



Neutral Citation Number: [2021] EWHC 432 (QB)

Case No: G90MA65

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MANCHESTER DISTRICT REGISTRY**

Date: 25<sup>th</sup> February 2021

Before :

**MR JUSTICE FORDHAM**

Between :

**WILFRED WALKER**  
**- and -**  
**JAKE SMITH**

**Claimant**

**Defendant**

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**Winston Hunter QC** (instructed by Irwin Mitchell LLP) for the **claimant**  
**Christopher Kennedy QC** (instructed by DWF Solicitors) for the **defendant**  
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Hearing date: 25.2.21

Judgment as delivered in open court at the hearing  
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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

**MR JUSTICE FORDHAM :**

1. These proceedings are a damages claim in respect of serious personal injury arising out of a road traffic accident. The trial was due to take place in this Court on 1 March 2021. The parties have reached a settlement, embodied in a draft consent order, subject to the Court being satisfied on two questions. The claimant is of full age and capacity and has agreed the settlement. This is not a protected party case and the Court is not being asked to approve the settlement as a whole. I shall focus on the two questions on which I need to be satisfied. The mode of hearing was by MS Teams which, during the pandemic, was justified and proportionate. No party's interests were prejudiced. Open justice was secured: the case, its start time, and an email address usable by anyone wishing to observe this public hearing were published in the Court's cause list.
2. Section 2(3) of the Damages Act 1996 requires the Court to be satisfied, in the context of periodical payments, that the continuity of payment is reasonably secure. Section 2(4)(b) provides that, for the purposes of section 2(3), continuity of payment is reasonably secure if it is protected by a scheme under section 213 of the Financial Services and Markets Act 2000 (compensation). The parties and their legal representatives are satisfied that the periodical payments in this case are protected by a scheme under section 213 of the 2000 Act. So am I. The draft Order records that the Defendant's insurer, Aviva Insurance Ltd (and its successors in title) ("Aviva") on behalf of the Defendant will pay the periodical payments. The order records that "the Defendant and the Defence Insurer have agreed with the Claimant that any failure to make the periodical payments shall give rise to a direct right of the Claimant to enforce this Order and all rights arising under it against the Defence Insurer in consideration of the Claimant agreeing to this Order". Aviva is a UK-based motor insurer and the Financial Services Compensation Scheme applies to the policy issued in respect of the vehicle involved in causing the accident. The details as to the policy and its applicability, and Aviva's status as a relevant person under section 213(9) of the 2000 Act, are confirmed in a letter from Aviva's solicitors (DAC Beachcroft) dated 11 February 2021 and in Winston Hunter QC's Note dated 21 February 2021 for this hearing. The order records that the Defence Insurer will not transfer, novate or assign its obligations to pay the periodical payments absent further Court approval; but that the Defence Insurer's obligations may be discharged with the prior consent of the Court by procuring an undertaking by an annuity provider satisfying the requirements of section 2(4) and enshrined in a further Order of the Court to which the Claimant, the Defence Insurer and the annuity provider are parties. The consent order in this case will therefore include this recital: "AND UPON the Court being satisfied that the continuity of periodical payments under the terms of this Order is reasonably secure pursuant to section 2(3) and section 2(4)(b) of the Damages Act 1996".
3. CPR 41.2(1)(b) requires the Court to be satisfied, in the context of an award of provisional damages, that section 32A of the Senior Courts Act 1981 applies. Section 32A(1) provides that section 32A "applies to an action for damages for personal injuries in which there is proved or admitted to be a chance that at some definite or indefinite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration in his physical or mental condition". The parties and their legal representatives are satisfied that section 32A applies in this case. So am I. As Mr Hunter QC's Note dated 21 February 2021 records: "The joint statements of the medical

experts ... agree that the Claimant is at some, albeit small, risk of developing a cyst (syrinx)”, involving a risk of “a significant deterioration in his physical or mental condition”; that “[t]he parties have resolved the claim on the assumption that the Claimant will not at any future date during his lifetime develop a syrinx in a manner that leads to a significant deterioration in his condition and that if he should do so then he should be entitled to apply to the court for an order for further damages”; and that “the parties are agreed that the risk of syringomyelia is one that it capable of satisfying the test identified under section 32A”. The consent order records in a recital that “the criteria under section 32A of the Senior Courts Act 1981 are met for the making of an award of provisional damages in respect of the agreed lump sum award and the criteria under The Damages (Variation of Periodical Payments) Order 2005 are met for the making of a variable order in respect of the agreed periodical payments in the event that the Claimant at any time in the future suffers from a serious deterioration by reason of the development of post traumatic syringomyelia as defined in [the] Order”. The Order refers to “a serious deterioration by reason of the development of post traumatic syringomyelia which seriously increases [the Claimant’s] disability notwithstanding any treatment (including any surgical treatment) he may receive for that condition”. I am satisfied that this is an action for damages for personal injuries in which there is admitted to be a chance that at some definite or indefinite time in the future the claimant as the injured person will, as a result of the act or omission which gave rise to the cause of action, suffer some serious deterioration in his physical or mental condition. I am also satisfied that the other criteria are met and, to the extent it arises in a consent order case, that the provisional damages order is appropriate as an exercise of judicial discretion. The consent order in this case will record this recital: “AND UPON the Court being satisfied pursuant to CPR 41.2(1)(b) that section 32A of the Senior Courts Act 1981 applies and that the criteria under section 32A and CPR 41.2 are themselves satisfied”.

4. The contents of the remainder of the Order are not matters on which the Court’s consent or approval are required or being sought. For the reasons I have given, I am satisfied on the two points on which I am required to be satisfied. I make the Consent Order in the terms invited by the parties and reflecting the settlement terms they have agreed.