

Serious Personal Injury Litigation
- Quantum Updated to 2021



James Rowley QC

The vista of major reported cases



2013-14:

- ❖ 5 RTAs (3 involving MIB)
- ❖ No NHS cases

2015:

- ❖ 5 NHS cases
- ❖ No RTAs

2016: 1 NHS / no RTA cases

- ❖ *AB v Royal Devon & Exeter (SCI)*

2017: 1 NHS/ no RTA cases

- ❖ *JR v Sheffield (cerebral palsy)*

2018: 1 RTA / no NHS cases

- ❖ *Swift v Carpenter (amputation)*

None since

Non-commercial care

- ❖ Companionship / emotional & practical support while in hospital:
Allowed as to 14 hours a week in *Welsh v Walsall Healthcare*
- ❖ Non-commercial deduction:
Continues at 25% even where a relative gave up work to provide it
Mehmetemin v Farrell
- ❖ Aggregate rate agreed or allowed in all really serious cases but the basic rate is alive and well in lesser ones:
“...the bulk of the care will not be during unsocial hours, nor is it in the nature of an “on call” duty, nor can any of [it] be described as in any sense technical or of a quasi-nursing nature.” *Swift v Carpenter*
- ❖ NJC Spinal Point 2 from 1 April 2020: £9.43 basic rate; £12,39 aggregate rate
- ❖ 1 hour a week added to the 14 hours for monitoring the home and picking up post



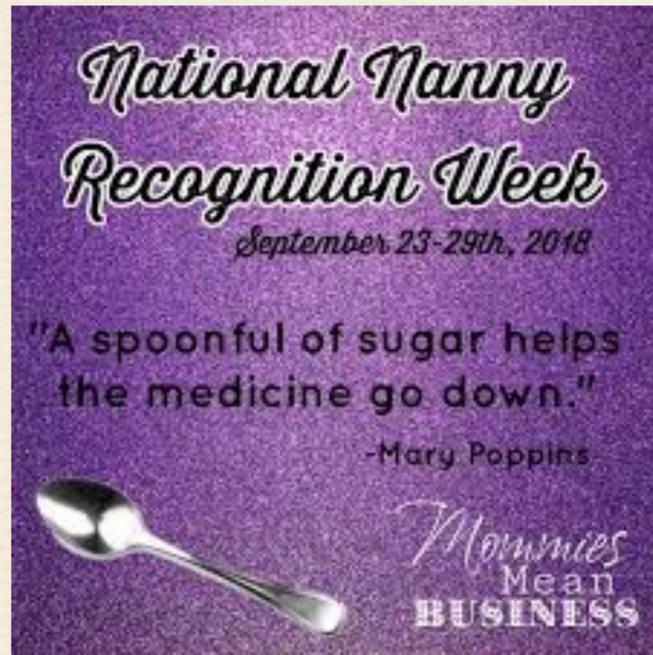
Future care

- ❖ 60 weeks is still the rule: no new cases allowing add ons/contingencies/team meetings/extra training
- ❖ Resident carers: the answer in *AB* and *Swift* (end of life)
- ❖ Rates: no cases but ASHE 6115 80th C. is rising

| Year | % change |
|---------|----------|
| 2011-12 | 0.29 |
| 2012-13 | 0.39 |
| 2013-14 | -0.78 |
| 2014-15 | 1.67 |
| 2015-16 | 3.58 |
| 2016-17 | 2.51 |
| 2017-18 | 4.08 |
| 2018-19 | 3.58 |
| 2019-20 | 5.31 |

- ❖ Waking night care: up more than twice a night on *any regular kind of basis*
= 6-8 weeks pa absolute maximum: *JR*
- ❖ Team leader rates: £4-5 hr x 25+ hrs/wk
- ❖ Case management rates:
Manna: cut from £107 hr to £95
AB: £98 hr.
JR: Mrs Sargent's rate
Anecdotal, now £107-£110

Childcare / household chores



- ❖ Claim for a nanny demoted to a £9,082 pa “factotum” to help with heavier housework and childcare until youngest child aged 5; then 4 hours a week at £12 hr.: *Hayden* (2016)
- ❖ Claim for full-time nanny/housekeeper during maternity leave (£53,000): rejected as neither reasonable nor likely to be engaged; instead, 25 hours a week at an *agency mother’s help rate* (£16.50) i.e. £21,450 pa + 14 hours a week non-commercial care: *Swift* (2018)
- ❖ Then, 20 hours a week at *agency mother’s help rate* (£17,160 pa) and 11 hrs non-commercial care until younger child reaches secondary school age: *Swift* (2018)
- ❖ The Defendant’s evidence was preferred in *Zeromska-Smith* (2019) where only £8.25 hr. over 52 weeks for future nanny care/domestic assistance over 15 hours a week (year 1 - £6,435) and 10 hours a week (year 2 - £4,376)

Causation and divisibility



XP v Compensa Towarzystwo SA & Przewslaw Bejger

- ❖ 2 accidents on top of each and no clear line to be drawn in evidence on some heads of damage to determine condition and prognosis after the first compared with the end result after the second
- ❖ The detailed attempt at evaluating only the increased need in *Reaney* was distinguished in favour of *Rahman v Arearose* and a broader brush split (here 75:25) between competing tortfeasors

BAE Systems (Operations) Ltd v Konczac (2018) – divide/accelerate if you possibly can

56 ... An injury is to be regarded as single and indivisible “where there is simply no rational basis for an objective apportionment of causative responsibility for [it]” Underhill LJ quoting Laws LJ in *Rahman*

92 ... As a matter of principle, and supporting the fundamental approach that compensation should never become windfall, where an injury is divisible, even if on a rough and ready approach to the division, recompense must be limited to the consequences of identified injury attributable to the tort in question. I further support the proposition that it will often be appropriate to look closely, particularly in a case where psychiatric injury proves indivisible, to establish whether the pre-existing state may not nevertheless demonstrate a high degree of vulnerability to, and the probability of, future injury: if not today, then tomorrow. Irwin LJ

Home pools - normal service resumed

- ❖ Claims tended to fail, even in serious claims like *Whiten* where, if swimming is so desirable, it should influence where it is decided to live i.e. within commuting distance of a suitable pool
- ❖ Unusual claim in *Ellison* (overwhelmingly painful spasm relieved by immersion in warm water) allowed; and in *Robshaw* (where the claimant was said to love swimming but a decision had already been taken to locate miles away from a pool - 5m x 3m pool
- ❖ William Davis J rejected the pool argument in *HS v Lancs.* (2015) and again in *JR* (2017); similarly Irwin J in *AB v Devon & Exeter* (2016).

Pool hire settling at c. £2,000 pa:

HS : £5,000 pa

AB: £2,000 pa

JR: £1,925 pa

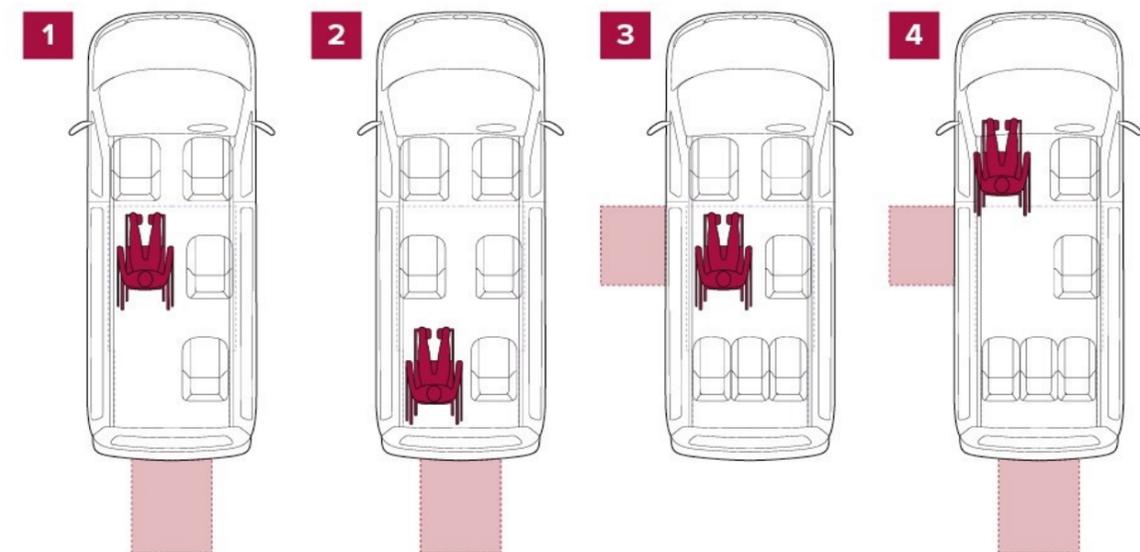


Transport

- ❖ Chrysler Voyager no longer converted
- ❖ VW Caravelle has been the vehicle and conversion in all recent, decided large cases except *AB* (Citroen Duo with bench seat)



- ❖ Usually a rear loading design except in London in *Totham*
- ❖ Mercedes V-Class entering the game at rather higher cost
- ❖ Changed every 5 years; conversion cost treated as a cost thrown away



Holidays

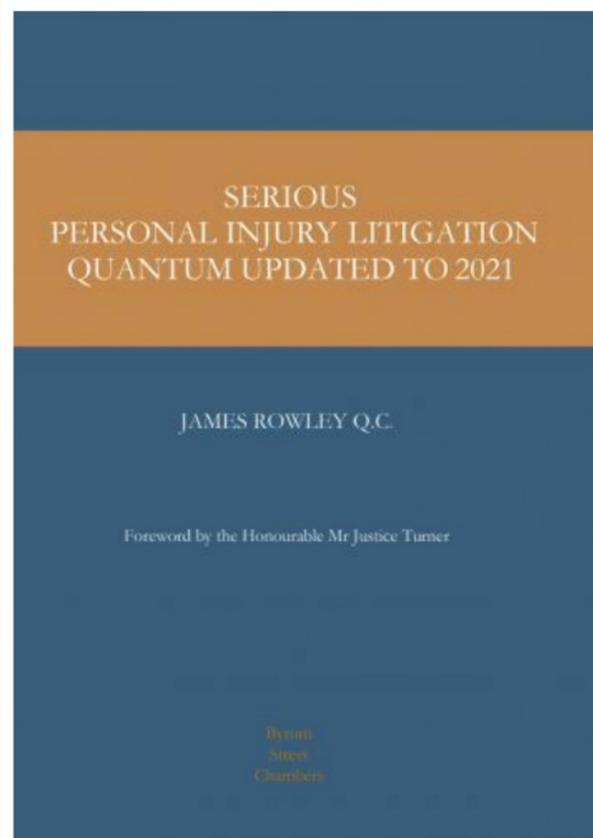
- ❖ *Robshaw*: (4 commercial carers) £11,000 (Europe) and £14,000 (long haul) rotated with use of Motorhome (one-off purchase of £96,000) + £1,000 for short breaks (rather than £3,000 because of motorhome)
- ❖ *HS v Lancs.*: £5,000 pa because likely to go to India to visit extended family at low cost; the claimant was lucky the commercial care package survived for 60 weeks in the year
- ❖ *Manna* (2 commercial carers only): 3 business class flights (rest of family in standard)
- ❖ *AB*: motorhome rejected; £1,500 pa for a drug addict with 2 resident carers
- ❖ *JR*: (6 carers) £14,500 pa for essentially European holidays with £25,000 lump sum to supplement occasional wider travel; modest sums in addition for the additional cost of an adapted static caravan in the UK
- ❖ *Swift*: lower costs but mounting up; £1,250 pa x 4 (to cover the children to age 18 - no commercial carer) towards upgrades to Premium Economy flights + £1,000 pa towards miscellaneous additional costs = £6,000 pa (£3,500 after children 18); further £2,000 for increased accommodation cost from age 70; claimant recovered £5,500 - £6,000 most years



Deputyship allowed in *JR*

| Year | Claimant | Defendant | William Davis J |
|------|------------------------------|------------------------------|----------------------------|
| 1 | 30,605 plus cost of 2 visits | 14,000 inclusive of 2 visits | 30,000 inclusive of visits |
| 2 | 21,492 plus cost of 2 visits | 9,000 inclusive of 2 visits | 20,000 inclusive of visits |
| 3 | 17,040 plus cost of 1 visit | 8,000 inclusive of 1 visit | 15,000 inclusive of visits |
| 4 | 17,040 plus cost of 1 visit | 8,000 inclusive of 1 visit | 15,000 inclusive of visits |
| 5 + | 11,232 plus cost of 1 visit | 7,000 inclusive of 1 visit | 10,000 inclusive of visits |

- ❖ VAT to be added, plus a few low disbursements = c.£13,250 pa overall from Year 5
- ❖ Other contingencies agreed in a lump sum of £38,160
- ❖ Now with a 20% increase after *Re PLK et al* with increased guideline hourly rates



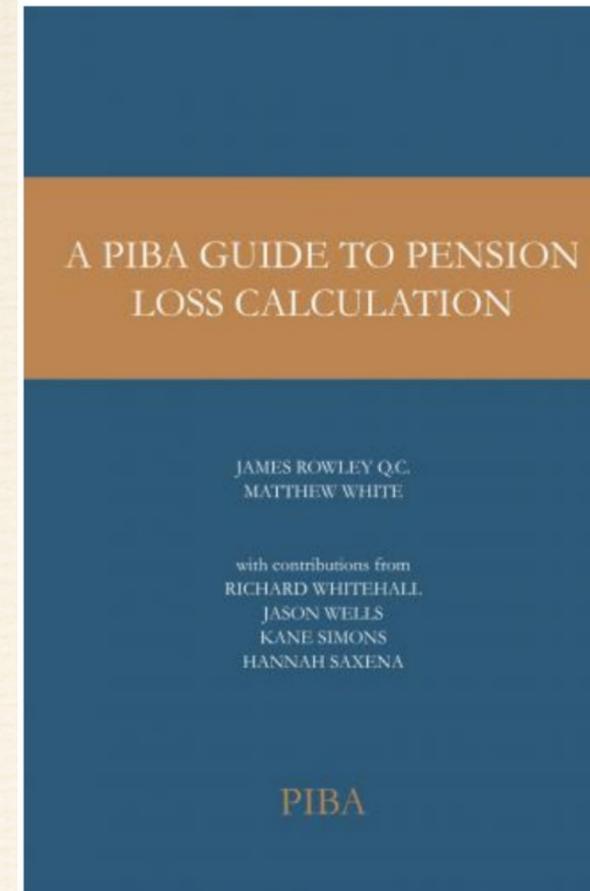
James Rowley QC

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15 years after A v B Hospitals NHS Trust, James Rowley QC updates his long running evaluation of reported decisions in serious personal injury litigation, with new tables of contents and case references, and a review of Swift v Carpenter.

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