at £185 per session for life;

ii) 6 personal training sessions per annum at £45 per session for life;

iii) 4 specialist Musculo-skeletal therapy sessions per annum at £50 for life;

iv) Boxia (every 2 years) at £46.96 each time, for life;

v) Gym membership at £780 per annum for life;

and I award these sums as claimed.

187. The parties also agree on the need for spinal injury rehabilitation sessions. In the expert physiotherapists' joint statement Ms Bochkoltz recommends that Mr Wilson would benefit from a 2 week stay in the Royal Buckinghamshire Hospital or other appropriate facility every 3 years as an outpatient up to age 55, and a 2 week stay

every 3 years as an inpatient from age 55 at a total cost of c. £140,000. Ms Keech agrees that Mr Wilson requires input from a SCI centre with specialist physiotherapy being part of a multidisciplinary team, but defers to the medical experts as to the recommended frequency and whether this should be provided by private or statutory services. She comments that the frequency and duration of stays recommended by Ms Bochkoltz are above what is reasonably required, but given that she considers that this provision is mainly a medical need and outside the scope of physiotherapy to comment upon, I am not sure on what she bases this view.

188. In addition to this cost, Mr Wilson seeks (under the heading "**Future Medical Care – Spinal Injury**") the cost of regular review, treatment and inpatient care at a specialist spinal injury centre for life-long medical monitoring and specialist support and education, as the spinal experts agreed that he needs in their joint statement. The spinal experts further agree this is unlikely to be met in the NHS and so he should be able to access this in the private sector. They agree this should be in the form of a yearly follow-up, with contingency funds to cover other requirements. Mr Selmi's opinion is that this should include an MDT assessment and investigations such as ultrasound for urinary surveillance and an MRI scan at an annual cost of £6,000, being a total of £218,700 over his lifetime. In the further amended counter schedule the Defendant relies on Mr Kumar's recommendation of one week inpatient stay in a spinal centre every 10 years for both the spinal injury rehabilitation sessions under the Future Physiotherapy head of loss and the Future Medical Care – Spinal Injury head or loss at a cost of c.£131,000.

189. I have considered whether there is an element of overlap between these two heads of claim. Ms Bochkoltz was very clear in cross-examination why she had made the recommendations that she did, and why she did not defer to the SCI experts as Ms Keech did. She was clear that her recommended outpatient/inpatient stays at the Royal Buckinghamshire were a matter of physiotherapy need, not medical need. During these stays, she said, he would not deal with multidisciplinary issues such as urology, medication for spasticity and pain, and these would be dealt with by the provision recommended by Mr Selmi. She said that "*The main reason I want him to go [to the Royal Buckinghamshire Hospital] is to have therapy with specialists in SCI, as it is difficult to find it in the community*". She said there was better care there

because the physiotherapists had extensive experience in SCI and would provide him with specialised therapy on, for example, his dorsiflexors, which had not been done in the community. She said visiting such a facility once every 10 years was insufficient as he needed to be treated preventatively, and getting him to the best state that he could be, in order to maintain his plateau of functionality as long as possible, required regular return every three years. As I have noted, I found Ms Bochkoltz to be a very impressive witness and her work with Mr Wilson was praised by others including the Defendant's pain expert Dr Edwards as exactly what he needed. I accept her evidence and her physiotherapy recommendations and award the sums claimed for such stays in the further amended statement of claim, which total £139,887.54.

190. The parties also agree the need for Mr Wilson to have three seating reviews every 5 years at £185 per review or £555 every 5 years. I award a sum to cover those costs, as Mr Wilson claims.

191. Mr Wilson no longer claims sums relating to orthotics, the physiotherapists agreeing this is not required. The total award under this head is therefore £234,846.87

Future Psychiatric/Psychological Therapy

192. I have set out the expert psychiatrists' views in detail earlier in this judgment. They agree that while Mr Wilson's ADHD preceded the index attack and was not exacerbated by it, it complicates the treatment of his other conditions, and that he should have specialist treatment before the management of his PTSD in the form of CBT, EMDR and acceptance and commitment therapy ("ACT"). I accept this. Mr Wilson seeks:

i) 4 ADHD follow up appointments and 6 ADHD counselling sessions at a cost of £2,200 plus the cost of repeat private prescriptions x 4 for ADHD medications at £760. The Defendant takes some issue with these figures but allows overall a higher award of £6,300 so I simply allow the costs sought by the Claimant of £2,960 for this head of loss;

ii) the costs of a PTSD psychiatric assessment (£400), 12 sessions of PTSD psychological treatment at £1,800 and 6 sessions of PTSD psychiatric

treatment per year for two years at a cost of £2,400 (total £4,600). The Defendant does not take issue with the treatments, accepting those are reasonable, but says he needs 10 sessions not 12 of psychological treatment and 5 sessions per year not 6 of psychiatric treatment over one year, not two, and suggests these can be obtained at a slightly lower cost. I suspect the cost of such treatment has only increased not decreased since the further updated schedule of loss was produced and given the importance that so many of the experts (psychiatric, physiotherapy, SCI) put on treating Mr Wilson's PTSD in order for him to better engage with his physical therapies I am satisfied that the number of sessions sought by Mr Wilson is reasonably required. I award the full sums sought by him under this head of loss;

iii) the cost of 20 sessions of psychological adjustment treatment at £3,000. The Defendant again accepts the need for treatment but says a reasonable award would be for fewer sessions at a slightly lower cost per session. For the reasons I have just given I am satisfied that the sums sought by Mr Wilson are reasonably required and I award this head of loss in full;

iv) 15 sessions of CBT or ACT at £2,250. The Defendant does not address this element of the claim in its counter schedule but it is a clear recommendation of both expert psychiatrists and so I am satisfied it is reasonably required and award this head of loss as sought by Mr Wilson;

v) 6 sessions with a specialised addiction counsellor at £1800. The psychiatric experts agree that Mr Wilson is in full remission from cocaine abuse prior to the index attack, but say Mr Wilson is at risk of a resumption of substance dependence, particularly on prescribed medication to manage his pain, so recommend close monitoring by pain specialists in collaboration with a psychiatrist in addiction medicine. The Defendant does not agree that psychiatric treatment for addiction is required. In my judgment the Defendant must take Mr Wilson as he finds him, and that is as a recovering addict who is susceptible to further substance dependence on the medication which he is required to take to manage his pain resulting from the injuries caused by his index accident, and so I am satisfied this treatment is reasonably required. I make the award sought; and

vi) 6 hours of psychosexual therapy counselling at £540. This has not been recommended by the psychiatrist experts but by Ms Way (care and OT expert) who feels that he would benefit from such therapy to address Mr Wilson's issues relating to body image and sexuality. The Defendant says this is not reasonably required, points to a GP record noting that Mr Wilson said he had slept with six different women on release from prison and submits he has been in long-term sexual relationships for much of the time since his release from prison. I accept those submissions and consider that if such therapy were reasonably required the psychiatrists would have recommended it. I make no award under this head.

193. The total award under this head is therefore £15,810.

Future Occupational Therapy

194. Ms Way recommends regular review of Mr Wilson's need for aids, appliances and equipment as his abilities and level of independence changes over time, in the form of lifelong access to an Occupational Therapist. She recommends 72 hours of occupational therapy for the first two years at £90 per hour, plus travel and mileage for 18 visits, and thereafter 4 hours of occupational therapy per year plus travel and mileage for 2 visits, totalling £33,220.50. The Defendant disputes that Mr Wilson has any requirement in the first two years, relying on Mr Kumar's evidence that he was surprised at the level of equipment recommended by Ms Way, but: (a) this is not Mr Kumar's area of expertise; and (b) this is not the claim for equipment but for OT support, on which the Defendant's further amended counter schedule is silent.

195. Given that Ms Way's evidence is unchallenged, I accept it and award the sums sought by Mr Wilson.

Future Alternative Therapies

196. Mr Wilson seeks an annual sum of £2,000 to spend on alternative therapies such as acupuncture, hydrotherapy massage and osteopathy in the event that painkillers and physical therapy has only limited effect on the Mr Wilson's pain. The Defendant allows nothing. I am with the Defendant. If it is the case that physical therapy in the form of physiotherapy and personal trainer/gym sessions has only limited effect, Mr

Wilson could choose to reduce his physiotherapy or personal training sessions and spend that money already awarded on alternative therapies which do have effect. Mr Wilson further claims, and the Defendant accepts the need for, a podiatry consultation and 8 podiatry sessions per annum at £40 per session for life. Mr Wilson is not able to manage his own foot and toenail care and so I award the £11,714 sought under this head.

197. Finally, Mr Wilson seeks the cost of a Back Up Next Steps course at £450 which provides information and support to help him understand what he can achieve as a person with an SCI and as someone who uses mobility aids, and the cost of an annual subscription to Forward Magazine, which Ms Way recommends (and Mr Lenfield agreed with her in the joint statement). The Defendant submits that it is unlikely that Mr Wilson will gain any benefit from such a course because he tries not to use his wheelchair as much as possible and says that it doubts that Mr Wilson will read such a magazine. I am satisfied on Mr Wilson's evidence that although he prefers to walk with a stick or access the community by car as much as possible, part of the reason why he does not use his wheelchair as much as the experts believe he should is because he cannot store it at his current accommodation so has to fetch it from his mother's home when he wants to use it, and that he understands that he will inevitably have to use his wheelchair more as his condition deteriorates. In addition, the physiotherapists recommend the course in their joint statement. I allow that at £450.

198. Mr Wilson has not provided any evidence in his witness statement or orally that he would read such a magazine, or that he has sought out written materials to understand or better manage his disabilities arising from the index attack. His evidence about his schooldays is that he had difficulties with reading and processing written information. It is not clear to me that the information that can be found in this monthly magazine cannot be better obtained by him orally from his various therapists and outpatient/inpatient courses for which awards have been made. Mr Wilson has not satisfied me that this is reasonably required and so I make no award for this.

Future Dietician

199. Mr Wilson's case is that he is unable to handle knives which makes it difficult for him to cook. He obtains takeaway meals or relies on others (such as partners) to cook for him. Ms Way suggests that he should be provided with support from a dietician to help him maintain good health, and so he seeks an assessment, two sessions, travel and mileage. The Defendant submits that Mr Wilson did not cook prior to the index accident, as the care and OT experts agreed in the joint statement, and so he would likely have mostly eaten takeaways in any event. Mr Wheeler challenged Mr Wilson's case on his inability to handle knives in cross-examination, pointing to Mr Husain recording that he keeps a knife in his bedroom drawer for fear of attack (which Mr Wilson said is a knife sharpener, not a knife) and Ms Bochkoltz's evidence that she saw a knife under the sofa in his living room. I do not find it necessary to make findings about his feelings and fears around knives. If he has a fear of knives after the accident which makes him unable to handle them and prepare his own food, there is no credible evidence before me that two sessions with a dietician will dispel it. That would be something he would have to deal with psychologically as part of his PTSD therapy. In any event I am satisfied on the balance of probabilities that but for the accident Mr Wilson would also be subsisting on takeaways or food prepared for him by others, as he did before his accident. For those reasons Mr Wilson has not satisfied me that this is reasonably required as a result of the injuries suffered in the index accident and I make no award under this head.

Future Medical Care - Spinal Injury

200. Mr Wilson seeks the cost of regular review, treatment and inpatient care at a specialist spinal injury centre for life-long medical monitoring and specialist support and education, as the spinal experts agreed that he needed in his joint statement. They further agree this is unlikely to be met in the NHS and so he should be able to access this in the private sector. They agree this should be in the form of a yearly follow-up, with contingency funds to cover other requirements. Mr Selmi's opinion is that this should include an MDT assessment and investigations such as ultrasound for urinary surveillance and an MRI scan at an annual cost of £6,000. Mr Kumar's view is that one week a year inpatient stays at a specialist unit (which is found in the counter-schedule in relation to future physiotherapy costs) is sufficient. As I

discussed in relation to the future physiotherapy claim, I am satisfied that this does not overlap with the three-yearly stays at the Royal Buckinghamshire Hospital for specialised physiotherapy recommended by Ms Bochkoltz for which I have made an award. I accept Mr Selmi's recommendation over that of Mr Kumar, whose partiality taints his evidence, and award the £218,700 lifetime costs sought by Mr Wilson.

Future Medical Treatment

201. Mr Wilson relies on Mr Selmi's opinion in his updated report of March 2023 that with the fracture of the posterior elements of his T8/T9 vertebrae and his spinal fusion, there is a potential risk of causing a disruption in the functional vertebral unit and developing local anatomical changes which will result in exaggerated and accelerated secondary degenerative disease, escalated by his abnormal gait. In his opinion, Mr Wilson's spine will always remain vulnerable, with there being a 15 - 20% risk of him developing degenerative changes in 10 - 15 years' time. This will cause him to experience increased back pain and, possibly, neurological deficits such as limb pain and weakness. He opines that this may lead, possibly, to surgery to treat the disc degenerative disease and/or medical management of pain. In his view this will need to be undertaken in the private sector as any delay under the NHS will have consequent problems in Mr Wilson's day to day life. Mr Wilson claims £3,000 being 20% of the top of the £10,000 - £15,000 range suggested by Mr Selmi for cost of the likely treatment, post-operative care and rehabilitation.

202. Mr Selmi also recommends treatment from a pain management team to deal with any increased back pain, as well as the shoulder pain which Mr Selmi anticipates that Mr Wilson may start to develop in 5 - 10 years from the index attack, as he becomes increasingly reliant on a wheelchair for his mobility. He says that the reported incidence of shoulder pain after SCI is between 30-70% depending on the level and time since injury, of whom 40% have bilateral symptoms. He says that in a spinal cord injured individual the shoulder pain and limitation of function can occur from several different types of pathological changes, although rotator cuff deformities are the commonest, occurring in 65-70% of those with symptoms, and these improve with surgical treatment. He recommends this pain be managed by physiotherapy and analgesics in the first instance, but treated by steroid injections (3

per year at £150 per injection for life) and, ultimately, shoulder joint replacement for both shoulders if necessary (at £6000 per shoulder). He does not address the timing of any likely shoulder joint replacement. Mr Wilson claims the full cost of steroid injections but does not discount for Mr Selmi's evidence that shoulder pain arises only in 30 – 70% of those with SCI. Mr Wilson also seeks the full cost of shoulder joint replacement, although the chance of that being necessary at all appears to be perhaps 70% of the 30-70% of those with SCI who develop shoulder issues, and only 40% of those require bilateral replacement.

203. Mr Selmi further anticipates that Mr Wilson will experience degenerative and arthritic changes in his ankles, particularly his left ankle, earlier than the general population, because of his stiffness, imbalance and poor gait which subjects the lower limb joints, to abnormal loading. He opines that these will likely require replacement at £8,000 per ankle and Mr Wilson claims £16,000 for this in the further amended schedule of loss. Mr Selmi further anticipates a 20-30% risk of Mr Wilson developing peripheral nerve neuropathies in his hands in 15-20 years which will likely require surgery at £2,000 per hand. Mr Wilson claims £1200 which is 30% of this cost.

204. The Defendant makes nil allowance for this head of claim. It relies on the opinion of Mr Kumar, but I cannot accept Mr Kumar's opinions given my findings about his partiality and lack of independence. The Defendant further submits that the risk of surgery for degenerative disc changes is not established on the claimant's own evidence and points to Mr Selmi's assessment of this risk at 15 - 20%. The SCI experts did not explore their differences in opinion in relation to possible treatment and surgery for disc degeneration, shoulder joint pain, degenerative and arthritic changes to ankles or peripheral nerve neuropathies in their joint report, as Mr Kumar simply stated that he disagreed with Mr Selmi in relation to paragraphs 13 (Mobility) and 15 (Activities of daily living /Care & Ageing) in which Mr Selmi's opinions about likely limb joint and spinal deterioration were summarised.

205. I prefer Mr Selmi's opinions set out in this section to Mr Kumar's bald disagreement. I award Mr Wilson:

i) the £3,000 sought for disc degenerative disease treatment, being 20% of the overall cost to reflect the risk that it is not required;

ii) 50% of the £450 annual cost for steroid injections (to reflect the risk that he does not develop shoulder pain, the mid-point of Mr Selmi's 30% -70% range being appropriate in my judgment) for life, being £8,201;

iii) 35% of the £6,000 cost of one shoulder joint replacement (being 70% of the 50% possibility that he does not develop shoulder pain) which is £2,100;

iv) a further 40% of that cost for the possibility that he needs the second shoulder joint replacing, being £840;

v) ankle replacement at £8,000 per ankle being £16,000;

vi) £1,200 being 30% of the cost of peripheral nerve neuropathy surgery as sought.

Future Pain Management

206. Dr Valentine recommends the input of a consultant pain specialist to oversee and optimise the range of medications used for the management of Mr Wilson's chronic pain condition, and allows for a review by a pain specialist in the future as new specialist drugs and therapies may become available. It was put to him in cross-examination that the management of Mr Wilson's pain would be dealt with by the multidisciplinary team in the regional SCI centre, and he said that he disagreed "*completely*". He said that he had many SCI patients who were managed at the Sheffield regional SCI centre but still come to local facilities in Norfolk for local management of pain and were often better managed locally.

207. The Defendant submits there should be nil award under this head, relying on Dr Edwards' view expressed in his report and in the joint statement that he considers there is no place in Mr Wilson's case for additional medication prescribing and he does not recommend the input of a consultant pain specialist. However, in cross-examination Dr Edwards fully accepted that Mr Wilson needed physiotherapy and had psychosocial problems that he needed to overcome which would enable him to manage his pain better, and remained of the view that if he worked with a small,

focussed multi-disciplinary team that would benefit him, but he also he agreed with the contention that whether money was spent at the chronic pain clinic or on psychiatry/psychology or physiotherapy, "*the money still needs spending*".

208. I have looked at this head of loss together with those for future physiotherapy (including future spinal injury outpatient/inpatient rehabilitation), future psychiatric and psychological therapy, future medical care – spinal injury and future case management and in my judgment it is likely that if the full provision that is claimed is awarded, that will result in a significant over award. What is claimed is an ideal sum under each of those heads, with the risk of overlap. I accept the need for a pain medication review, but think it unlikely that could not be carried out within the funds made available for yearly spinal injury follow-ups and contingencies. If Mr Wilson suffers greater pain because of an inability to engage fully with physiotherapy or psychology provision, or if these treatments are ineffective, for example, he can instead spend some of the sums awarded for physiotherapy or psychology at the pain clinic. This was very much the tenor of the oral evidence of Dr Edwards, the Defendant's pain expert, and in my judgment the evidence of the psychology and pain experts generally is that a psychiatric/psychological improvement in will increase his ability to manage his pain, and lessen his need for pain management and treatment, but his psychiatric/psychological condition may be entrenched in which case the focus would move to pain management. Mr Barclay or any successor case manager will no doubt continue to manage the provision of support services depending on part on what Mr Wilson is able to engage with at the time where that money is best spent. Accordingly although I accept the need, potentially, for future pain management, I make no award as I consider that can be provided for, if required, in the awards already made under the heads of loss identified above.

Future Urology Treatment and Sexual Function Support

209. Mr Wilson seeks the costs of management and treatment of his existing urological symptoms and neurogenic bladder overactivity resulting from the index attack. He seeks the cost of scans, urodynamic studies and consultation with a urologist annually for life, as recommended by the single joint expert Mr Shah in his report. He further seeks the cost of Botox injections every 9 months (Mr Shah's evidence is

that they last 6-12 months) at £3,210 each time, for 20 years (£88,821.02 after the appropriate multiplier), after which he may be able to continue with those injections or may require an augmentation ileocystoplasty. He seeks a further £25,000 contingency to cover either option. He further seeks the cost of erectile dysfunction medication at £3 per week for life.

210. The Defendant notes that after his attendance at a consultation with his treating urologist, Mr Ockrim, at which Botox injections and the likely need for self-catheterisation were discussed, he told a tissue viability nurse, Ms Dunne, that he would rather avoid bladder Botox and the need to self-catheterise. In the counter-schedule the Defendant submits that the evidence suggests he will not undergo further treatment for his bladder, but Mr Wilson was asked about this in cross-examination and he was very clear that he was "*having that done*". He said that he had been on medication to try and calm his bladder but it had not worked, so he would now move to the Botox treatment. He said that he understood the likelihood that he would need to self-catheterise afterwards, and told the Court that he had an appointment on 1 February 2024 for a nurse to show him how to do so, but she was not there so that had to be rescheduled. He says that he has a rescheduled appointment, and Mr Barclay confirms the appointment and that Mr Wilson intends to have Botox treatment. I find on balance that he does intend to carry out the Botox treatment.

211. Given this finding, the Defendant allows the cost of the erectile dysfunction medication and the annual cost of scans and consultations, but submits that urodynamics can be done every two years. This comes from Mr Shah's answers to part 35 questions in which he notes that "*Urodynamic studies will not necessarily be conducted every year since this is not practicable in a busy unit. Ideally the[y]… should be repeated every couple of years depending on how he is being managed…*". Accordingly, I accept that submission and allow the cost of erectile dysfunction medication, annual scans and consultations as sought by Mr Wilson, but allow the cost of urodynamic studies every two years, not annually.

212. The Defendant further seeks a 50% discount on the likelihood that Mr Wilson will not attend such appointments, but I do not agree. No doubt if he does not attend he will be charged an additional fee for a rescheduled appointment, but there is no

proper basis for reducing the treatment costs on the basis that he may miss some appointments, in my judgment, which in any event I have found are unlikely to be deliberately missed, but rather missed because of Mr Wilson's ADHD and/or issues resulting from his PTSD caused in the index attack.

213. Given my finding that Mr Wilson intends to have Botox injections, the Defendant seeks a 30% discount on the sum sought for Botox for the chance that it does not work at all, and a further 2/3rd discount on that reduced sum for the chance that Mr Wilson will not continue the treatment even if it is initially successful. The former submission is an application of the principle that "*The assessment of future losses involves an assessment of the chances of future events, and that assessment of those chances, whether they are more or less than even, must be reflected in the amount of damages.*" (per Laing J in *Totham v King's College Hospital NHS Foundation Trust* [2015] EWHC 97 (QB)). Mr Shah's evidence, in answer to Part 35 questions, is that Botox injections work for 70% of patients with a neurogenic bladder and do not work on 30% of them. Accordingly, I agree that an award of 70% of the sums sought by Mr Wilson for Botox injections will reflect the chance that Botox injections may not work for Mr Wilson. However I do not have any evidence about the number of patients who stop the treatment even though it works, and why. Mr Shah does not mention this as a risk factor. If the injections work, they will prevent Mr Wilson's incontinence and the pain and damage that is caused to his skin by that incontinence, so it seems to me unlikely that he will discontinue them. For those reasons I do not further reduce the award to reflect that potential risk.

214. The Defendant only allows for Botox treatment for 20 years in the counter-schedule, and does not address the further £25,000 contingency for further Botox or augmentation ileocystoplasty sought by Mr Wilson. Mr Shah recommends the surgery as something Mr Wilson should seriously consider, which he says is a very effective procedure for the treatment of the hyperreflexic neuropathic bladder of the type Mr Wilson suffers with, but will more than likely result in the need to self-catheterise indefinitely. However he says that is a procedure which "*is appropriate in a younger patient*" like Mr Wilson, so does not appear to envisage it being carried out *after* 20 years of Botox treatment, when Mr Wilson is older. The benefit of the Botox treatment over the surgery appears to be that he may not have to self-

catheterise indefinitely after Botox injections (whereas he will more than likely need to after the surgery). Mr Shah says that this depends on the dose of Botox used, and that is likely in Mr Wilson's case to be at least 200 units and possibly 300 units of Botox. He says in his report that if 200 units are used, that the likely need for self-catheterisation is 20%, but if 300 units are required to stabilise his bladder, he is more likely than not to need to self-catheterise. In his answers to Part 35 questions he further refines this by saying that Mr Wilson "*is more likely than not*" to have to self-catheterise as "*he has a neuropathic bladder… The catheterisation is necessary as long as the Botox effect is present. It could be for several months. He is likely to need to catheterise indefinitely*". Accordingly it seems to me that if Mr Wilson finds, following one or more Botox treatments, that he does need to self-catheterise indefinitely (for which Mr Selmi says there is a greater than 50% chance), or if he finds that he is one of the 30% of patients for whom Botox does not work, it is more likely than not that he will have the surgery.

215. Accordingly, I find that the correct award for Botox injections is one of £3210.00 every 9 months for the rest of his life subject to a 30% discount for the 2nd and 3rd treatment to reflect that Botox might not work for him at all and a 50% discount thereafter to reflect the risk that he will need to self-catheterise indefinitely, both leading him to undergo augmentation ileocystoplasty instead of continuing with Botox injections. The cost of that surgery at £25,000, if required, is well within the cost of the discounted award for Botox injections and so I make no further award for that surgery. Although this is different to what the Claimant had claimed (Botox injections for life with varying discount awarded vs 20 years of Botox injections and a contingency thereafter for further Botox injections or surgery as claimed), I am satisfied that it is fair compensation given the various uncertainties I have highlighted above.

Future Dermatology

216. Mr Wilson seeks an award for future dermatological/skin tissue assessments because of his lack of sensation and altered sensation on his lower legs, arising from the index attack. He seeks the costs of an initial consultation plus six follow-ups per year for life at a total cost of £26,444.00.

217. The Defendant submits that the only evidence of dermatological issues arises from Mr Wilson's incontinence (Mr Shah's answers to Part 35 questions "*It is probable that the incontinence has caused the problem with his skin*") and so the urology treatments which are aimed at stopping the urinary leakage will mean there is no reasonable need for future dermatology. It seeks a nil award. I am with the Defendant for the reasons it gives. I have seen no evidence that Mr Wilson requires dermatological assessment or treatment other than arising in relation to his bladder dysfunction. I make no award under this head.

Future Transport

218. Mr Wilson relies on Ms Way's recommendations that he requires a vehicle which is adapted for his transportation needs and has: automatic transmission; suitable hand controls; a wheelchair hoist; additional boot space for equipment; rear seating for passengers; wide door opening, low sills and plenty of leg room; electric seat and steering wheel adjustment; central locking and electric windows and a leather interior. I note that Mr Lenfield, the Defendant's previous care and OT expert, agreed with Ms Way's recommendations. Mr Wilson therefore seeks the costs of a Ford Galaxy Titanium 2.0 hybrid auto (at £39,610 purchase price less residual value) or similar every 5 years, less the cost of a vehicle in any event (a manual vehicle bought at £2,100 less residual value), plus the cost of adaptions. He also seeks the cost of insuring a support worker to drive the vehicle, breakdown cover as recommended by Mr Selmi and agreed by the care and OT experts, and the cost of a blue badge.

219. The Defendant submits that Mr Wilson has been managing either with his Ford Puma Motability vehicle or a selection of other small four door cars which he has hired or bought, and which have not been adapted. It notes that Ms Bochkoltz found in August 2022 that Mr Wilson was able to put his wheelchair and Tri-ride into the boot of his car independently. It submits there is insufficient evidence that Mr Wilson wants or reasonably needs to purchase an adapted vehicle, but if he does he should make use of the Motability scheme or buy a standard automatic vehicle. The Defendant does concede that he may need an adapted vehicle in the last 5 years of his life, but this is based on Mr Kumar's inexplicable and unjustifiable statement in his report that Mr Wilson "*is likely to need an electric scooter for longer distances*

and outside" in the last five years of his life, when he knew that Mr Wilson already was using a wheelchair for those purposes and that it was reasonable for him to do so. Given that concession by the Defendant, therefore, it appears that the Defendant must accept that Mr Wilson needs an adapted vehicle now, when he already needs and is using a wheelchair for longer distances and outside. The Defendant does not take any issue with the reasonable requirement for such a car to be the Ford Galaxy suggested, at the cost suggested for both the vehicle and the adaptations, the insurance or blue badge. It does submit that the cost of the car necessary in any event should be higher, being based on a purchase cost of £2,990 which is the cost of the car bought by Mr Wilson in April 2022, which I accept. I also accept the care/OT expert's agreement that the car should be replaced every 5 years.

220. Accordingly, I award the sums sought by Mr Wilson save that the award should reflect that the vehicle in any event would be purchased at £2,990.

Future Holidays

221. Mr Wilson says that he enjoyed foreign holidays every two years prior to the index attack. He claims for the cost of a foreign holiday each year. He relies on Mr Selmi's recommendation that he should take holidays in warmer climates to relieve his pain, spasms and stiffness (although Mr Selmi considers Mr Wilson's mobility, pain and poor balance will restrict his choice of holiday destination) and Ms Way's recommendation that holidays will become increasingly important given the limitations in Mr Wilson's life post-injuries. Ms Way also considers that his choice of suitable package holidays will be limited by his need for wheelchair accessible destinations and accommodation. She opines that he will need to travel with a support worker, use wheelchair accessible taxis and recommends the use of a baggage courier service to get the baggage from his home to his holiday accommodation and back again. Both Mr Selmi and Ms Way consider that he will need to travel business class on long haul flights which will provide Mr Wilson with a multi-adjustable seat and increase the leg room which will help to relieve pain and pressure.

222. Although Mr Wilson claims only for one two week holiday per year, in Europe, he seeks the cost of annual multi-trip worldwide insurance for himself and for his

support worker. Although Mr Selmi and Ms Way consider he needs business class on long haul flights, he seeks an allowance towards the cost of return European business class flights for him and a support worker. I take judicial notice of the fact that there is generally no difference in the seats in economy and business class on European flights which provide no additional adjustability or legroom and so this does not appear to be reasonably required.

223. Other costs sought include an allowance of: £150 x 14 nights for accessible accommodation for Mr Wilson, although I have no evidence that accessible accommodation costs any more than non-accessible accommodation; and £1400 allowance to upgrade to all-inclusive accommodation or for additional costs of meals out for 14 days at £100 per day, although it is not clear to me why he has any additional meal costs arising from his injuries; but these sums appear to be covered by the set-off of £3500 cost of holidays which would be incurred in any event.

224. Mr Wilson further claims £150 x 14 nights for the support worker accommodation; £50 x 14 day allowance for wheelchair accessible vehicle hire or taxis; £70 allowance towards additional airport parking costs or drop and go service; £250 allowance to hire or transport specialist equipment; £144 for specialist return courier service; and £20 per night x 14 nights subsistence for the support worker.

225. The Defendant allows nil under this head. It puts Mr Wilson to proof of his holidays abroad prior to the index event. This was explored with both Mr Wilson and his mother in cross-examination. In his witness statement he says that he used to go on holiday before his accident, and he had previously visited Spain, Greece, Turkey, the USA and Barbados, about every two years and his father had paid for his holidays. In cross-examination he thought the last time he had been on holiday was to Tenerife with his father in 2014 or 2015, so two or three years before he went to prison in 2017, but I have found that he is not very reliable with chronologies and so I cannot rely on this. Mrs Wilson thought that he had been on holiday to Turkey and Fuerteventura only "*very long time ago*" when he was about 10 or 12, and on holiday with his father more as a teenager than an adult. I find that it is more likely than not that that the holidays Mr Wilson described were mostly taken when he was a child or a teenager and he has not satisfied me that he travelled abroad on holiday as an adult as often as once every two years before the index attack. I have no

evidence from Mr Wilson's father that he would have continued taking him away on holiday after his release from prison, and I consider it unlikely that he would have been able to afford to go abroad on holiday very often given that he has failed to satisfy me on the balance of probabilities that he would have had any significant legitimate earnings. I think it is likely that he would have persuaded a partner or his father to have paid for him to go on holiday once every 5 years or so. I will award only the additional costs set out in the paragraph above, in respect of one European holiday every 5 years, with no additional insurance costs for Mr Wilson as he would have paid for insurance in any event, but single trip European travel insurance for the support worker. Counsel should seek to agree that cost.

Future Aids and Equipment

226. Ms Way recommends an extensive list of aids and equipment and this was largely but not entirely agreed by Mr Lenfield in the joint statement of care and OT experts. It is based on Mr Selmi's prognosis which I have accepted. The Defendant makes submissions that some of this equipment is unnecessary based on Mr Kumar's comments, but he is not a care/OT expert and I do not consider those comments to be reliable for the reasons I have given. Mr Lenfield is no longer an expert in this case and so there is nothing else before me to gainsay Ms Way's opinion. I do find that Ms Way's opinion that Mr Wilson requires a sports wheelchair as well as a lightweight wheelchair and a powered wheelchair because he may like to do wheelchair sports to amount to little more than speculation given that he has not evidenced a desire to do so, and so I do not allow the costs in relation to this, which amount to £19,652.65. I also note that she has provided replacement bedding on an annual basis due to incontinence, but I have awarded Mr Wilson sums for Botox injections or surgery which will deal with his incontinence, so I remove that cost of £7,290.00 and £2,259.90 for botos for the same reason. I also remove the padded toilet seats and backseats which Mr Wilson already has but says he does not use, at a total cost of £1971.61, and the BerkelBike and FES abdominal program and shorts which do not appear to be recommended by the physiotherapists or the SCI surgeons, amounting to £177,828.80 and £9,089.78 respectively. Although this was agreed by both Care/OT experts at the time of the joint statement, Ms Way accepted in cross-examination that there was no evidence the FES abdominal program was

appropriate in addition to the BerkelBike itself. She also said, and I noted, that the Court should not cost it "unless the physiotherapists support". Although I initially remembered that as being a reference to the FES program rather than the BerkelBike, following submissions from Mr Wheeler after the draft judgment was circulated I looked at my notes again and it is clear that comment related to the BerkelBike. Ms Keech a recumbent bike at £599 replaced every 8 years until the Claimant was 60 and Ms Bochkoltz suggested a bike or other equipment at £1,000 replaced every 5 years for life, although the Schedule of loss pleads Ms Bochkoltz's suggestion until age 50 and the BerkelBike throughout. As neither physiotherapist appears to see the need for a BerkelBike, and indeed I accept Mr Wheeler's submission that without the FES program it is difficult to see what benefit it has over the very much cheaper options the physiotherapists recommend, I do not allow the BerkelBike as I do not consider it reasonably required. I generally prefer Ms Bochkoltz's evidence and for that reason I will award Ms Bochkoltz's recommended bike at £1,000 every 5 years for life which I understand with the appropriate multiplier amounts to £5,335.40. Finally, my finding in paragraph 199 above that but for the accident Mr Wilson would be subsisting on takeaways or food prepared for him by others as he did before his accident means that I disallow the sum of £46,156.76 for pre-packaged meals which I do not believe are reasonably required as a result of the injuries suffered in the index attack. I otherwise award the full sums sought by Mr Wilson under this head which amount to £308,845.48.

Future Accommodation

'But for' accommodation

227. In my judgment it is unlikely that Mr Wilson would have occupied a three-bedroom property 'but for' the index attack. I have set out my findings about his accommodation before his imprisonment in 2017 and I think it is more likely that he would have moved into a room in a shared property, and eventually rented a one-bedroom flat at a monthly rent of £913 per calendar month and running costs of £3100 per annum (the agreed figures produced in Mr Burton's supplementary report and agreed by Mr Nocker in his supplementary report, rounded up). Although he may have on occasion moved into a two bedroom flat with a partner and paid a share

of that, I think it is unlikely that any such arrangement would have lasted in the long-term given his history of many and relatively short-term relationships.

Future accommodation

228. Despite my finding that the 'but for' accommodation is a one-bedroom flat, in my judgment a suitable award is one which allows Mr Wilson to purchase a 3-bed bungalow within the ranges agreed by the accommodation experts in the joint statement, i.e. between 137 and 146m^2, with a living room, dining kitchen, utility room, adapted shower room, family bathroom, WC and internal circulation suitable for Mr Wilson's needs, plus a low maintenance garden and attached garage and car port. This is because I accept Ms Way's opinion that Mr Wilson will need live-in support up to the age of 60 in times of illness and after surgery and medical treatment, and full time live-in care after that age, and that he needs space for visitors (including, potentially, his child) as it is difficult for him to stay with other people because of his accessibility and other needs including specialist beds etc, so an additional bedroom is reasonably required, in my judgment.

229. Given the time that has passed since the joint statement, I prefer Mr Nocker's estimate of the purchase price for such a property at £600,000 to Mr Burton's lower sum. I further accept Mr Nocker's ancillary purchase costs of £16,519. Mr Wilson seeks £286,717 for adaptation and extension works, and I accept this sum.

230. I make no allowance for betterment as I accept Mr Nocker's view that the cost of betterment relating to the exercise pod is comparable to the cost of reinstatement before selling the property. I do subtract from the value of the required accommodation the value of the reversionary interest as calculated by Mr Wilson in the further updated schedule of loss.

231. The experts' likely increase in running costs in the joint statement is based on the difference between the three-bedroom bungalow lifetime home and a 'but for' case of a 2-3 bedroom family home, not the 'but for' case as I have found of a one-bed flat. Mr Nocker does not specify the three-bedroom bungalow running costs in his initial report but Mr Burton puts those at £14,818.69 in his initial report and I accept that figure. The difference between the running costs for that lifetime home and the 'but for' one bed flat at £3,100 per annum is therefore £11,719 per annum, to

include furnishings replacement and specialist equipment maintenance and replacement costs per annum. I so award. I also award the costs sought for general repairs of £15,000. I have no evidence why there is an additional sum sought for upgrading thermal elements and why this does not fall within the purchase or adaptation costs so I do not allow it. I also do not allow the various sums sought for resurfacing the driveway, glazed balustrades and a special bath, which I am not satisfied are reasonably required.

232. The award is therefore £489,729.64 (being the purchase price less the reversionary interest) less £399,346.20 (being rental in any event) plus £16,519 (costs of purchase), plus £286,717 (cost of adaptation works) plus £427,157.55 (increased running costs), plus £15,000 for repairs, being £835,776.99.

Future Accommodation Equipment

233. Mr Wilson relies on the reports of Mr Nocker and Ms Way for details of the furnishing and equipment needs of the property. The Defendant submits that Mr Kumar says that his property does not need much adaptation, but I do not accept the evidence of Mr Kumar on this point as he is not a care expert. Mr Burton in the joint report does not allow for intruder and smoke alarms, electric shower, visual door entry system etc saying that Mr Wilson would have had to pay for those in the 'but for' property, but I have found he would have rented his 'but for' property and so the renewal costs would be additional costs which I allow as reasonably required.

234. The Defendant does accept that the support worker requires bedroom furniture, bedding and towels etc but does not consider that kitchen and office appliances and furniture for that support worker is reasonably required. I accept that the support worker may reasonably require a kettle and a microwave for his or her own use, and also a desk with a locking drawer and office chair and bin. I do not make any additional award for: curtains and carpets (£1200 every 10 years being £4985 in total) as that seems to be double counting, floor coverings and curtains for the whole property having already been accounted for; a shredder, stationery, computer equipment and office 365 as it seems to me any support worker should provide and be responsible for their own IT and is unlikely to need a shredder if they are keeping digital notes (totalling £16,909.04).

235. Accordingly I award a total of £130,591.77 under this head.

Future Increased Costs

236. Mr Wilson claims for the increased cost of heating his home, which he says is caused by him being at home for longer periods of time and more sedentary requiring the heating on for longer, additional laundry costs as result of his incontinence, and because of the need to use a tumble dryer rather than hanging washing out which he is unable to do, and additional electricity expenses for charging his wheelchair power assist device, exercise equipment and powered wheelchair.

237. I accept the increased heating costs and electricity expenses as these appear to me to be reasonably required as a result of his injuries and the need to rely on powered mobility and exercise aids. The sums sought appear to be reasonable. Accordingly I allow the £14,580 and £6,465.27 sought under these heads. However, I have allowed costs to treat his incontinence by way of Botox injections and/or surgery which should mean that he does not have additional laundry costs, and I have also allowed sufficient care costs which will cover assistance with domestic tasks such as hanging out laundry, so I do not award the £4,321.51 sought under this head.

Lost Years on Income

238. The Defendant submits that this head of loss is advanced on the basis that Mr Wilson's entire foreshortened life expectancy was caused by his spinal injury, when in fact the SCI experts agree that part of it is due to his smoking, and that it is also made on the incorrect assumption that that Mr Wilson would, but for the accident, have a full set of qualifying National Insurance Contributions. He had practically no NICs before the index attack and I am satisfied, as previously discussed, that he would have in any event likely have had only extremely patchy employment. Mr Mooney in closing accepted both these points. I make no award under this head of claim.

IX. Conclusion

239. The following sums shall be set off against the damages I have awarded:

i) £3,577.65 owing from Mr Wilson to the Defendant pursuant to the consolidated account attached to the Defence;

ii) Recoverable benefits pursuant to a CRU certificate dated 5 September 2024 (valid to 25 December 2024) to the extent they can be offset, which amounts to £13,264.91 of the total;

iii) Interim payments made by the Defendant to Mr Wilson on account of damages in the sum of £331,000;

iv) Interest on such interim payments totalling £15,485.90

The parties have agreed the few figures that remain to be calculated and the relevant interest calculations and the final figure for damages plus interest awarded is £5,404,559.05.

240. I have tried to do justice to both parties based on the evidence before me, including expert evidence, without sympathy or bias. There is no doubt that Mr Wilson's life has been radically and permanently affected by the physical and psychiatric/psychological injuries caused by that terrible attack in the prison kitchen. I hope that despite his challenges, he is able to engage to the fullest extent with all the therapies that I have found he requires, so that his life is as full and active as it can be. I also hope that the conclusion of this litigation will assist him in doing so.