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Judgment: approved by the Court for handing down | *Delivered:* **20/6/08**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

REGINA McKENNA BY HER FATHER AND NEXT FRIEND WILLIAM McKENNA

Plaintiff;

-and-

ROSEMARY CONNOLLY AND PATRICK McGEE (JNR) AS PERSONAL REPRESENTATIVES OF THE ESTATE OF FRANCIS McGEE (DECEASED) AND MOTOR INSURERS BUREAU

Defendants.

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COGHLIN J

[1] The plaintiff in this case, Regina McKenna, is 28 years of age and on 9 February 2003 the vehicle in which she was travelling as a passenger was involved in a collision with a vehicle driven by the deceased defendant as a result of which she suffered devastating injuries. Her injuries included severe trauma to her brain associated with generalised swelling as a result of which it was necessary to perform bi-frontal decompressive craniectomies. She also sustained a fracture of the lateral malleolus of the left ankle and severe chest injuries complicated by pulmonary infection. She underwent a prolonged period of unconsciousness and developed some seizure activity which is controlled by medication. Her bladder is managed by a supra pubic catheter and bowel function is controlled by an enema on alternate mornings. From the date of the accident to early 2007 she required to take nutrition and hydration by way of a PEG tube inserted into her throat. She now able to drink free fluids from a spouted cup and, with supervision, she is able to drink from a normal cup and use a spoon to feed herself. She is unable to speak but can answer simple biographical questions with gestural yes/no

responses and can follow some simple instructions. There has been some improvement in attention and concentration but she is unable to walk and remains subject to profound physical and cognitive disability. She will not be capable of an independent existence. The relevant medical experts have agreed that her life expectancy is 25 years.

[2] If it had not been for the devastating results of the accident it seems clear that the plaintiff would have enjoyed a bright future. Her mother has been employed as a teacher for many years with a particular interest in special needs pupils. At the time of the accident she had reached the position of vice principal and had successfully completed three periods as acting principal in her current school. Since the plaintiff's accident she has returned to work part-time at a local primary school but would like to resume full-time employment. Her father owns a successful horticultural/landscaping business. She has four siblings two of whom are currently at school, one is studying civil engineering and the fourth has professional employment away from home. The plaintiff is a graduate of Queen's University from which she obtained a degree in European Area Studies. Prior to starting her degree the plaintiff had spent a year in Italy teaching English as a foreign language in Sicily and, on completion of her degree she was offered the opportunity of studying for a Masters Degree. However, for financial reasons, she accepted employment as a sales representative with her uncle's company in the local area. The plaintiff participated in a number of sporting activities including netball and ladies GAA and her vivacious and outgoing personality proved a significant advantage in her work as a saleswoman.

[3] The representatives of the estate of Francis McGee deceased, with the leave of the court, took no active part in the proceedings and the second named defendant, the Motor Insurers Bureau, did not dispute primary liability.

[4] In order to assist them in resolving the case the parties have asked me to deal with a number of discrete issues.

General damages

[5] In my opinion the appropriate figure for general damages is one £300,000.

Care and attendance

[6] One of the fundamental differences between the parties has been the extent of care and attendance required by the plaintiff. During their helpful submissions both Mr Ringland QC, who appeared on behalf of the defendant with Mr Michael Maxwell, and Mr Dermott Fee QC, who represented the plaintiff with Ms McKenna, referred to the case of Sowden v Lodge [2005] 1

AER 581 in which the Court of Appeal in England and Wales discussed the relevant principles. In that case Pill LJ, who gave the judgment of the court, referred to the history of damages awarded at common law beginning with the well known statement of Lord Blackburn in Livingstone v Rawyards Coal Company (1880) 5 Appeal Cases 25 at 39:

> "… where any injury is to be compensated by damages, in settling the sum of money to be given for reparation or damages you should as nearly as possible get that sum of money which will put the party that has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation."

The learned Lord Justice also referred with approval to the statement by O'Connor LJ in Rialas v Mitchell (1984) 128 Solicitors Journal 704 in which he said:

> "There may well be cases in which it would be right to conclude that it is unreasonable for a plaintiff to insist on being cared for at home but I am quite satisfied that this is not such a case and once it is concluded that it is reasonable for the infant plaintiff to remain at home then I can find no acceptable ground for saying that the defendant should not pay the reasonable costs of caring for him at home but pay only a lesser sum which would be appropriate only if it was unreasonable for him to live at home and reasonable for him to be in an institution."

At paragraph 38 of his judgment Pill LJ dealt with the appropriate test in the following terms:

> "The test to be applied is in my judgment that expressed by O'Connor and Stephenson LJJ in Rialas' case. That is different from the test applied by the judge who repeatedly used the expression 'best interests' though he equated that with a position which 'most nearly restores her to the position in which she would be but for the accident'. The judge's good intentions with respect to the claimant's welfare are not of course in question and neither, in my view, is the perceptiveness with which he approached the medical evidence but there is a difference between what a claimant can establish as reasonable in the

> circumstances, and what a judge objectively concludes is in the best interests of the claimant. In this context, paternalism does not replace the right of a claimant, or those with responsibility for the claimant, making a reasonable choice."

[7] One further matter of practical importance to emerge from the judgment of the Court of Appeal in Sowden's case was the need to ensure that evidence was relevant to the individual circumstances of the particular plaintiff. At paragraph 85 Pill LJ said:

> "What emerges from the present case is the importance, when dealing with cases involving very serious injuries, of placing before the court cogent evidence as to how the regimes proposed by the parties for the care and accommodation of claimants will operate. …. Judges trying this type of case should not be put in the position the judge, in Sowden, was. Whatever is proposed should be particularised and costed in the schedule (or counter-schedule) of damages. When issues arise, efforts should be made to divide and narrow them in advance of the hearing."

The evidence

[8] I heard evidence from the plaintiff's parents Mr and Mrs McKenna, Dr McCann, the consultant in rehabilitation medicine retained on behalf of the plaintiff, Dr Keegan, consultant physician, retained on behalf of the defendant, Ms Claire Booth, an occupational therapist with an interest in brain injured patients employed by Jacqueline Webb and Company who reported on behalf the plaintiff and Mr Douglas Catlin a nursing care consultant employed by Carnmoney Care Consultancy Limited who reported on behalf of the defendant. The reports and oral evidence tendered by Ms Booth and Mr Catlin concentrated upon the plaintiff's needs and requirements for nursing care, attendance, equipment, appliances, transport etc.

[9] Both of the care experts were subjected to some degree of criticism in relation to their evidence. Mr Catlin accepted in cross-examination that he had not approached the provision of care and equipment in the context of the level of care chosen by those with responsibility for the plaintiff so long as that choice was reasonable. He referred to "current Trust practice" with regard to the provision of two carers to assist severely disabled people and to his experience with "Trust care packages" in similar circumstances.

[10] Ms Booth was cross-examined on the basis that, in a number of respects, her report failed to comply with the concerns expressed by the Court of Appeal in Sowden and Lodge about the need to provide cogent evidence as to how the regimes proposed by the parties for the care and accommodation of claimants will operate in relation to the particular plaintiff concerned. She accepted that in the section of her report dealing with the role of the case manager there were references to liaison with DEA/workplace visits, school visits, finding appropriate rehabilitation placement, looking for appropriate education placement and looking for appropriate residential placement that had little, if anything, to do with this particular plaintiff. She agreed that she had made no enquiry as to the rates paid to home carers when dealing with past care but had simply adopted rates that were the result of policy in her "organisation". When asked about her recommendation that "Regina should have the opportunity to go on holiday to provide stimulation and different experiences," with particular reference to the opinion of Dr McCann that there was no point in holidays, she agreed that she no longer thought that holidays were appropriate and said that she had been "thinking of my other clients who were entitled to holidays". She accepted that there were omissions from her reports. She agreed that the statement that "Regina's need for turning, changes of position and pad changes are unpredictable and she should have two staff available when she requires support" in her second report was a misrepresentation and incorrect. When Dr McCann, the medical expert called on behalf of the plaintiff, was referred to the section on "Rehabilitation" in Ms Booth's first report in which she had included as one of the guides for therapists seeking to meet Regina's current needs the requirement to "assess any perceptual deficits and advise on compensatory techniques and treatment" his pithy observation was "pie in the sky".

[11] A number of matters have been the subject of agreement between the parties. These include:

(*i*) The plaintiff's life expectancy is 25 years.

(*ii*) There should be a 25% reduction to take account of the plaintiff's contributory negligence by failing to wear a properly adjusted seat belt.

(*iii*) Past financial loss £355,000.

(*iv*) Future loss of earnings £318,000.

(*v*) Financial loss in respect of the lost years £25,000.

(*vi*) Pension loss in respect of lost years £10,000.

(*vii*) Care manager costs in respect of lost years £10,000 per annum.

(*viii*) Nursing costs £5,000 to date together with £60,000 in respect of the future.

(*ix*) Accommodation £26,300 to date and £18,000 in respect of the future.

(*x*) Office of Care and Protection costs £300 to date and in the future £6,000.

(*xi*) There should be a deduction of £54,000 to take account of advances made by the defendant in respect of accommodation.

I turn now to consider the specific matters remaining at issue between the parties.

Hours of care required in future

[12] Both Ms Booth and Mr Catlin agreed that a carer should be in attendance during night hours, which were measured between 10.00 pm and 8.00 am. There was also agreement that a single carer was required during the residual 14 hours of waking time and the real debate centred over how many of those hours required a second carer to be in attendance. There was also agreement between the parties that two carers were required for transferring the plaintiff from the bed into her chair or to the bath or from either of those locations back to the bed. Such transfers involved the use of the overhead hoist.

[13] The current arrangements for the provision of care are as follows:

(*i*) From about 7.00 to about 8.45 am the plaintiff is cared for by Mr and Mrs McKenna who prepare and serve her breakfast, turn her if required and carry out other services such as emptying the catheter bag. The main carer arrives at 9.00 am and stays until 2.15 pm. A second carer is present for one hour in the morning usually arriving between 9.30 and 10.00. During this period the plaintiff is showered and dressed. During three mornings a week the Community Trust provides exercises and the second carer stays for an extra hour. Mrs McKenna is the only carer present from 2.15 pm to 4.30 pm when two carers arrive and remain until 5.30 pm. Care of the plaintiff again reverts to the family between 5.30 and 8.30 pm when two carers arrive for a further hour to assist in preparing and transferring the plaintiff to her bed. A night sitter is present throughout the night during two nights a week.

[14] Ms Booth had originally been of the view that the plaintiff would require the constant attention of two carers during the fourteen waking hours. However, she conceded in evidence that only one carer would be needed to manage the plaintiff until she got up at about 9.00 a.m. In Ms

Booth's opinion two carers would be required for twelve of the remaining thirteen or fourteen hours waking time to cover not only the agreed two person activities of transfer but also to provide for the need to adjust the plaintiff's position in her wheelchair when she has slipped forward, the need to provide short breaks for the carers, the need to allow one carer to carry out food preparation, the need to carry out the plaintiff's passive movement exercises, the need to organise the plaintiff in the standing frame and the provision of a flexible facility to allow for various outings. In Ms Booth's view two people were required to travel with the plaintiff in a vehicle, one to drive and the other to reassure her and, if necessary, readjust her position. She also advised that a second person should be present when the plaintiff was travelling in her wheelchair to converse with her and "keep her engaged".

[15] For his part, Mr Catlin proposed one carer to be present during the ten hours of sleep and also during the fourteen hours waking time period. In addition he conceded that it would be appropriate to cater for the presence of two carers for four hours during waking time. He accepted that two carers would be needed for two hours in the morning to provide for the transfer of the plaintiff from her bed to the shower, dressing, transfer to her chair and passive movement and standing frame exercise. In the evening a second carer would be required for an hour to prepare her and transfer her to bed. Mr Catlin suggested that the extra hour for two carers could be used flexibly to deal with unpredictable occurrences, outings etc. He did not accept that outings in the present vehicle used by the plaintiff, a Fiat Scudo, required the presence of two carers. He advised that the winch used to bring the wheelchair into the rear of the vehicle could be adapted so that it could be operated by a single person and he did not accept that a second person was required to travel in the rear of the vehicle as long as steps were taken to ensure that the plaintiff was secure. He suggested that any reassurance could be provided by the driver and, to the extent that that was insufficient, the driver could stop the vehicle at the roadside until the plaintiff had regained peace of mind. He did not accept that it was reasonable to require a second carer to walk beside the plaintiff's wheelchair carrying on a conversation. Mr Catlin expressed the view that any readjustment of the plaintiff's position in her wheelchair could be effected by one person using the overhead hoist or by use of the mobile hoist. He did not consider that there would be any difficult or discomfort in permitting the plaintiff to sit on the sling while in her wheelchair. He accepted that the plaintiff was entirely dependent on others for every activity and that she was subject to unpredictable involuntary movements including nipping and kicking. He also agreed that two carers might be needed for journeys of longer than one hour in a vehicle but suggested that this could be dealt with by telephoning a second carer and implementing his additional or "floating hour". He also agreed that, occasionally, it might be necessary to have a second carer at night estimating that "ten nights a year would be as good a guess as anything else".

[16] From a medical point of view Dr McCann recommended daily use of the standing frame as being an appropriate means of avoiding the development of flexion contractures of the plaintiff's hips and knees. Use of the standing frame requires the assistance of two people. With regard to transport he considered that one carer would be sufficient for short distances lasting for 5 or 10 minutes but for journeys of longer than an hour two people would be required to deal with any problems and provide reassurance. In his opinion the provision of two carers full-time from 8.00 am to 10.30 pm, which was Ms Booth's original view, was probably not necessary on a continuing basis. He accepted that if the plaintiff slipped down in her chair repositioning could not easily be carried out by one person. He also felt that coping with bowel and bladder accidents required the assistance of two persons and that if one person was required to prepare a meal it would be desirable that another person would remain with the plaintiff. Dr Keegan had difficulty in understanding the proposition that the plaintiff would require conversation and reassurance while being transported and at the ultimate destination having regard to her lack of capacity to understand. He recognised that there could be a problem of slippage in wheelchairs but thought that the risk of it occurring might be significantly reduced with the use of an appropriate harness and cushion and that, if it did occur, readjustment could be effected by use of the hoist.

[17] It is not altogether easy to reach an informed decision on the evidence with regard to the number of waking hours during which two carers should be in attendance. Ms Booth's ultimate position seems to have been that two carers were required for 12 waking hours and she based this contention primarily upon the unpredictability of the plaintiff's changes of position and the need for the presence of two carers during outings. She also referred to the need for breaks for the carers, food preparation and passive movement and standing frame exercise. While it is right that Mrs McKenna confirmed in her evidence that the plaintiff tended to slide down in her chair and that she could not be repositioned by a single carer she does not appear to have made such a point to Ms Booth. Ms Booth admitted that she had made no enquiries as to how often the plaintiff needed readjustment in her chair during the course of the day despite the fact that in the course of her evidence she accepted that such readjustments were the major reason for her recommending the presence of two carers during the day. She said that she would have asked a question about this problem but did not record the fact that she had done so although she accepted that it should have been recorded. It is also difficult to be accurate about the extent to which the plaintiff has been going for outings in the past. In the course of her direct evidence Mrs McKenna said that, since Christmas, the plaintiff appeared to enjoy outings and she referred to the plaintiff's visits to the day centre one afternoon a week. She also said that she might look at a visit to the Share Centre which has a swimming pool. When Dr Keegan consulted with Mr and

Mrs McKenna for the purposes of his report dated 30 November 2007 he was informed that the plaintiff's excursions were limited to Sunday Mass, the day centre and respite care in Belfast. However, when she was recalled Mrs McKenna described how the plaintiff had been taken to the family public house to listen to music, once every four weeks went to the hairdresser, during the summer she would attend a football match on a Saturday or a Sunday and that over the past 12 to 18 months she had attended a number of weddings. She also described how she would take the plaintiff out to a local restaurant for lunch on Fridays and, possibly, shopping to Craigavon or Omagh. When questioned in cross-examination she said that she had forgotten to mention these outings when originally giving evidence. Understandably, the defendant viewed the degree of recall contained in this interposed evidence with a certain degree of scepticism. However, even if I were to accept that this evidence was, to some extent, the product of protective but misguided exaggeration it seems to me to indicate the range of outings that might be open to the Plaintiff with the benefit of flexible resources. On the other hand, my view is that the more structured and compressed regime for the attendance of two carers proposed on behalf of the defendant by Mr Catlin and Dr Keegan was influenced more by current NHS and Social Services practice and resources than an attempt to comply with the tests adopted by the Court of Appeal in Sowden v Lodge. In seeking to restore the plaintiff to the same position in which she would have been if she had not sustained her injuries it does not seem to me to be unreasonable for Mr and Mrs McKenna to seek a regime that reduces, if not removes, their role as carers and fosters and, as far as may be practically possible, preserves something of the degree of independence, dignity, flexibility and spontaneity that their daughter previously enjoyed. The DVD that was shown in court illustrates the difficulties posed by the plaintiff's involuntary movements, her tendency to nip and strike out and her uncoordinated and discordant sounds. As a matter of fact it would appear that the plaintiff's position in her chair is likely to alter fairly frequently during the day. I do not think that it is unreasonable for the plaintiff's parents to wish her to be made comfortable by carers whom they know and trust rather than for her to be restrained by a harness for lengthy periods and to have her position re-adjusted mechanically. In the circumstances, having given the matter careful consideration as well as viewing and reviewing the DVD, it seems to me that the plaintiff should be compensated on the basis that two carers are required for a total period of eleven hours between 8.00 am and 10.00 pm.

Rates for carers.

{18} Pending the outcome of a current local government review the parties have agreed to apply the currently applicable hourly rates subject to a review by the court in 12 months time.

Number of weeks required by carers

[19] On behalf of the plaintiff Ms Booth recommended 52 weeks at full pay to which would have to be added 4.8 weeks holidays rising to 5.6 weeks in April 2009. She also referred to the need for some time for training and recruitment. On behalf of the defendant Mr Catlin was prepared to agree a period of seven additional weeks to account for holiday pay and training and it seems that the only significant difference between the experts is whether or not a deduction should be made for six weeks of respite care. The plaintiff has undergone regular periods of respite care at Foster Green Hospital but Dr McCann has expressed the view that this would be more appropriate provided in a Nursing Home closer to the family house. When she was recalled Mrs McKenna stated that, if they had a choice, by which I think she meant that if there were two carers present during daylight hours throughout the year, they would prefer not to let the plaintiff go for respite care. She said that on the last occasion, when she returned from respite care, the plaintiff had been soiled and her skin was excoriated. She accepted in cross-examination that she had never previously complained about respite care. Without wishing to detract from the admirable and selfless dedication with which she has approached the care of the plaintiff to date, I must admit to approaching this particular portion of Mrs McKenna's evidence with some degree of reservation. Both Dr McCann and Dr Keegan were in favour of some degree of continuing respite care, although Dr McCann agreed that it might be less necessary if there was a full time care regime at home. Dr Keegan stated that it was invaluable not only as providing an opportunity for a break for the carers but also an interlude during which the condition of the plaintiff could be thoroughly checked and any problems resolved. In the circumstances, I consider that a period of no less than four weeks per annum should be allowed for respite care and, accordingly, the appropriate number of weeks for the payment of carers should be reduced to 55.

Care manager/team leader

[20] In the course of her original care report Ms Booth described the core skills of the case manager as including the assessment of the plaintiff's function ability and needs, the identification of immediate and long-term goals, drawing up a case management plan and the co-ordination and resourcing of services in order to ensure that identified needs were met. Ms Booth accepted that the level of case management would be highest in the first year and thereafter the case manager would be responsible for supervising staff and organising training, reviews, interviews, meetings with equipment representatives and architects etc. She advised that the case manager should have a professional background such as a nurse specialist, occupational therapist or qualified social worker with experience of brain injury. It appears that the section in Ms Booth's report dealing with the position and role of the case manager was included on the basis of a standard template and it is significant that Dr McCann accepted in cross-examination

that there was nothing in that section of her report that was tailored to the circumstances of this case. The plaintiff did not call any evidence to indicate the nature and extent of the functions currently carried out by Mr McKenna's sister. In addition to a case manager Ms Booth also advocated an additional allowance to be paid to a "team leader". She suggested that this position could be held by one of the carers prepared to take on more responsibility including maintaining the care rota, making annual leave checks, organising repairs to worn equipment and to make day to day management decisions. Dr McCann explained that one reason why there were no case managers currently based in Northern Ireland might be because it was felt that the local community brain injury teams sufficiently co-ordinated the development and administration of care. He accepted that such teams did not have an advocacy role, that they depended on the commitment of the social workers and carers concerned and that, since they were funded by the Health Care Trusts, they would be limited in terms of available resources.

[21] Mr Catlin was not prepared to accept the need for a separate team leader and expressed the view that the concept of a case manager embraced all the relevant aspects of the plaintiff's care. He agreed that the major task of the care manager, the initial organisation and implementation of the care regime, had already been carried out by Mr McKenna. Mr Catlin considered that an allowance of 15% of total care salaries, including National Insurance contributions, would effectively compensate the role of the case manager. He stated that such a rate was consistent with practice in Galway and Edinburgh. Dr Keegan confirmed that, in his opinion, the most difficult and time consuming part of the case managers activities were now in the past. As he put it, the system was now on "tick over".

[22] It seems to me that this is an area of the case in which it is particularly important to bear in mind the need to focus upon the particular circumstances of the individual plaintiff. Both Mr and Mrs McKenna expressed themselves as entirely satisfied with the performance of the current local team of carers. According to Mrs McKenna the current carers are more like "members of our extended family" than carers and she felt that their rapport with the plaintiff was "remarkable". Both she and her husband emphasised that their ideal would be to continue to use the present carers for longer periods provided that sufficient resources were available. Dr McCann confirmed that there would be a role for someone to ensure that any statutory assistance available was used and he felt that, ideally, such a person should be locally based. It is clear that the major task of setting up the care system was completed some time ago by Mr McKenna and that the current management of the carers' payroll is carried out on a voluntary basis by his sister who is employed full-time as an office manager for a forestry company. In my view, in such circumstances, the recommendation by Ms Booth that a professional case manager should be imported from outside Northern Ireland, without making any inquiry as to whether a suitable person might be

recruited locally, was quite unrealistic. I am not persuaded that it is reasonable in the circumstances of this case to provide for both a care manager and a team leader and I am inclined to the view that the relevant functions of both such positions could be satisfactorily discharged by a local person, quite possibly one of the present carers. I accept that such a person would have additional responsibilities and it seems that such duties would be adequately compensated by a sum representing some 15% of total annual care salaries and National Insurance contributions. As Mr Catlin has advised such a percentage would include incidentals such as advertising, training allowance, payroll, subsistence, criminal record checks and insurance.

Travel and transport

[23] The plaintiff currently uses an attendant controlled wheelchair provided, following assessment, by the Regional Wheelchair Centre at Musgrave Park Hospital. The present system of loading this wheelchair into the Fiat Escudo used to transport the plaintiff, by means of a winch, requires two persons but there was evidence that it would be possible to modify this system for use by a single person. Ms Booth recommended the purpose of a Permobil electric powered wheelchair which has a much wider degree of adjustability. This chair has a standing facility and the seat may be raised in order to allow the occupant to be elevated to the eye level of people standing nearby. This facility is important in this case not only for the purpose of preserving some degree of normality but also because the plaintiff has a significantly restricted field of vision. The Permobil chair also has a greater degree of seating adjustment. Mr Catlin was unable to see any reason for the purchase of a Permobil although he conceded that it would allow for easier interaction and avoid people having to bend over when meeting the plaintiff for the first time. In the circumstances I have reached the conclusion that it would be reasonable to provide the plaintiff with a Permobil chair.

[24] Ms Booth referred to a Mercedes Benz Vito "as a guide "in her report. She said that her main concern was the size of the vehicle and that the Mercedes should have more room when the wheelchair was loaded. In her direct evidence she admitted that she had only seen the Fiat Scudo on DVD and had never tested that vehicle for space. By the time of her cross-examination she claimed that she had done some research in relation to room and height in the Fiat, although she accepted that the fact that she had done so was not mentioned in her report. During the trial she did make inquiries with a Fiat dealer and said that she was told that the Fiat could not be fitted with a platform lift suitable for the Permobil chair. She agreed that she had been provided with Dr Keegan's report in which he had recommended a Peugeot expert. Ms Booth accepted that she should have made enquiries about the suitability of such a vehicle and agreed that she had not done so. I was unimpressed by Ms Booth's evidence on this topic but, in the circumstances, having regard to the plaintiff's height and the acquisition of

the Permobil wheelchair it seems to me that the Peugeot expert would be the most appropriate vehicle in the circumstances assuming that it will accommodate the Permobil. It will require to be properly costed.

Appliances, equipment and miscellaneous costings

[25] I have reached the conclusion that it would be reasonable to provide the following:

(*i*) I would not allow the Rea manual wheelchair on the basis that it would not be required in addition to the Permobil. That was the view expressed by Ms Booth in direct examination.

(*ii*) Ms Booth has not persuaded me that it would be reasonable to provide the Volker 3080 bed but I accept that bumpers for bedrails should be provided although at the local cost of £60 a pair.

(*iii*) I consider that it would be reasonable to provide the overbed table.

(*iv*) I would allow replacement costs in relation to the Arjo Paker bath.

(*v*) Mrs McKenna said that she had been told by staff at the Musgrave Park Hospital that a computer had been tried for the plaintiff with some indication for potential use. Ms Booth supported the purchase of computer equipment. She also stated that a representative from the Addis Trust was to assess the plaintiff's ability to use a computer. She referred to the plaintiff using a switch at home. On the other hand Dr McCann said that he had been asked to look at switching by the community team and had reached the conclusion that there was no requirement. In the circumstances, I would not be prepared to allow the purchase of a computer.

(*vi*) Dr McCann agreed that, with time, the plaintiff had indicated a greater degree of reaction with her environment but said that he had been unable to demonstrate any consistent level of decision-making. He did not think that there would be any significant change in the future. Dr Keegan felt that the plaintiff did not have the capacity to understand communication although she might be able to interact at a minimum level. They did not consider that such a degree of interaction indicated any real level of perception and felt that her movements and expressions were reflexive rather than responses. Mr and Mrs McKenna, understandably, and the current carers were somewhat more positive. However, in the circumstances while I would be prepared to allow for the purchase of a Sensory in a Case system I am not persuaded that the Woppa pack recommended by Ms Booth would be reasonable.

(*vii*) The Clos-O-Mat Automatic WC/bidet toilet. This piece of equipment was recommended by Ms Booth as a means of preserving some degree of personal dignity for the plaintiff during the course of personal hygiene functions. She was cross-examined on the basis that, as a consequence of the lack of insight resulting from her head injury, the plaintiff was unable to appreciate any loss of dignity. In his report, Mr Catlin expressed the view that this device would only serve to preserve dignity when used alone and that it would not do so for this plaintiff since a carer would always need to be present. I reject the submission that there is no loss of dignity if the person concerned lacks insight. The degree to which personal dignity is valued and preserved, particularly in the case of vulnerable individuals, is an important value in any humane and civilised society. Given the devastating consequences of the injuries sustained by their daughter I am quite satisfied that it would be reasonable for her parents to seek to maintain and preserve any degree of personal dignity that remains. On the same basis I am persuaded that purchase of a Carendo shower chair would be justified.

(*viii*) Mr Catlin accepted that he had been mistaken in his belief that the plaintiff had a Sigma Neuro-support chair. I consider that it is reasonable for the plaintiff's parents to wish her to have an alternative to the wheelchair and accordingly I allow the purchase of the Multi-6 recommended by Ms Booth.

(*ix*) Dr McCann could see no medical justification for continuing occupational, speech and language or physiotherapy. While he speculated that holistic or recreational therapy might have certain immediate benefits he did not consider that they would be long term. A similar view was expressed by Dr Keegan. In such circumstances I am not prepared to make any allowance under this head.

[26] Finally I record that this takes the form of an interim judgement which I hope will be of some assistance to the parties in their deliberations and I shall hear any further submissions that counsel may wish to make at their convenience.