



Case No: HQ16X01000

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/06/2019

Before:

MR JUSTICE LAVENDER

Between:

Margaret Beal and others

Claimants

- and -

(1) Avery Homes (Nelson) Limited

(2) Avery (Lucas Court) Limited

(3) Rotherwood Healthcare (St Georges Park) Limited

(4) Bowood Care Homes Limited

Defendants

Sean Jones QC and Ronnie Dennis (instructed by Leigh Day) for the Claimants
Thomas Linden QC and Mathew Purchase (instructed by Lewis Silkin LLP) for the
Defendants

Hearing dates: 8, 11, 12, 15 and 25 February 2019

JUDGMENT

Mr Justice Lavender:

(1) Introduction

1. This judgment follows what would, if these claims had been brought before an Employment Tribunal, have been a Stage 2 hearing under the Employment Tribunals (Equal Value) Rules of Procedure. The purpose of the hearing was to make a determination of those facts on which the parties could not agree which relate to the question whether each Lead Claimant's work is of equal value to that of the Comparators, so that the independent expert can prepare a report on the basis of those facts, as well as the facts agreed between the parties.

(1)(i) *The Progress of the Action*

2. In this action, which was commenced on 21 March 2016, the female claimants, who had various jobs in certain care homes, contend that their work was of equal value (within the meaning of section 65(1)(c) and (6)(b) of the Equality Act 2010: "the Act") to the work of four male maintenance operatives ("the Comparators") who were paid at higher hourly rates than them. On that basis, they contend that the terms and conditions of their contracts of employment concerning hourly rates of pay were modified by the sex equality clause provided for in section 66 of the Act so as not to be less favourable than the corresponding terms and conditions in the Comparators' contracts of employment. They claim the amounts which they contend should have been, but were not, paid under their contracts as so modified since 21 March 2010. The male claimants bring what are known as "piggyback" claims, which are conditional on the success of the female claimants' claims.
3. There are many issues which may have to be determined at a later stage in this action, but this hearing was only concerned with the factual issues relevant to the issue of equal value. As is usual in such cases, the parties have instructed an independent expert, Derek Burn. They have also agreed on the selection of certain Lead Claimants. The expert is to prepare a report on the question whether the work of each of the Lead Claimants was of equal value to the work of the Comparators. In October and November 2018 he visited several of the care homes and interviewed some of the Lead Claimants.
4. As a basis for Mr Burn's report, the parties have largely agreed job descriptions for each Lead Claimant and Comparator. Each job description sets out the relevant individual's work under the following headings:
 - (1) Background to job description.
 - (2) What is done?
 - (a) Main tasks performed; how/what with; frequency and for how long.
 - (b) Occasional tasks performed; how/what with; frequency and for how long.
 - (3) Knowledge & skills.
 - (4) Judgement.

- (5) (a) Teamwork & Leadership.
 - (b) Supervision Received.
 - (6) Accountability & Responsibility.
 - (7) Relationships/Contacts.
 - (8) Physical Demands & Co-ordination.
 - (9) Conditions & Emotional Demands.
 - (10) Any other Significant Aspects of job not previously covered.
5. The parties have not been able to agree all aspects of the job descriptions. Accordingly, by consent, Master Davison ordered on 8 October 2018 that the purpose of this hearing would be “to determine any disputes, whether factual or legal, which require resolution in order to enable the Independent Expert to complete their report”. The parties agreed lists of issues for this hearing in relation to each job description. Originally, these listed over 370 issues. Fortunately, many issues were resolved in the run-up to, during and even after the hearing. After the hearing, I continued to receive written submissions until 6 March 2019 and to receive notice that issues had been resolved until 7 March 2019. Nevertheless, a large number of issues remained for determination.

(1)(ii) *The Care Homes*

6. I will refer in this judgment to the following care homes:
- (1) **Rowan Court**, Silverdale Road, Newcastle-under-Lyme, Staffordshire ST5 2TA. Rowan Court has capacity for 76 residents in three units: residential, nursing (for residents whose medical conditions require that a qualified nurse is on duty at all times) and memory (for residents with dementia). Following an inspection on 25 October 2016 by the Care Quality Commission (“the CQC”), Rowan Court was rated as “Inadequate” and placed in special measures (which meant, inter alia, that no new residents could be admitted) until June 2017, when it was rated “Requires Improvement”.
 - (2) **Birchwood Grange**, 177 Preston Hill, Harrow HA3 9UY. Birchwood Grange has capacity for 150 residents. It has five nursing units, two residential units and one dementia unit. Given its location, Birchwood Grange has a large number of Gujarati residents: one residential unit and one nursing unit are dedicated Gujarati units.
 - (3) **Amarna House**, Rosetta Way, York YO26 5RN.
 - (4) **St Georges Park**, School Street, St Georges, Telford TF2 9LL.
 - (5) **Bowood Court** and **Bowood Mews**, Hewell Road, Redditch, B97 6AT. Bowood Mews has capacity for 34 residents.

7. These care homes, and the other care homes relevant to this action, were all owned and operated by Southern Cross on and after 21 March 2010, then from November 2011 by HC-One, then from November 2014 by the First Defendant, Avery Homes (Nelson) Limited (“Avery”). Subsequently:
 - (1) On 19 June 2015 the Third Defendant, now known as Rotherwood Healthcare (St Georges Park) Limited, acquired St. Georges Park. The Third Defendant is a subsidiary of the Rotherwood group of companies.
 - (2) On 4 December 2015 the Fourth Defendant, now known as Bowood Care Homes Limited, acquired Bowood Mews and Bowood Court. On 19 January 2016 the Fourth Defendant became a subsidiary of Adept Care Homes Limited (“Adept”).
8. Each change in ownership of a care home or homes involved a relevant transfer for the purposes of employment pursuant to the Transfer of Undertakings (Protection of Employment) Regulations. Accordingly, the transfers of ownership in 2011 and 2014 are largely immaterial to the Claimants’ claims. However, since 19 June 2015 and 4 December 2015 some of the care homes have been in different ownership. A claimant cannot, in respect of the period after a relevant change of ownership, rely on a comparison between her work and that of a Comparator who was employed by a different Defendant.

(1)(iii) The Material Dates

9. The job descriptions for each Lead Claimant and each Comparator have been prepared as at the Material Date for that individual, which is generally the earlier of either 26 February 2018 or the last day on which they carried out the relevant role. This approach gives rise to the potential for issues which may have to be addressed at a later stage in this action, since:
 - (1) The Material Date for a Lead Claimant and a Comparator may be different.
 - (2) The Material Date for a Lead Claimant or Comparator may post-date the transfer of their (or a Comparator’s or Lead Claimant’s) employment to the Third or Fourth Defendant.
10. It may be that these matters will not give rise to any disputes in practice. That may depend on whether there were any material changes in a Lead Claimant’s or Comparator’s work in the period between 21 March 2010 and the relevant Material Date. I will return to that question later.

(1)(iv) The Lead Claimants and the Comparators

11. There are nine Lead Claimants, but the job descriptions for four of them have been agreed. In the remainder of this judgment I will refer to the remaining five as the Lead Claimants. They (and their Material Dates) are:
 - (1) Debra **Turner**, a care assistant at Rowan Court (26 February 2018).

- (2) Linda **Shore**, a senior care assistant at Rowan Court (21 October 2017).
 - (3) Ann **Hughes**, a unit manager at Rowan Court (22 March 2017).
 - (4) Clara **Hemmings**, a head chef at Rowan Court (29 March 2016).
 - (5) Stephanie **Garwood**, a care team leader at Bowood Mews (25 July 2016).
12. The Lead Claimants were all employed by the First Defendant (or its predecessors), save that Mrs Garwood was employed by the Fourth Defendant following its acquisition of Bowood Mews on 4 December 2015.
13. The **Comparators** were all employed as maintenance operatives. They (and their Material Dates) are:
- (1) Tomy **Thomas**, employed at Birchwood Grange (25 May 2015).
 - (2) Anil **Chakkummoottil**, employed at Birchwood Grange (26 February 2018).
 - (3) Christopher **Martin**, employed at St Georges Park (26 May 2017).
 - (4) Robert **Brooks**, employed at Bowood Mews (28 January 2017).
14. It will be noted that:
- (1) Mr Thomas and Mr Chakkummoottil were employed by Avery.
 - (2) Mr Martin was employed by the Third Defendant from 19 June 2015.
 - (3) Mr Brooks was employed by the Fourth Defendant following its acquisition of Bowood Court on 4 December 2015.
15. Mr Martin's job description was agreed shortly before trial.
- (1)(v) Witnesses*
16. The Claimants called the following witnesses to give evidence at trial:
- (1) Mrs Shore.
 - (2) Mrs Hughes.
 - (3) Mrs Garwood.
 - (4) Mr Brooks.
 - (5) Wendy **Thompson**, a care assistant at Amarna House.
17. The Claimants also relied on witness statements from the two Lead Claimants who were said to be too unwell to give evidence, Mrs Turner and Mrs Hemmings. The purpose of Mrs Thompson's evidence was to assist with the disputes concerning the care assistant role, given that Mrs Turner would not be giving evidence.

18. The Defendants called the following witnesses to give evidence at trial:
- (1) Jacinta Mary **Greatrex**, who has been the Home Manager at Rowan Court since 3 January 2017. Mrs Greatrex's evidence dealt with the work of the Lead Claimants from Rowan Court (i.e. Mrs Turner, Mrs Shore, Mrs Hughes and Mrs Hemmings).
 - (2) Simon James **Lawrence**, who was Avery's Group Hotel and Catering Manager from October 2014 to December 2015 and who has since then been Avery's Group Culinary Manager. Mr Lawrence's evidence dealt with the work of Mrs Hemmings.
 - (3) Mark Antony **Bird**, who has been the general manager of Birchwood Grange since 20 October 2014. Mr Bird's evidence dealt with the work of Mr Thomas and Mr Chakkummoottil.
 - (4) Emma Sara **Philpott**, who has been Adept's operations director since 2009. Mrs Philpott's evidence dealt with the work of Mrs Garwood and Mr Brooks.

(2) General Issues

19. Before dealing with the individual issues, it is appropriate to address some of the general themes which underlie them. These include, in particular, consideration of: what constitutes the work which a person is employed on; and how to deal with changes in their work during the relevant period.

(2)(i) *The Equality Act 2010*

20. The starting point is to be found in the provisions of the Act. Section 64 of the Act provides as follows:

(1) Sections 66 to 70 apply where—

(a) a person (A) is employed on work that is equal to the work that a comparator of the opposite sex (B) does;

(b) a person (A) holding a personal or public office does work that is equal to the work that a comparator of the opposite sex (B) does.

(2) The references in subsection (1) to the work that B does are not restricted to work done contemporaneously with the work done by A.

21. Section 65(1)(c) provides as follows:

“For the purposes of this Chapter, A's work is equal to that of B if it is—

(c) of equal value to B's work.”

22. Section 65(6) provides further as follows:

“A's work is of equal value to B's work if it is—

- (a) neither like B's work nor rated as equivalent to B's work, but
- (b) nevertheless equal to B's work in terms of the demands made on A by reference to factors such as effort, skill and decision-making.”

23. The question whether one person's work is of equal value to another's is not a matter for determination by the Court at this stage. That question will be addressed at a later stage, at which point the Court will have the assistance of the expert's report. The aim of this stage of the proceedings is to produce a factual statement of each individual's work, to be used by the expert as the basis for his assessment of the question whether they are of equal value. Those statements have, for the sake of convenience, been described as job descriptions, but it was common ground that the use of this term (which tends to be associated with the sort of document prepared, for example, when a job vacancy is being advertised) should not distract attention from what the Act requires, and that the key word in the Act is “work” rather than “job”. In addition, Mr Linden also drew attention to the words “employed on” in section 64(1)(a).

(2)(ii) *Potter*

24. Some of the implications of these provisions of the Act for a case such as the present were considered by a panel of the Employment Appeal Tribunal (“the EAT”) presided over by Underhill J, as he then was, in *Potter v North Cumbria Acute Hospitals NHS Trust* [2008] ICR 910. The EAT said as follows in paragraph 10 of its judgment:

“The starting point is that as a matter of principle an Employment Tribunal is obliged to consider what is referred to in the Equal Value Rules as “the question” — i.e. whether the claimant's work and the comparator's are of equal value: see rule 2 (1) — in respect of every part of the claim period. That seems to us obviously to follow from the way that the 1970 Act works. The mechanism is contractual, by reference to the equality clause imported by sec. 1 (1) of the Act. In a typical equal pay claim the employee is making a distinct claim of breach of contract — i.e. of a failure to pay a sum due — as at each pay-day over the period to which her claim relates; and it must follow that it is necessary in principle to establish what her rights were as at each such date.”

25. It makes no difference that the present case is being heard by the High Court rather than an Employment Tribunal. Nor has it been suggested that the commencement of the Act made any material difference to the analysis set out, or the guidance given, in *Potter*. The EAT gave the following case management guidance in paragraphs 13 to 15 of its judgment:

“13. We have thus far been considering the correct approach at the level of theory. Our conclusion does not of course mean that a tribunal has in practice to hear detailed evidence relating to every part of the claim period. In many cases — very likely the great majority — there will be no reason to suppose that the relevant facts are materially different at any point during the period. In such cases the facts will simply be stated as required by rule 5 (and, where necessary, found by the tribunal under rule 7) — and put to the independent expert where one is instructed — on a basis which does not differentiate between the different parts of the period.

14. In some cases, however, either party or both may claim that the facts are materially different in different parts of the claim period. In such cases the facts will have to be stated (and, where necessary, found by the Tribunal) on a distinct basis in respect of the different parts of the period. How the task of stating the facts in such a case should be approached will depend on the circumstances. If the claimed differences are very great, the sensible course may be to have two completely distinct statements. In other cases it will be more convenient for the parties to produce a statement of the facts at a given “base” date but to identify the respects in which they are said to have been different in another part of the period. Usually it will be easier to take as the base date the most recent relevant date — typically, the date at which the claim is presented — because recent facts are most readily accessible, and to identify the variations by looking back. But there is no reason why it could not be done the other way round, taking as a base the facts at the beginning of the claim period and identifying any changes which occurred subsequently. These are simply matters of presentation, which do not affect the task of the tribunal in principle as we have identified it at para. 10 above.

15. It does not follow from the fact that a Tribunal has in principle to decide “the question” in respect of every part of the period that it needs to do so all in one go. It can and should apply ordinary case management approaches, which in an appropriate case permit the splitting of issues in order to allow the manageable conduct of complex litigation. Thus in a case where material changes in job content during the claim period are asserted, it may make sense — depending on the particular case — to consider and decide the question first in relation to one part of the period and to deal later, if necessary, with an earlier or later period pre- or post- the alleged change. Taking this course would have the advantage of keeping the issues more simple at the first stage; and it may be that in the end the issues raised by the allegation of changes in job content never have to be considered — either because the decision in the first round has the effect that they could not make any material difference to the outcome or simply because the parties are able to reach agreement. Alternatively, the point may still have to be decided, but the Tribunal may feel able to do so without the benefit of a report by the independent expert: as to this, see para. 24 below. On either of those alternatives the splitting of the issues will have saved time and costs. Of course, if the point does in the end have to be decided by the tribunal at a further hearing, and particularly if a further expert's report has to be obtained, the process will probably have taken longer and been more expensive than if all the issues had been considered at a single hearing. Tribunals are very familiar with having to make this kind of judgment; and which way the balance tilts in any particular case will depend on a number of factors.”

26. This guidance concerns the situation where there have, or may have, been changes in a person's work during the relevant period. That has been an issue to a limited extent in the present case, and I will deal with that issue shortly.

(2)(iii) Work

27. The judgment in *Potter* also contains some guidance on what constitutes a person's “work” for the purposes of the relevant provisions Act. In dealing with the facts of

Potter, the EAT rejected a submission that an order made in that case had excluded from the experts' consideration tasks which were not actually being performed as at the date of the evaluation, but which nevertheless remained part of the jobs in question. In doing so, the EAT made the following general observations, which were relied on by both parties in the present case:

“There are in many employments — and no doubt in nursing — tasks which fall to be performed only occasionally or at long intervals, but that does not mean that they are not part of the package of tasks and responsibilities that requires to be evaluated (though their infrequency may be important in assessing the weight accorded to them); nor is the job to be regarded as different in the periods when such tasks are actually being performed and when they are not.”

28. At the end of this sentence, the EAT referred to its footnote 7, which stated as follows:

“Of course sometimes a task may last have been required to be performed so long ago that it can no longer be regarded as part of the job at all. If that is really established, there may indeed have been a job change. Drawing the dividing-line between tasks which are rarely performed but still a real part of the job and tasks which have fallen outside the scope of the job through desuetude may not be easy: much will depend on why the task has not in practice been performed.”
29. The parties did not refer to any other authorities on the meaning of “work” in the present context. However, there were a number of issues as to what constitutes “work” and, if it is different (which I doubt), what it is to be “employed on work”.
30. There was some common ground. In particular, it was agreed that it was appropriate to look at what the employee actually did, and not simply at documents (such as contracts, job descriptions or work manuals), even if they had contractual force. Such documents are relevant, but not necessarily determinative, when considering what constitutes someone's work. Likewise, what the employee actually did is an important consideration, but is not necessarily determinative. To take an obvious example, an employee who loafs around during work hours does not thereby convert loafing into part of their work. Likewise, as the parties agreed, if an employee refused or neglected to do something which they were supposed to do, that activity would remain part of their work.
31. Another relevant consideration is whether a particular activity was a “requirement or expectation”. This was a term used by the Defendants, but Mr Linden denied the suggestion that he was seeking to elevate it to the status of a test for what constitutes “work”.
32. Of course, where an employee is contractually required to do something (and that requirement has not fallen into desuetude or otherwise been varied), then that activity will form part of their work (even if, in practice, they neglect or refuse to perform it). But most of the issues in the present case concerned activities where the contractual position was not so clear-cut. On the whole, the dispute was not as to what the employee did, but as to whether it formed part of their work. I will deal with the

individual issues later, but it may be helpful to set out in general terms what seems to me to be the appropriate approach. In general terms, therefore:

- (1) Where an employee is instructed by their manager to do something, then, if they do it, that is surely part of their work. Moreover, that is so, even if they might have been entitled to say, “But that is not something I am obliged to do.”
- (2) The same is likely to be the case where the manager does not instruct, but requests or encourages, the employee to perform the activity in question. On the other hand, in such a case, it may be relevant to note for the expert’s benefit (if it is the case) that the employee could not be required to perform that activity.
- (3) Where an employee does something which they have not been instructed, requested or encouraged to do, it may still constitute work if, for instance:
 - (a) it is simply a way of doing something which forms part of their work; and/or
 - (b) their manager knows that they are doing it, but does not object and thereby tacitly approves of their doing it.
- (4) On the other hand, something may not be part of an employee’s work if they have not been instructed, requested or encouraged to do it, their doing it has not been approved by their employer and it does not simply constitute a way of doing something which forms part of their work.

33. I stress that these are merely general considerations, which are not intended to place a gloss on the Act and that each disputed issue has to be considered on the basis of its own particular facts.

(2)(iv) *Changes in Work*

34. At the start of the trial, the parties appeared to be in broad agreement that there had been no material change in the work of any of the Lead Claimants or the Comparators over the period (“the Relevant Period”) from: (i) the later of (a) when they started work in the relevant role or (b) 21 March 2010; until (ii) the Material Date. By the end of the trial, however, a number of potential changes had been identified. There was a disagreement as to how to deal with them. This is a case management issue, to be dealt with in the light of the guidance given in *Potter*.
35. The possibility that there might be such changes was identified as long ago as 18 January 2018, in the consent order which directed the parties jointly to instruct Mr Burn to prepare a report on the question whether the work carried out by each of the Lead Claimants was of equal value to that of the Comparators as at the Material Date. By paragraph 11 of that order, the Defendants were ordered to inform the Claimants by 5 March 2018 whether they contended that there had been a material change during the Relevant Period in the role of any of the Lead Claimants or Comparators, such that it would be appropriate for any additional comparisons to be performed and,

if so, to identify the changes relied on and the dates proposed for any additional comparisons.

36. Pursuant to this paragraph, the Defendants' solicitors sent an email on 5 March 2018 in which they stated that they did not, as a general rule, consider there to be any such material changes. However, they also stated that they considered that it would be sensible to ask the expert to evaluate whether three specific alleged changes in the role of the Comparators constituted material changes such as to change his opinion on the equal value question. In response, the Claimants' solicitors stated in an email of 12 March 2018 that they reserved their position as to whether those three alleged changes occurred, but that, if the changes did occur, they proposed that the expert should be invited to express a view on the value of those roles, with and without those particular "attributes".
37. In the event, there ceased to be any issue about the three alleged changes identified on 5 March 2018. However, the agreed part of Mr Thomas' job description included the following:

"The duties summarised in this Job Description were all carried out by the Job Holder at the material date, save as indicated as follows: The Job Holder's role was changed in or around late October 2014, following the arrival of a new Home Manager, when the Job Holder no longer effectively performed in practice the managerial / supervisory responsibilities he had previously performed. The expert should therefore consider whether the outcome of the equal value comparison would be different before and after this time."
38. At trial, the position adopted by the Defendants in the cross-examination of the Lead Claimants on some issues was that, whereas the Lead Claimants might have done certain things before Avery took over Rowan Court or Adept took over Bowood Mews, they ceased to do those things after the take-over, so that those things were not part of their work as at the Material Date.
39. A related issue was the claim by some of the Lead Claimants that they often had to work hard because the care home in which they worked was understaffed. In the light of the CQC's reports, the Defendants accepted that Rowan Court had at one stage been understaffed, but contended that that ceased to be the case once Avery took over and improved the management of the home in advance of the Material Date. It was suggested that there was a change in the work of the Lead Claimants employed at Rowan Court when they were no longer having to cope with the degree of understaffing identified by the CQC in its report.
40. These developments prompted the Claimants, in their closing submissions, to propose in relation to certain issues that the expert should be asked to include in his valuation of the employee's work tasks which the employee did not perform at the Material Date, but had performed at an earlier date, and to inform the parties if he considered that the inclusion of these tasks had a material impact on whether or not he considered their role to be of equal value to that of the Comparators.
41. The Defendants' initial response was to accept this proposal to some extent. I invited the Defendants to set out in writing precisely what they were prepared to agree to. However, on reflection, the Defendants indicated that they did not agree to this

proposal at all and argued that the expert should simply be asked to express his opinion with regard to the Lead Claimants' work as at the Material Date.

42. As I have said, this is really a case management issue. I recognise that there are good arguments in favour of asking the expert to produce a "clean" report which deals solely with the work of the Lead Claimants and the Comparators as at the Material Date, and leaving any question as to the effect of changes in their work before that date to a later stage, if they need to be dealt with at all. On the other hand, there is a potential for avoiding uncertainty and saving costs at a later stage if the expert is asked to deal now with what are a limited number of changes in the work of some individuals. On balance, I prefer the approach adopted by the Claimants and will adopt it where appropriate.

(2)(v) The Care Quality Commission and the Fundamental Standards

43. The operators and managers of care homes must be registered and regulation 8 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ("the 2014 Regulations") imposes an obligation on them to comply with regulations 9 to 20A, which are known as the "Fundamental Standards". Any breach of that obligation may result in regulatory action being taken by the CQC. Moreover, regulation 22 provides that, in certain specified cases, a breach of that obligation by the registered person will be a criminal offence, subject to the defence that they took all reasonable steps and exercised all due diligence to prevent the breach.
44. None of the Lead Claimants or Comparators were registered persons, so the 2014 Regulations did not apply directly to them. However, the Claimants proposed that each job description should include a list of those Fundamental Standards to which the employee's work was relevant. The Defendants opposed this proposal, on the basis that it risked trespassing into the evaluation, rather than merely the description, of their work, which at this stage is a matter for the expert, and not for the Court.
45. I agree with the Defendants that it would not be appropriate to include the proposed list in the job descriptions. It would be unnecessary and unhelpful and might involve the Court in going beyond its proper function at this stage:
- (1) An employee's work can be adequately described without the proposed list.
 - (2) The expert will be able to have regard to the regulatory framework, including the Fundamental Standards, in assessing the value of each person's work. Insofar as he deems it appropriate to take these matters into account, his assessment is likely to be considerably more nuanced than simply saying, for each employee, "Their work is (or is not) relevant to this or that Fundamental Standard."
 - (3) It follows that it is unlikely that the expert would be assisted by the proposed list.
 - (4) However, if the proposed list were to influence the expert's opinion as to the value of an employee's work, then that might in itself be an undesirable

outcome, since the Court ought not to be dealing at this stage with the evaluation of the employee's work, but merely the identification of that work.

(2)(vi) Residents' Behaviour

46. A number of the issues concerned the nature and extent of the risk of verbal or physical aggression from residents towards the Lead Claimants. However, it appeared from the parties' closing submissions that there was a large measure of agreement about this. For example, the Defendants accepted that problematic behaviour did occur from time to time and would range from mild bickering between residents to verbal and physical abuse. The Defendants also accepted that care staff would need to know the residents and their trigger points and to deal with any problematic behaviour sensitively.
47. On the whole, the Defendants were not in a position to challenge the evidence given by the Lead Claimants of specific instances of aggressive behaviour by residents. However, they did challenge any evidence which involved an estimate as to the frequency of such incidents. Being less specific and more impressionistic, this evidence was more open to challenge. In any event, the Claimants accepted that actual incidents of violence were fairly uncommon on residential units and both parties agreed that they were more common on dementia units.
48. This left some relatively minor disputes about drafting the relevant parts of the Lead Claimants' job descriptions, which I will deal with later.

(2)(vii) Understaffing at Rowan Court

49. A number of the issues in the job descriptions of Mrs Shore and Mrs Hughes concerned the effects on them of alleged understaffing at Rowan Court. It is relevant to note in this context what CQC reports said about staffing levels at Rowan Court:
 - (1) The CQC inspected Rowan Court in November 2015 and produced a report which gave the home an overall rating of "Requires improvement". The CQC stated that it had concerns that there were insufficient staff to meet people's needs in a timely manner. It found that there was a breach of regulation 18 of the 2014 Regulations, which provides that:

"Sufficient numbers of suitably qualified, competent, skilled and experienced persons must be deployed in order to meet the requirements of this Part."
 - (2) The CQC inspected Rowan Court on 25 October 2016 and produced a report dated 8 May 2017 which gave the home an overall rating of "Inadequate" and found that there was a breach of regulation 18. In that report, the CQC stated, inter alia, as follows:
 - (a) "There were still insufficient suitably trained staff to safely meet the needs of people in a timely manner throughout the service."

- (b) “There were four members of staff available on the Memory unit and this included the member of staff who was responsible for administering the medication.”
 - (c) “On the Residential unit there were only three staff available ...”
 - (3) The CQC inspected Rowan Court on 16 May 2017 and produced a report dated 16 June 2017 which gave the home an overall rating of “Requires improvement”. In that report, the CQC stated, inter alia, as follows:
 - “There were sufficient numbers of suitably trained staff to meet the needs of people who used the service.”
 - (4) The CQC inspected Rowan Court on 6 and 7 August 2018 and produced a report dated 9 November 2018 which gave the home an overall rating of “Requires improvement”. In that report, the CQC stated:
 - (a) “There were also sufficient amounts of staff to support people.”
 - (b) “Some improvements had also been sustained, such as staffing levels ...”
50. In the light of these reports, it was not disputed that Rowan Court was understaffed for a period of time. I find, however, that that issue had been resolved between 25 October 2016 and 16 May 2017, i.e. the date of the third inspection to which I have referred. It seems to me that the dates of the inspections are more significant for these purposes than the dates of the reports. Moreover, the reports were not merely an indication that there were sufficient or insufficient staff on the day of the relevant inspection. The CQC inspectors spoke to staff and residents and gained a much more general picture of how the home was operating at that time. The fourth report supported the conclusion that what was seen on the third inspection was a sustained improvement.

(2)(viii) Narrowing/Expanding the Issues

51. In the remainder of this judgment, I will address the individual issues which were presented to the Court. With one exception, these issues were presented in the following format in the list of issues for the relevant employee: the Claimants (in the case of a Lead Claimant) or the Defendants (in the case of a Comparator) set out the text which they proposed for inclusion in the relevant job description, and the other party set out their objections to the inclusion of that text. In relation to each issue dealt with in this judgment, I have set out the relevant entries from the list of issues. I have not rehearsed all of the evidence on each issue. This was set out fully by the parties in 190 pages of written closing submissions, and in reaching my conclusions on each issue I have considered all of the evidence to which they have referred in their submissions.
52. In their closing submissions, the Claimants set out in relation to each issue a revised text which they proposed for inclusion in the relevant job description. In many cases, the revision reflected a narrowing of the issues between the parties in the light of the evidence. In a few cases, the Defendants objected that the revised text involved an

expansion of the issue as originally defined. I will address these questions as they arise.

53. However, the Claimants also proposed, in the light of some of the evidence at trial, to add completely new text in some or all of the job descriptions. In particular, they proposed that:

- (1) Each job description should include the following text:

“The JH was required to be aware of and have respect for each individual resident’s cultural needs.

This was important for the Home to comply with Reg. 10 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, which requires service users to be treated with dignity and respect.”

- (2) Each job description should include the following text:

“The JH had an impact on effective financial management of the Home in that the way in which she carried out her role had a direct impact on the home’s expenditure.

If the JH did not carry out her role properly this could cause the Home to incur additional expenditure, for example the cost of replacing expensive equipment or arranging additional cover.”

- (3) The job descriptions for Mrs Shore, Mrs Hughes and Mrs Garwood should include reference to induction training.

54. I am not persuaded that it would be appropriate to include any of this text. There was a lengthy process to identify the issues for trial. These matters were not identified by the Claimants in that process. The parties prepared for the trial on the basis that they had to address the issues as defined by that process. In particular, the Claimants had the opportunity before trial to propose for inclusion in the relevant job descriptions, and to produce statements from the Lead Claimants dealing with, any matters considered to be material, including their training, the extent of their potential impact on the finances of the relevant care home and the extent of their need to be aware of and have respect for residents’ cultural needs. The Defendants would then have had the opportunity to produce evidence in response and/or to cross-examine the relevant witnesses in relation to those issues. I do not consider that it is appropriate for the Claimants to add these matters after the evidence has been heard.

(3) Debra Turner

55. After a previous period of work at Rowan Court, Mrs Turner has worked at Rowan Court since 2005. Until the Material Date (26 February 2018), she worked as a care assistant. She worked on the nursing unit, allocated to the dining room, until January 2018. Thereafter she worked on the residential unit. She only worked on the memory unit on 3 or 4 days in the period from 2005 to 2018.
56. As I have already explained, Mrs Turner did not attend trial. Her witness statement was in evidence, but I have to bear in mind that the Defendants were not able to cross-

examine her. Moreover, the evidence as to why Mrs Turner did not attend the trial was unsatisfactory. Mrs Turner said in her statement that she suffers from chronic obstructive pulmonary disease, which causes her breathing difficulties and which can be made worse by being put in stressful situations. Her medical records confirm that she has this condition and that she has also been diagnosed with depression. However, I was not shown any medical evidence which stated that she was too unwell to give evidence. Indeed, a letter dated 30 January 2019 from her GP stated that he concluded from her medical records that “there is no medical reason to suggest that [Mrs Turner] is unable to appear in Court to act as witness in her equal pay claim case”. A “fit note” dated 1 February 2019 stated that because of her depression Mrs Turner was not fit to work in February 2019, but did not address her ability to give evidence.

57. Mrs Thompson gave evidence about her work as a care assistant at Amarna House from 23 February 2013 to 27 May 2018, but there was a limit on the extent to which she could speak to detailed issues concerning what happened in Rowan Court.
58. In relation to Mrs Turner’s work, the Defendants relied on the evidence of Mrs Greatrex, who was the home manager for Rowan Court, but only from 3 January 2017.

(3)(i) Debra Turner: Issue 1

59. This issue was described as follows in the list of issues:

“The Claimants have included a number of tasks undertaken in the dementia unit. As above, the Claimants’ position is that the job description should include tasks for all three units - residential, nursing and dementia given that the JH could have been asked to cover any unit.

While the Defendants accept that the JH could have been asked to cover any unit, the First Defendant does not recall the JH ever working a shift in the dementia unit. The JH contends that she did so on approximately five occasions while working in the dementia unit.”

60. Unlike other issues, the list of issues did not set out for this issue the parties’ rival contentions as to the wording which should be included in Mrs Turner’s job description. This was productive of some confusion.
61. By the end of the trial, it was agreed that her job description should state that Mrs Turner could be required to work in any unit, but the Defendants rightly pointed out, and I determine, that the job description should also recognise that she had only moved between units once, and then only because she chose to, and that she had only been required to provide cover in the memory unit on 3-4 occasions.
62. In their closing submissions, the Claimants proposed a radical restructuring of Mrs Turner’s job description. I did not consider that this was an appropriate way of proceeding.
63. The latest draft of the job description as at the start of the trial included a disputed list of 8 additional tasks and duties which applied on the dementia unit. Regrettably, this

list was not the focus of attention during the trial. In particular, Mrs Turner’s witness statement did not set out to address each of these issues, and contained only two passing references to them. I do not accept the Claimants’ submissions that a brief reference to this list by Mrs Greatrex in her witness statement constituted evidence from her as to the accuracy of this list.

64. However, the items on the list had clearly been the subject of discussion outside court in the context of agreeing Mrs Shore’s job description, as she worked on the dementia unit. One approach, advocated by the Claimants, would be to amend the items in the list in Mrs Turner’s job description in line with the agreement reached on those items in the context of Mrs Shore’s job description. The problem with that approach, however, is that, as the Defendants have pointed out, the list only contains additional tasks performed on the memory unit, without any reference to those compensating respects in which a care assistant working on the dementia unit does less than a care assistant working on the residential unit.

65. It seems to me that the right course is to stick to the evidence which was called in relation to Mrs Turner’s work. Mrs Greatrex said as follows in paragraph 48 of her statement:

“A typical day in the Memory Unit is very similar to one on the Residential unit, but involves the care staff providing more support for residents including prompts to remind them of the activity they were engaged in or how to perform certain tasks if they have forgotten. Everything usually takes longer because residents are often easily distracted due to their condition. Conversations can be quite repetitive and a lot more encouragement is needed. There are more care staff on the Memory unit.”

66. I accept that uncontested evidence, and determine that that paragraph should be included in Mrs Turner’s job description, after a paragraph which states as follows:

“The JH could be required to work on any unit, but between 2005 and 2018 she only worked on the dementia unit on 3 or 4 days, and she was only transferred between units once, in January 2018, when she requested a transfer from the nursing unit to the residential unit.”

67. Finally, it was common ground that there was a greater risk of verbal abuse or physical aggression from residents on the dementia unit. This will be dealt with in relation to issue 18.

(3)(ii) Debra Turner: Issue 2

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
2	The Claimants set out frequency and length of the JH’s tasks and activities and approx. % of each task and activity for the whole job.	The Defendants have made no admissions as to the accuracy of the figures which are inconsistent and do not total 100%.

68. The Claimants produced revised estimates for each task in minutes, rather than as a percentage of Mrs Turner’s overall shift. These revised estimates were included in the draft job description accompanying the Claimants’ closing submissions. They were not disputed by the Defendants and I determine that they (but not the percentage figures originally relied on) should be included in Mrs Turner’s job description.

(3)(iii) Debra Turner: Issue 7

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
7	<p>There are 16 essential standards that the CQC focus on which are set out at Part 4 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010. The CQC carries out inspections to assess whether the provider is meeting the legal requirements and regulations associated with the Health and Social Care Act 2008 to look at the overall quality of the service, and to provide a rating for the service under the Care Act 2014. Providers must have evidence that they meet these outcomes. The JH’s role is relevant to nine regulations / outcomes (care and welfare of people who use services; safeguarding people who use services from abuse; cleanliness and infection control; meeting nutritional needs; safety, availability and suitability of equipment; respecting and involving people who use services; consent to care and treatment; records). The CQC carried out an inspection on 17 and 21 August 2017 (published on 6 October 2017). As part of their inspection, the CQC spoke to six support workers (care staff), the registered manager, the administrator, a learning and development officer for the provider, and a speech and language therapist for the provider. As part of the inspection, the CQC reviewed</p>	<p>The Defendants do not accept the premise. To the extent the CQC speaks to a particular member of staff at all (and it would be unlikely in view of numbers that a particular individual Care Assistant would be spoken to) the inspectors’ focus is on being satisfied that they are competent in their job, and the questions asked are normally general ones, relating to mandatory training and whether staff feel supported and receive supervision. The Home Manager is the focus of enquiries as to whether there is good governance or not, and all the Regulations cited start with or include “the registered person must ...” – i.e., responsibility is placed on the Home Manager.</p>

	three residents’ care files. This is in turn relevant to the number and type of questions a JH may be asked on a CQC visit.	
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69. The first part of this issue concerns the Claimants’ proposed list of the Fundamental Standards to which Mrs Turner’s work was relevant. I have already dealt with that issue.

70. The second part of this issue concerns the possibility that Mrs Turner might be asked questions by CQC inspectors (although the dates given for the CQC inspection and report are incorrect). It is not suggested that Mrs Turner was ever interviewed by a CQC inspector. Mrs Greatrex accepted that any care worker might be questioned by the CQC staff. In their closing submissions, the Claimants proposed the following text for inclusion in Mrs Turner’s job description:

“As part of their inspection, the CQC inspectors could ask questions of the JH, if she was on duty, which she would have to answer. These could relate to any aspect of the JH’s work, for example her competency and training, support and supervision received, or staffing levels.

If the JH felt there was any risk to service users she was also expected to raise this with the CQC inspectors.”

71. In my judgment, this text should be included in Mrs Turner’s job description. It will, of course, be open to the expert to conclude that it is of little or no significance, but that will be a matter for him.

(3)(iv) Debra Turner: Issue 12

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
12	<p>The JH planned out room checks and care actions with the care assistant she was partnered with.</p> <p>The JH took the initiative on room checks and care actions, although following any direction given by the senior in charge.</p>	<p>The JH followed a routine order of room checks and care actions as instructed by the senior in charge.</p> <p>All room checks and care actions were directed by the senior in charge.</p>

72. In the light of the evidence, this issue narrowed significantly. The Claimants proposed the following revised wording:

“At the start of each shift, the JH would be given an allocation sheet setting out the rooms for which she was responsible for that shift. On some occasions, the JH would be told to see particular resident(s) first, for example if something had happened overnight. Subject to any such instruction, the JH would plan the order in which to complete room checks and care activities, in light of her knowledge of the residents. For example, she would see non-

disabled residents first, because she would be able to complete her care tasks for them more quickly than bedridden residents.”

73. The Defendants proposed the following wording:

“At the start of each shift, the JH would be allocated the rooms and other tasks for which she was responsible for that shift. She would also be told if any residents had particular needs or were to be prioritised. Subject to any such instruction, the JH’s routine was to assist non bed-ridden residents first, because she would be able to complete her care tasks for them more quickly than bedridden residents.”

74. There are differences of emphasis here, but the real issue was whether Mrs Turner did anything which could meaningfully be described as “planning”. That is a matter of the evaluation of Mrs Turner’s work, which is for the expert. In my judgment, the appropriate course to take at this stage is to adopt the Claimants’ proposed wording, but with the substitution of the word “decide” for the word “plan”.

(3)(v) Debra Turner: Issue 13

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
13	The JH determined conflicting priorities, subject to the senior in charge’s instruction.	All conflicting priorities were dealt with by the senior in charge or the resident themselves.

75. Again, the parties moved closer together in the light of the evidence. In their closing submissions, the Claimants proposed the following wording:

“The JH could be faced with conflicting priorities at any time throughout the day. On some occasions she would seek the senior in charge’s instruction how to deal with them. On other occasions she would use her own knowledge and experience to decide which task to prioritise: for example dealing with another resident first or spending more time with them if they were ill or dying; or deciding when to give residents a shave, bath or shower in response to ad hoc requests during the day.”

76. The Defendants proposed the following wording:

“If a resident rang, or otherwise needed assistance, and the JH was doing something else she would ask a senior how to deal with the situation. If she was not doing anything else she would attend to the resident.”

77. In my judgment, while there is not much in it, the Claimants’ proposed wording better reflects the evidence.

(3)(vi) Debra Turner: Issue 14

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
14	The order of tasks the JH carried out when caring for the residents	The JH had no discretion, but was led by the residents. There were set ways

	was directed by the Senior in charge and the JH had discretion as to how the tasks were performed.	of completing her tasks.
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78. Again, the parties have proposed different wording in the light of the evidence. The Claimants’ proposed wording was as follows;

“Other than as described elsewhere in this JD, the order of the tasks the JH carried out when caring for the residents was generally directed by the senior in charge. There were also set ways of completing certain tasks. However, the JH had discretion as to how other tasks were performed, for example how best to communicate with residents who had difficulty communicating, and how to deal with unforeseen events like residents bickering with one another or attempting to leave the home. The JH would use her own knowledge and experience of the resident and similar situations to decide how best to deal with these issues as they arose: for example by adapting her way of speaking to suit the resident; or reassuring them about any concerns that had prompted them to try to leave the home.”

79. The Defendants’ proposed wording was as follows:

“Other than as described elsewhere in this JD, the order of the tasks the JH carried out when caring for the residents was generally directed by the senior in charge. There were also set ways of completing certain tasks and guidance was provided in the care plans in relation to other issues such as communication.”

80. In my judgment, the appropriate wording to use is as follows, which is based on the Claimants’ proposal, but amended to incorporate part of the Defendants’ wording:

“Other than as described elsewhere in this JD, the order of the tasks the JH carried out when caring for the residents was generally directed by the senior in charge. There were also set ways of completing certain tasks and guidance was provided in the care plans in relation to other issues such as communication. However, subject thereto, the JH had discretion as to how other tasks were performed, for example how best to communicate with residents who had difficulty communicating, and how to deal with unforeseen events like residents bickering with one another or attempting to leave the home. The JH would use her own knowledge and experience of the resident and similar situations to decide how best to deal with these issues as they arose: for example by adapting her way of speaking to suit the resident; or reassuring them about any concerns that had prompted them to try to leave the home.”

(3)(vii) Debra Turner: Issues 16 and 17

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
16	The JH is potentially exposed to infection if the residents at	The risk is generally low as any residents with a serious infection

	the Care Home she is caring for have an infectious disease or condition. When caring for residents who had an infection, the JH is potentially at risk from catching the infection, including serious infections such as MRSA. This risk would be higher when the JH was completing occasional floor work in the nursing unit. The JH would wear a disposable plastic apron and disposable gloves as a precaution to reduce the risk of infection.	would be moved to the Nursing unit, where JH was only very occasionally working on the floor (and not at the Material Date).
17	The JH was exposed to infection for 20 minutes per task on average.	The duration would be limited to the time the JH had contact with the resident.

81. In their closing submissions, the Claimants proposed the following wording:

“The JH is potentially exposed to infection if the residents at the Care Home she is caring for have an infectious disease or condition. When caring for residents who had an infection, the JH is potentially at risk from catching the infection, including serious infections such as MRSA.

The JH was exposed to this risk on all of the units at the Home. However, the risk was greatest on the nursing unit, because residents who developed symptoms would likely be moved to that unit.

The JH was at risk of catching an infection directly from an infected resident, or from any other member(s) of staff who had been infected.

When carrying out personal care tasks for any residents known to have an infection, the JH would wear a disposable plastic apron and disposable gloves as a precaution to reduce the risk of infection. She would also place the residents’ laundry into a red bag to keep it separate from other clothing in the laundry room; and dispose of any used continence pads separately into a yellow bag.”

82. The Defendants’ proposed wording was as follows:

“The risk of infection was very low and staff were trained how to deal with this issue, provided with protective clothing and took other measures to minimise the risk. The JH had not caught any infection from a resident in all her years of working at the Home.”

83. Both sets of wording are supported by the evidence. They do not contradict one another. They merely emphasise those aspects of the evidence which the different

parties wish to stress. In my judgment, both sets of wording should be included in Mrs Turner’s job description.

(3)(viii) Debra Turner: Issue 18

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
18	The JH had training on “dealing with a violent episode” and was therefore at risk of violence from residents.	There was low risk of any physical threat or violence both on the residential and nursing units. No examples have been given of the JH being involved in any such incidents.

84. In their closing submissions, the Claimants proposed the following revised and expanded wording:

“The JH had training on “dealing with a violent episode” because she was at risk of violence from residents.

Violent behaviour could include residents grabbing, striking, scratching or biting the JH. Some residents could be prone to this type of behaviour, in which case the JH would be exposed to this risk whenever she was in personal contact with them.

The risk was greatest from residents with dementia and therefore on the dementia unit. On the residential unit, actual incidents of violence were fairly uncommon.

During her employment, the JH was involved in two incidents in particular.

First, on the nursing unit, when she was washing a resident in his room, he hit her leaving a bruise near her cheekbone.

Second, on the residential unit, when a resident raised her walking stick to strike her own daughter, the JH stepped in front of the resident and persuaded her to lower her stick.

Part of the JH’s role was to understand what the individual triggers of each resident would be, and ensure that she adapted the way she provided care to avoid those triggers.”

85. The Defendants’ revised proposed wording was as follows:

“The JH had training on “dealing with a violent episode” because there was a risk of violence from residents, albeit such incidents were few and far between.”

86. Neither set of wording is inaccurate. In my judgment, Mrs Turner’s job description should include the Claimants’ proposed wording, but with the Defendants’ proposed wording substituted for the first paragraph.

(4) Linda Shore

- 87. Mrs Shore worked at Rowan Court for at least 15 years. She worked as a senior care assistant from 4 July 2012 until she left Avery’s employment on 21 October 2017. During this period she worked on the memory unit, but would occasionally help out on the residential unit.
- 88. In relation to Mrs Shore’s work, the Defendants relied on the evidence of Mrs Greatrex. She said that there were some issues concerning Mrs Shore’s attitude, including one complaint, although I was not told the outcome of this complaint. It is not relevant for present purposes, since the aim of this exercise is to describe her work, not whether she was doing it well or badly.

(4)(i) Linda Shore: Issue 2

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
2	The JH worked in a pressured environment and at least one of the residents’ Care Plans and the daily notes to be written for each resident had to be got through on each shift. Understaffing of the Unit increased the work pressure on the JH.	The JH did not update a Care Plan every day and there were more than adequate staffing levels at the material time.

- 89. In their closing submissions, the Claimants proposed the following revised wording:

“The JH worked in a pressurised environment because of her responsibility to complete certain fixed tasks during each shift, as well as helping with Care Assistant tasks, as described elsewhere in this JD.

Understaffing of the dementia unit where the JH worked increased the work pressure on her. The unit was understaffed in November 2015 and October 2016, but not as at 16 May 2017. Throughout the JH’s employment, including as at the Material Date, it was part of her role to deal with any increased pressures that arose as a result of any understaffing.”
- 90. The two paragraphs of this proposed wording represent two distinct aspects of this issue. The first paragraph is essentially an evaluative issue, i.e. whether the demands of Mrs Shore’s job, as set out elsewhere in the job description, and assuming no understaffing, should properly be described as a “pressurised environment”. It would be neither appropriate nor helpful for me to apply that label to Mrs Shore’s work, since the evaluation of her work is a matter for the expert at this stage.
- 91. The second paragraph is accurate and, in my judgment, should be included in Mrs Shore’s job description. It is clear from CQC reports that understaffing had been an issue at Rowan Court, but appeared to have been resolved by 16 May 2017. It is perhaps only a statement of the obvious that a shortage of staff will create additional pressures for any senior employee, but that will be a matter for the expert to consider.

(4)(ii) Linda Shore: Issue 6

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
6	<p>The JH would have kept bedroom areas tidy by emptying commodes, specifically that of a resident in room 17 who used a commode throughout the night.</p> <p>The JH would also have been responsible for the regular cleaning of commodes and wheelchairs.</p>	<p>None of the residents on the memory unit used commodes at the material time.</p> <p>To the extent the JH did this at all her involvement would be limited to instructing a Care Assistant to clean a wheelchair.</p>

92. In their closing submissions, the Claimants proposed the following wording for insertion in Mrs Shore's job description:

“The JH kept bedroom areas tidy by emptying commodes that residents had used during the night, or during the day. This included a resident in room 17, who used a commode throughout the night, and two other residents.

The JH would then clean the commodes by placing them into a sluice machine.

The JH would also occasionally clean wheelchairs as and when required during the day, for example if a resident spilt their dinner she would wipe the chair clean.”

93. The first of these paragraphs goes beyond Mrs Shore's evidence, which was that she would clean a commode if she assisted a resident to use it during the day. So the job description should include the following:

“The JH would occasionally empty commodes and clean them (by placing them into a sluice machine). This happened if she assisted a resident to use the commode during the day, but few residents (i.e. only those in rooms 4 and 17) used a commode during the day.

The JH would also occasionally clean wheelchairs as and when required during the day, for example if a resident spilt their dinner she would wipe the chair clean.”

(4)(iii) Linda Shore: Issues 10, 13, 14 and 16 to 19

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
10	<p>The JH was required to be good at influencing and negotiation when interacting with residents with challenging behaviour, for</p>	<p>The behaviour the JH might experience while working on the dementia unit would normally be mildly disruptive and not physical or mental abuse (which is what</p>

	example, those who were physically or verbally abusive. Challenging behaviour including biting, spitting at, punching, swearing and kicking members of staff, other residents, and visitors to the Care Home.	“challenging behaviour” implies). The Defendants are not aware of residents ever attempting to, or actually, biting, spitting, punching, kicking or scratching the JH or any incident reports involving the JH of this nature.
13	The JH had to deal with verbal abuse including residents swearing at the JH. The JH recalls one resident who would ‘have a go’ each time someone walked past. According to the JH, this was the resident in Room 5 (also said to have spat at her).	The Defendants have not documentation reporting these incidents, they cannot find any evidence of the JH reporting this in supervisions, and there is nothing in the JH’s personnel file supporting this account.
14	The JH had to deal with physical threats, including threats to kick her, on a monthly basis.	The Defendants have no records of the JH ever being subject to physical threats.
16	The JH was exposed to anti-social behaviour daily and it was a daily occurrence.	This was a monthly occurrence.
17	The JH was exposed to mental/verbal abuse daily and it was a daily occurrence.	This was a monthly occurrence.
18	Physical threats occurred monthly.	The JH was never subject to physical threats.
19	The JH was exposed to physical violence daily and it was a weekly occurrence.	The Defendants are not aware of the JH ever being subjected to physical violence and any attempts to bite, kick, scratch or punch would have been extremely rare.

94. In their closing submissions, the Claimants proposed the following revised wording to address all of these issues:

“The JH was at a daily risk of physical violence from residents. The risk was greatest when she was carrying out personal care tasks in close proximity to them. Some residents would spit at her; try to scratch, bite, punch or kick her; pull her hair; or flail and thrash around. Some residents were more prone to this behaviour than others. Some would engage in this kind of violent behaviour every time the JH carried out their personal care.

Specific incidents include:

- On one occasion a resident came out of her room and punched the JH when she was pushing her medicine cart past;
- Another resident would pull the JH's hair, dig her nails in to her arms, and attempt to bite and kick her when she was assisting with personal care tasks;
- Another resident would kick out at the JH nearly every time she tried to assist her, or punch and dig her nails in;
- Another resident would lash and kick out at the JH every time she tried to assist her;
- Another resident would sometimes spit at the JH, or try and punch out.

The JH also witnessed physical violence from residents towards each other, other members of staff and visitors to the Home. Once again this included biting, spitting, punching and kicking.

The JH was required to be good at influencing and negotiation when interacting with residents with challenging behaviour, for example, those who were physically or verbally abusive towards her, each other, other members of staff or visitors to the Home: see further above.

The JH would need to persuade any residents with dementia who were upset or confused and resistant to personal care to allow her to carry out personal care tasks. She would employ different tactics to deal with these situations, depending on the resident. Sometimes she would talk to them softly. At other times she would give them time to settle or brush their hair and calm them that way.”

95. I find that this is accurate, save that I do not accept Mrs Shore's evidence as to the frequency with which she experienced physical violence from residents, which was impressionistic and seemed overstated. Accordingly, her job description should include the following:

“The JH was at risk of physical violence from residents. The risk was greatest when she was carrying out personal care tasks in close proximity to them. Some residents would spit at her; try to scratch, bite, punch or kick her; pull her hair; or flail and thrash around. Some residents were more prone to this behaviour than others.

Specific incidents include:

- On one occasion a resident came out of her room and punched the JH when she was pushing her medicine cart past;
- Another resident would sometimes pull the JH's hair, dig her nails in to her arms, and attempt to bite and kick her when she was assisting with personal care tasks;
- Another resident would sometimes kick out at the JH when she tried to assist her, or punch and dig her nails in;
- Another resident would sometimes lash and kick out at the JH when she tried to assist her;
- Another resident would sometimes spit at the JH, or try and punch out.

The JH also witnessed physical violence from residents towards each other, other members of staff and visitors to the Home. Once again this included biting, spitting, punching and kicking.

The JH was required to be good at influencing and negotiation when interacting with residents with challenging behaviour, for example, those who were physically or verbally abusive towards her, each other, other members of staff or visitors to the Home: see further above.

The JH would need to persuade any residents with dementia who were upset or confused and resistant to personal care to allow her to carry out personal care tasks. She would employ different tactics to deal with these situations, depending on the resident. Sometimes she would talk to them softly. At other times she would give them time to settle or brush their hair and calm them that way.”

(4)(iv) Linda Shore: Issue 15

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
15	The JH would solve problems such as separating two residents who were bickering.	This is not a problem that the JH would deal with and it would be highly unusual for residents to need separating.

96. In their closing submissions, the Claimants proposed the following revised wording:

“The JH was required to be good at influencing and negotiation when interacting with residents with challenging behaviour, for example, those who were physically or verbally abusive towards her, each other, other members of staff or visitors to the Home: see further above.

The JH would need to persuade any residents with dementia who were upset or confused and resistant to personal care to allow her to carry out personal care tasks. She would employ different tactics to deal with these situations, depending on the resident. Sometimes she would talk to them softly. At other times she would give them time to settle or brush their hair and calm them that way.”

97. As I have said, the Defendants accepted that the Lead Claimants would have to deal with bickering between residents and would need to know the residents and their trigger points and to deal with any problematic behaviour sensitively. I find that the Claimants’ revised proposed wording is accurate and should be included in Mrs Shore’s job description.

(5) Ann Hughes

98. Mrs Hughes worked at Rowan Court from July 1999 to May 2017. She worked as a care assistant until 2007 or 2008 and from then until 22 March 2017 as the unit manager of the residential unit, occasionally working shifts on the memory unit.

99. In relation to Mrs Hughes’s work, the Defendants relied on the evidence of Mrs Greatrex, who took over as home manager at Rowan Court in February 2017. She

spoke of shortcomings in Mrs Hughes’ performance. Mrs Hughes was demoted on 22 March 2017 (which is her Material Date) and resigned with effect from May 2017. I was not asked to review the merits of the decision to demote her, and I express no opinion about it.

100. The Defendants drew attention to the fact that Mrs Hughes said in her witness statement that she spent around half her time assisting patients with their personal care, whereas it was agreed that she spent no more than 20% of her time on this. I accept that this is an illustration of how witnesses such as Mrs Hughes found it hard to produce reliable estimates of how often something happened during their employment.

(5)(i) Ann Hughes: Issues 1, 18, 20, 21 and 24

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
1	<p>There was normally one CA, occasionally two, on shift in the Residential Unit with the JH at any given time.</p> <p>There was usually one SCA or UM and two CAs on day shift in the Dementia Unit.</p>	<p>There were two CAs on shift each day in the Residential Unit with the JH (or SCA if the JH was not on shift) at any given time.</p> <p>There was the UM or SCA with three CAs on day shift in the Dementia Unit.</p>
18	<p>The Claimants’ position is that understaffing was a constant feature of the JH’s work; her day typically involved a sense of rushing around trying to get everything done; she faced many competing demands for her time with multiple residents often needing attention and certain essential tasks needing completing like medication rounds.</p>	<p>The Defendants dispute that the unit was understaffed. On the contrary, staffing levels were more than adequate (3 staff for 12 residents at the material time; there are usually 2 care staff except where breaks are taken). This is a typical nursing level of staffing not a residential unit level of staffing (where there would be less staff). Staffing issues should therefore not have arisen and any issues may have been a result of the JH’s ineffective management of the unit.</p>
20	<p>There was time pressure due to multiple demands and fixed matters such as medication and mealtimes. For example, when assisting residents generally with serving dinner, a resident may buzz for the toilet and JH would need to attend to that resident first, clean them,</p>	<p>The examples given are Care Assistant tasks and there were no staffing issues. If a resident sounded a care bell alarm, there would always be a member of staff available. If the JH was asked to assist, it would not have been demanding or disruptive for her to leave and resume writing a care plan. The JH worked in a well-</p>

	clean up herself and then go back to the job of serving dinner.	staffed area. During a medication round the JH would not be disturbed and would only respond to an emergency whilst doing the round.
21	Dealing with inadequate staffing levels calls for creativity in getting the essential tasks done to the required standard without appearing to rush the residents or place too great a burden on staff, which might lead to friction.	The Defendants dispute this and say staffing levels were more than adequate at the Material Date and no such creativity was required.
24	There were significant pressures/deadlines for the JH and she sometimes missed breaks due to the need to complete required tasks and routines.	Such work pressures/deadlines were not applicable to JH. Staffing levels were more than adequate – there were 12 residents and 3 staff at the material time – and the JH should have had time to take her break.

101. In their closing submissions, the Claimants proposed the following revised wording to address these issues:

Issue 1

“There was normally one CA, occasionally two, on shift in the Residential Unit with the JH at any given time. There would be two CAs on shift with the JH about once a month.

There was usually one SCA or UM and two CAs on day shift in the Dementia Unit.”

Issue 18

“Understaffing was a constant feature of the JH’s work. Her day typically involved a sense of rushing around trying to get everything done: she faced many competing demands for her time with multiple residents often needing attention; as well as certain essential tasks needing completing like medication rounds.”

Issue 20

“There was time pressure on the JH due to multiple demands and fixed daily requirements such as medication and mealtimes.

For example, when assisting residents generally with serving dinner, a resident may buzz for the toilet. The JH would then need to attend to that resident first, clean them, clean up herself and then go back to the job of serving dinner.

Similarly, if the JH was writing a Care Plan, and a resident buzzed, the JH may have to stop working on the Care Plan to carry out a personal care task, and return to the Care Plan afterwards.

The JH would carry out medication rounds undisturbed unless there was an emergency, for example if a resident had a fall. In that case she would stop what she was doing, press the assistant buzzer and start to assist the fallen resident.”

Issue 21

“Dealing with inadequate staffing levels calls for creativity in getting the essential tasks done to the required standard without appearing to rush the residents or place too great a burden on staff, which might lead to friction.”

Issue 24

“There were significant and daily work pressures/ deadlines for the JH and she sometimes missed breaks due to the need to complete required tasks and routines.”

102. There is a certain amount of repetition here. As with Mrs Shore, some of what is proposed is really evaluative in nature (e.g. the references to pressure and to Mrs Hughes’ “sense of rushing around”), which should be left to the expert. As to the level of staff, I have already noted that there is an issue as to the reliability of Mrs Hughes’ evidence. Moreover, it is one thing to state the actual number of care assistants on a unit on a particular day, but another thing to determine that that number was too low and left the unit understaffed (which may depend, for instance, on the number of residents on the unit, which changed over time). However, as I have already said, I accept that there was, as found by the CQC, understaffing at Rowan Court for a period of time, and, while this was resolved by May 2017, I have no evidence that it was resolved by 22 March 2017, which was Mrs Hughes’ Material Date.

103. In the circumstances, it is appropriate to include in Mrs Hughes’ job description a variant of the paragraph about understaffing which is to be included in Mrs Shore’s job description, with supplementary detail as follows:

“Understaffing of the residential and dementia units where the JH worked increased the work pressure on her. The units were understaffed in November 2015 until the Material Date. Throughout the JH’s employment, including as at the Material Date, it was part of her role to deal with any increased pressures that arose as a result of any understaffing.”

Dealing with inadequate staffing levels calls for creativity in getting the essential tasks done to the required standard without appearing to rush the residents or place too great a burden on staff, which might lead to friction.”

104. The matters addressed in relation to issue 20 do not concern understaffing, but competing demands. In relation to this, her job description should state as follows:

“The JH faced competing demands for her attention. For example:

- When assisting residents generally with serving dinner, a resident may buzz for the toilet. The JH would then need to attend to that resident first, clean them, clean up herself and then go back to the job of serving dinner.
- Similarly, if the JH was writing a Care Plan, and a resident buzzed, the JH may have to stop working on the Care Plan to carry out a personal care task, and return to the Care Plan afterwards.
- The JH would carry out medication rounds undisturbed unless there was an emergency, for example if a resident had a fall. In that case she would stop what she was doing, press the assistant buzzer and start to assist the fallen resident.”

105. It will be for the expert to determine whether this is merely a statement of the obvious, or whether it is something which increased the value of Mrs Hughes’ work.

(5)(ii) Ann Hughes: Issues 2 and 29

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
2	JH discussed training needs with junior members of staff in their appraisals and conducted inductions for new care staff. JH would decide which care assistants would be shadowed by new care assistants.	The JH would not carry out inductions. New junior members of care staff would be allocated a more experienced Care Assistant who they could shadow and learn from. This allocation would be decided by the Deputy Manager or Home Manager, not the JH.
29	JH would run through the induction programme and sign off the relevant training sheets and ensure that other external induction training was completed (fire safety, manual handling).	JH would not be required to do these tasks.

106. In their closing submission, the Claimants proposed the following revised wording:

“JH discussed training needs with junior members of staff in their appraisals.

Between 21 March 2010 and 11 November 2014, JH conducted inductions for new care assistants. The JH would take them through the induction programme, which included policies on personal care, health and safety and fire. She would also sign-off training sheets in their induction file as and when they completed their internal training; and ensure that they completed external training, such as fire safety and manual handling.

[Parties’ Note to the IE: The IE is asked to include this task in his valuation of the JH’s role. The IE is also asked to inform the parties if the inclusion of this task has a material impact on whether or not he considers this role to be of equal value to that of the JH’s Comparators]

JH would decide which care assistants would be shadowed by new care assistants.”

107. In my judgment, this wording should be included in Mrs Hughes’ job description, subject to two changes. By the end of the trial, it was, effectively, common ground that Mrs Hughes carried out inductions for Southern Cross (i.e. before November 2011) and HC-One before Avery acquired Rowan Court, but not after. I have already dealt with the question whether the job description should concentrate solely on the Material Date. I accept the Claimants’ submissions that the evidence shows that Mrs Hughes did carry out appraisals, discuss training needs and allocate care assistants for shadowing even after Avery acquired Rowan Court.
108. The Defendants submitted that, if the course proposed by the Claimants was adopted in relation to this or other changes in a Lead Claimant’s work, then: (a) the date when the relevant activity started should be left open; and (b) the expert should be asked to state whether the change in work affected his assessment of the value of the Lead Claimant’s work and, if so, what effect it had. I accept that changes should be made to the proposed wording to reflect these submissions, as follows:

“JH discussed training needs with junior members of staff in their appraisals.

From at least November 2011 to 11 November 2014, JH conducted inductions for new care assistants. The JH would take them through the induction programme, which included policies on personal care, health and safety and fire. She would also sign-off training sheets in their induction file as and when they completed their internal training; and ensure that they completed external training, such as fire safety and manual handling.

[Parties’ Note to the IE: The IE is asked to include this task in his valuation of the JH’s role. The IE is also asked to inform the parties if the inclusion of this task has a material impact (and, if so, what impact) on whether or not he considers this role to be of equal value to that of the JH’s Comparators]

JH would decide which care assistants would be shadowed by new care assistants.”

(5)(iii) Ann Hughes: Issue 3

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
3	JH would deal with any initial issues arising during her supervision of the induction period for other staff, escalating further issues to the Deputy Manager/Home Manager, providing suggestions as to how to solve the problems presented.	JH would escalate any issues which arose during the JH’s supervision of their induction period to the Deputy Manager/Home Manager and would not provide suggestions as to how to resolve such problems.

109. In their closing submissions the Claimants proposed the following revised wording:

“The JH would supervise new care assistants during their 6-month probationary period. If she noticed anything of concern, she would either provide guidance herself or – for more serious issues – escalate the issue to the Home Manager/ Deputy Manager.

Between 21 March 2010 and 11 November 2014, if the JH escalated any issues to the Deputy Manager/ Home Manager, she would also usually come up with a solution and confirm this with her supervisor before implementing it; or at least provide them with her suggestions to resolve the problem.

[Parties’ Note to the IE: The IE is asked to include this task in his valuation of the JH’s role. The IE is also asked to inform the parties if the inclusion of this task has a material impact on whether or not he considers this role to be of equal value to that of the JH’s Comparators.]

The problems that would arise during probation would include, for example, refusal to do certain tasks, or disagreement with a SCA. If this kind of problem arose the JH would suggest solutions such as reallocation to a more appropriate unit.”

110. Mrs Greatrex’s evidence was that a unit manager should either deal with or escalate issues which arose during the probation period of a new care assistant. It was not suggested that, when escalating issues, Mrs Hughes was either required or expected to offer solutions, but it is only human nature that a unit manager might do so, and I accept that Mrs Hughes did so on occasion, although she said that she did not in fact do so in the 28-month period after Avery acquired Rowan Court in November 2014. In the circumstances, I do not consider that there was a change in Mrs Hughes’ work.
111. I find, and Mrs Hughes’s job description should state, as follows:

“If the JH noticed anything of concern during a new care assistant’s 6-month probationary period, she would either provide guidance herself or – for more serious issues – escalate the issue to the Home Manager/ Deputy Manager. The problems that would arise during probation include, for example, refusal to do certain tasks, or disagreement with a SCA.

If the JH escalated any issues to the Deputy Manager/ Home Manager, then she might (but was not required or expected to) propose a solution to resolve the problem (although she did not do this in the period from November 2014 to March 2017).”

(5)(iv) Ann Hughes: Issue 4

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
4	JH monitored the training sheet for CAs and SCAs and reminded staff when training was taking place and prompted them as necessary to attend.	JH was not required to undertake these tasks and it was the in house trainer who managed this function.

112. The Claimants proposed the following revised wording in their closing submissions:

“Between 21 March 2010 and 11 November 2014, JH monitored the training sheet for CAs and SCAs and reminded staff when training was taking place and prompted them as necessary to attend.

[Parties’ Note to the IE: The IE is asked to include this task in his valuation of the JH’s role. The IE is also asked to inform the parties if the inclusion of this task has a material impact on whether or not he considers this role to be of equal value to that of the JH’s Comparators.]”

113. Mrs Hughes’ evidence was that she only did this before Avery acquired Rowan Court. As with issues 2 and 29, I consider that the Claimants’ proposed wording should be included in her job description, but amended as follows:

“Before 11 November 2014, JH monitored the training sheet for CAs and SCAs and reminded staff when training was taking place and prompted them as necessary to attend.

[Parties’ Note to the IE: The IE is asked to include this task in his valuation of the JH’s role. The IE is also asked to inform the parties if the inclusion of this task has a material impact (and, if so, what impact) on whether or not he considers this role to be of equal value to that of the JH’s Comparators.]”

(5)(v) Ann Hughes: Issue 5

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
5	<p>In the absence of the UM on the Dementia Unit, which occurred approximately once a month, the JH would have some responsibility for both Units at Rowan Court (Residential and Dementia), together with the Deputy Manager/Home Manager who had ultimate responsibility.</p> <p>An SCA who is not working in the UM’s Unit would be initially responsible for her own Unit but the responsibility for both Units lay with the UM on duty, with ultimate responsibility falling to the Home Manager or Deputy Manager, who were always on call.</p> <p>In the event of any major</p>	<p>In the absence of the UM on the Dementia Unit, the SCA in the Dementia Unit (not the JH – even if she was working a shift on the Dementia Unit) would be responsible for that Unit, with the Deputy Manager/Home manager being ultimately responsible.</p> <p>In the event of a major incident such as a fire or loss of water, if an SCA was on shift in the Dementia Unit they would contact the Deputy Manager or Home Manager straightaway (without approaching the JH first), and in the event of a resident dying, the SCA might approach the JH or more likely the nurse, as well as always contacting the Deputy Manager/Home Manager.</p>

	<p>incidents or issues (e.g. a fire, loss of water or if a resident was dying) in the Dementia Unit, the SCA would approach the UM for assistance and would always contact the Home Manager or Deputy Manager to inform them and seek instruction.</p>	
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114. The Claimants’ revised proposed wording was as follows:

“If the JH was working on the residential unit, and there was no UM working on the dementia unit, then she would have some responsibility for both units. This occurred approximately once a month. Ultimate responsibility for both units remained with the Deputy Manager/ Home Manager, who were always on-call.

On those occasions, if there was a SCA working on the dementia unit, then she would have initial responsibility for that unit. However, she could also seek guidance or assistance from the JH for any issues that arose on that unit.

In the event of any major incidents on the dementia unit, such as a fire, loss of water or if a resident was dying, the SCA would approach the JH to decide the correct course of action. The JH would then contact the Home Manager/Deputy Manager to inform them and seek instruction.”

115. I am not persuaded that Mrs Hughes had any responsibility for the dementia unit in these circumstances. I accept that, as one might expect, she might be consulted (or approached for assistance) by the senior care assistant working on the dementia unit, but I do not accept that she had any responsibility for the dementia unit. There is no suggestion in the evidence that there was any formal or regular reporting from the senior care assistant on the dementia unit to Mrs Hughes as the unit manager on the residential unit. The organogram relied on by the Claimants does not show any. Mrs Hughes’ claim that she had “some responsibility” for the dementia unit was vague and I do not accept it.

116. Accordingly, I find as follows, which should be included in the job description:

“If the JH was working on the residential unit, and there was no UM working on the dementia unit (which occurred approximately once a month), then the SCA working on the dementia unit might seek guidance or assistance from the JH on any issues that arose on that unit. However, in those circumstances, the SCA (rather than the JH) was responsible for the dementia unit, with ultimate responsibility for both units remaining with the Deputy Manager/Home Manager, who were always on-call.”

(5)(vi) Ann Hughes: Issue 16

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
16	JH had to influence and negotiate with residents exhibiting challenging behaviour, for example persuading residents to get up and dressed, receive support with personal care, eat, take medication.	These tasks (apart from administering medication) were normally carried out by Care Assistants. "Challenging behaviour" is a recognised category for people who need restraint and safe guarding, and is not an appropriate descriptor for the type of behaviour that the JH might typically encounter on the Unit, which would normally be mildly disruptive behaviour at most, for example a resident declining an offer of assistance.

117. In their closing submissions, the Claimants proposed the following revised wording:

“JH had to influence and negotiate with residents exhibiting difficult behaviour, for example persuading residents to get up and dressed, receive support with personal care, eat, take medication.

On other occasions the JH had to deal with residents getting undressed in communal areas, going into other residents’ rooms and taking things without permission.

In those situations the JH would talk the resident down, ask them to do as she asked, coax them to return to their rooms or to desist from what they were doing.”

118. The Defendants accepted that the residents would exhibit such behaviour and, as I have said, accepted that the Lead Claimants would need to know the residents and their trigger points and to deal with any problematic behaviour sensitively. The Claimants accepted that this behaviour was infrequent and was normally dealt with by the staff member providing personal care. This needs to be reflected in Mrs Hughes’ job description, which should state:

“On infrequent occasions, which usually only occurred when she was providing personal care, the JH had to influence and negotiate with residents exhibiting difficult behaviour, for example persuading residents to get up and dressed, receive support with personal care, eat, take medication or dealing with residents getting undressed in communal areas, going into other residents’ rooms and taking things without permission.

In those situations the JH would talk the resident down, ask them to do as she asked, coax them to return to their rooms or to desist from what they were doing.”

(5)(vii) Ann Hughes: Issue 17

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
17	Once every 3 months, the JH would deal with deliveries of continence pads – 40 boxes would need unloading and JH and CAs would deal with this.	This would have been done by a Care Assistant and/or the Maintenance Operative, rather than the JH.

119. The Claimants' revised proposed wording was as follows:

“Once every 3 months, the JH would help with distributing deliveries of continence pads.

The Maintenance Operatives would unload 25-30 boxes of pads into the home's reception area. The delivery would be accompanied by a sheet showing which pads were allocated to which residents. The JH and a CA would go through the sheet and mark up each of the boxes with the resident's room number. They would then load the boxes onto a trolley, 6 at a time, and take them to the resident's room. The boxes would be left outside the resident's room for the CAs to put away.”

120. I accept that Mrs Hughes did this. The Defendants' position was that she should not have done it, and that it should have been done by the care assistants she was supervising. But Mrs Hughes did some care assistant work herself and Mrs Greatrex accepted that it was within Mrs Hughes' discretion to decide who should do this particular job. Accordingly, the Claimants' revised proposed wording should be included in Mrs Hughes' job description.

(5)(viii) Ann Hughes: Issue 23

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
23	JH was on her feet most of the day within the Unit.	JH was on her feet approximately 20% of the day, and sitting down approximately 80% of the day.

121. Mrs Hughes said in her statement that she was on her feet helping out with care assistant tasks for the whole of her shift, from 8 am to 7pm. But it is now agreed that she only spent about 20% of her time on care assistant tasks. Her other tasks included administering medication. This involved going from one resident to another and I accept her evidence that she would not sit down when administering medication.

122. I find, and Mrs Hughes' job description should state, that:

“The JH was on her feet most of the time when she was performing care assistant tasks or administering medicine.”

(5)(ix) Ann Hughes: Issue 25

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
25	JH, when on shift, was responsible for updating care plans (with the Deputy Manager/Home Manager being ultimately responsible for the Care Plans).	JH had a responsibility to update the Care Plans but she failed to do so. JH should also have considered any impact of the daily progress notes (including any incidents or issues) on the current care plan, although she did not do this.

123. In their closing submissions, the Claimants proposed the following revised wording:

“The JH was required to update the residents’ Care Plans.

This included considering whether the Care Plan needed to be updated in light of any incidents or issues identified in the resident’s daily progress notes.

When the JH was not on duty at the Home, another UM or SCA would update the residents’ progress notes and care plans. When the JH came back on shift, she was required to check that they had been completed appropriately. If there were any gaps or issues, she would either leave a note or reminder for them, or speak to them directly if they were on shift.”

124. Mrs Greatrex’s evidence was that Mrs Hughes was responsible for updating care plans, but that she frequently failed to do so. Implicit in the statement that she frequently failed to do so is that she did not always fail to do so. There was no suggestion in Mrs Greatrex’s evidence that updating care plans had ceased to be part of Mrs Hughes’ job. It is unnecessary for me to reach a conclusion on whether Mrs Hughes did the job well. Accordingly, I determine that Mrs Hughes’ job description should include the revised wording proposed by the Claimants.

(5)(x) Ann Hughes: Issues 32 and 37 to 40

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
32	JH encountered challenging behaviour from residents ranging from reluctance/refusals to co-operate by residents (fairly frequent) through to verbal aggression even to physical violence (occasional). The JH would try and calm the resident down. This would involve considering whether a specific member of the care team should take over or whether they just needed	JH was working in a residential care home, not on the dementia unit and none of the residents are abusive. Whilst there was no verbal aggression by residents on JH’s unit, at times residents might get frustrated with their ability from time to time. All residents had capacity at the material time and were able to communicate their needs. See 21 above re meaning of “challenging behaviour”.

	some space and could be approached again after a short period of time.	
37	The residents had a range of challenging behaviours, some of which were anti-social. For example, some of the residents would shout at each other. The JH would deal with this behaviour by moving the residents away from each other.	The Defendants dispute this. JH was working in a residential unit. On rare occasions residents might get frustrated with their ability and raise their voice.
38	The JH was exposed to verbal abuse daily.	The JH was exposed to verbal abuse annually. The JH was working in a residential care home, not on the dementia unit, and none of the residents are abusive. Whilst there was no verbal aggression by residents on JH's unit, residents might get frustrated with their ability from time to time.
39	If there was a resident who was being physically or verbally abusive, they sometimes made physical threats to the JH. The threats were a reaction by the residents against the care being offered by the JH and the Care Assistants.	Physical threats would be extremely rare in the case of residents on the Residential Unit and they are not aware of any such incidents affecting the JH.
40	The JH was occasionally exposed to physical violence (see CQC report).	JH worked in a residential care home not on the dementia unit and none of the residents are physically violent.

125. In their closing submissions, the Claimants proposed the following revised wording:

“JH encountered difficult behaviour from residents ranging from reluctance/refusals to co-operate by residents (fairly frequent) through to verbal aggression even to physical violence.

On both the dementia and residential units, there were certain residents with dementia who could become verbally abusive or threatening towards the JH when she was carrying out personal care tasks. The JH witnessed swearing and verbal aggression from residents on most days. Some residents would also

shout at each other. However, on the residential unit this was not a regular event.

On both the dementia and residential units, there were certain residents with dementia who could become physical towards the JH when she was carrying out personal care tasks. This could include pushing her away, thrashing around and striking her, or kicking out. The JH dealt with this kind of behaviour on a monthly basis.

If a resident refused to co-operate with personal care tasks, or became verbally or physically abusive, then the JH would try to calm them down. She would also consider whether a specific member of the care team should take over, or the resident just needed some space.

If residents were shouting at each other the JH would move them apart, or sit between them and have a chat until they calmed down. How long the JH was exposed to any shouting would depend on how long it took to calm the residents down.”

126. While I accept that such incidents happened, I do not accept Mrs Hughes’s evidence as to the frequency with which she experienced verbal aggression or physical violence from residents. I accept the Defendants’ submission that it is appropriate to note that these incidents tended to occur when she was providing personal care, which was only part of her job. Accordingly, her job description should include the following:

“On infrequent occasions, which usually only occurred when she was providing personal care, and which occurred much less often on the residential unit than on the dementia unit, JH encountered difficult behaviour from certain residents, ranging from reluctance/refusals to co-operate by residents through to swearing and verbal aggression and even to physical violence, which could include pushing her away, thrashing around and striking her, or kicking out.

If a resident refused to co-operate with personal care tasks, or became verbally or physically abusive, then the JH would try to calm them down. She would also consider whether a specific member of the care team should take over, or the resident just needed some space.

If residents were shouting at each other the JH would move them apart, or sit between them and have a chat until they calmed down. How long the JH was exposed to any shouting would depend on how long it took to calm the residents down.”

(5)(xi) Ann Hughes: Issue 33

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
33	JH took money from relatives if paying a bill at the weekend, put it into envelope in the safe and gave them a receipt. JH was expected to ensure the money	JH had no financial responsibility or authority. There is no formal practice of this being done by the JH. The Defendants are not aware of the JH ever taking money from relatives at

	for any residents was handled securely.	weekends in this way. Relatives are aware there is no one in the office at the weekends.
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127. The Claimants' revised proposed wording was as follows:

“Residents’ relatives would sometimes want to pay a bill for the Home at the weekend when there was no one working in the office.

If the JH had access to the receipt book, she would accept the money and then – witnessed by another carer – put the money into an envelope, which they would place in the safe. The JH would then give the relative a receipt.

If she did not have access to the receipt book, she would tell the relative to come back and pay the following Monday.

Residents’ relatives might also give the JH small amounts of petty cash to pass on to the residents. The JH would pass this money on to the residents and give their relative a receipt.

The JH was required to handle resident’s money securely on these occasions.”

128. I accept that Mrs Hughes did this. However, there was no evidence that she was instructed, requested or encouraged to do it. On the contrary, the evidence was that she should not have done it. Avery’s policy manual stated, “The Home Manager and Home Administrator are the only persons authorised to handle resident money.” This was not reinforced, as it could have been, by her being subject to disciplinary action on those occasions when she did accept residents’ money, but I am not persuaded that her managers’ conduct was such as to amount to implicit or explicit approval of her taking residents’ money, not least because there was no evidence that her managers knew that she was doing this. This item should not be included in Mrs Hughes’ job description.

(6) Clara Hemmings

129. Mrs Hemmings worked at Rowan Court from 2012 to 2016, first as a kitchen assistant, then as assistant chef and from November 2014 as head chef. She left on maternity leave in March 2016 and did not return.

130. Mrs Hemmings did not give evidence at trial. Her witness statement was in evidence, but I have to bear in mind that the Defendants were not able to cross-examine her. Again, the evidence as to why she did not attend trial was unsatisfactory. She did not deal with her medical condition in her witness statement and, although her medical records indicated that she suffers from anxiety, I was not shown any medical evidence containing a statement that she was unfit to give evidence.

131. In relation to Mrs Hemmings’ work, the Defendants relied on the evidence of Mrs Greatrex and Mr Lawrence. However, Mrs Greatrex did not arrive at Rowan Court until after Mrs Hemmings had left, and Mr Lawrence was not based at Rowan Court.

(6)(i) Clara Hemmings: Issues 1 to 3

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
1	The JH prepared the staff rota 12 weeks in advance.	The JH prepared the staff rotas for 4 to 6 weeks in advance.
2	The JH spent 3 hours every three months during her own time working on staff rotas, as she did not have adequate time to do this at work.	The Defendants also dispute that this was done in her own time and say she had sufficient time to do this at work.
3	The JH would regularly (3-4 times a week) need to revise the rota based on ad hoc requests by staff and to accommodate the demands of the service.	The JH would not need to amend the rota that often. Other than accommodating specific leave requests, there would not be much variation in the rota and shift patterns of kitchen staff.

132. It is common ground that it was Mrs Hemmings' job to prepare and, where necessary, revise, the staff rotas. I accept her evidence that in fact she prepared the rotas 12 weeks in advance. The Defendants contend that this was inefficient and that she should only have been doing it 4-6 weeks in advance, in accordance with industry practice. There was no evidence as to how the practice of preparing the rotas 12 weeks in advance arose, but it was done openly, since the rotas were put up by the administrator for the staff to see. There was no evidence that Mrs Hemmings was told to adopt a different practice.
133. I accept, therefore, that preparing the rotas 12 weeks in advance was part of her work. However, I do not accept that it was part of her work to do what was, in effect, unpaid overtime. She did not suggest that her managers instructed, requested or encouraged her to do unpaid overtime. Moreover, if she had claimed overtime for those occasions when she says that she did the rotas in her own time, then that might have led to a closer examination of the efficiency of her practices.
134. I accept Mrs Hemmings' evidence that she regularly needed to revise the rotas. However, the estimate of 3-4 times a week is taken from clock-in records which are open to different interpretations. It represents a maximum rather than an accurate estimate. Mr Lawrence suggested that a high level of changes to the rotas meant that the rotas had not been properly planned in the first place and/or that the staff were not being properly managed. I do not consider, however, that it would be appropriate for me to conclude that Mrs Hemmings was not doing her job properly, especially as the CQC found in 2016 that Rowan Court as a whole was not being well managed.
135. Accordingly, I find, and Mrs Hemmings' job description should state, that:

“The JH prepared the staff rota 12 weeks in advance. The JH spent an average of 3 hours every three months preparing the staff rota. The JH would regularly (up to 3-4 times a week) need to revise the rota because of ad hoc

requests from the kitchen staff and/or to accommodate the demands of the service.”

(6)(ii) Clara Hemmings: Issue 4

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
4	The JH would frequently have to deal with staffing issues such as absences without prior notice.	Given the small size of the team, the JH would only occasionally have to deal with such issues.

136. It was common ground that Mrs Hemmings had to deal with such issues. The dispute concerned the frequency with which they occurred. The Claimants proposed adding “(on an almost weekly basis)” after “frequently”, to reflect what Mrs Hemmings said in her statement. However, the Defendants pointed to a sickness report which showed only 31 absences on the part of kitchen staff in the 17 months when Mrs Hemmings was head chef.

137. Accordingly, I find, and Mrs Hemmings’ job description should state, that:

“The JH would frequently (roughly once a fortnight) have to deal with staffing issues such as absences without prior notice.”

(6)(iii) Clara Hemmings: Issue 5

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
5	The team was short staffed at the material date due to Ms Garner’s absences for illness and family reasons, the 3-days off a week that all full time staff members had which left a gap in the rota, and annual leave absences.	The kitchen was not short staffed at the material date.

138. The Claimants’ revised proposed wording was as follows:

“The kitchen would be fully staffed when the JH was working alongside 2 other members of the kitchen staff at any one time.

Often the kitchen would be short-staffed, when members of the kitchen team were absent and the JH was unable to find cover. On those occasions, the JH would work alongside only 1 other member of staff in the kitchen, who could be a member of the kitchen staff, or a member of the care or housekeeping staff covering their shift.”

139. I accept that this happened from time to time, but I am not persuaded that it happened often, rather than occasionally. So Mrs Hemmings’ job description should include the

Claimants' revised proposed wording, but with the word "Occasionally" substituted for "Often".

(6)(iv) Clara Hemmings: Issue 6

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
6	Although the Assistant Chef and three Kitchen Assistants also had a reporting line to the Deputy Manager and Home Manager (as well as to JH), the JH would usually be the first and only port of call for the kitchen team each day, either while she was working or on her days off.	Staff would have been expected to contact the Assistant Chef or the Deputy or Home Manager on the JH's days off, and the JH's role only involved supervising the kitchen team when she was on duty.

140. The Claimants' revised proposed wording was as follows:

"Although the Assistant Chef and three Kitchen Assistants also had a reporting line to the Deputy Manager and Home Manager (as well as to JH), the JH would usually be the first and only port of call for the kitchen team each day, either while she was working or on her days off.

On her days off, the other members of the kitchen staff would contact the JH by telephone. This happened on numerous occasions. For example, staff contacted the JH to inform her that the kitchen had run out of various stock items, or that someone was unable to work their shift, or that one of the kitchen appliances had broken down."

141. Mrs Hemmings' contract did not provide for her to be on call when she was not at work. There were no formal arrangements for her to be contacted by anyone out of work hours. When she was not in the kitchen, the kitchen assistants could contact the assistant chef, who could contact the home manager or deputy home manager. I do not accept that Mrs Hemmings was the "first and only port of call" for the kitchen team during her days off.

142. I accept that individuals did nevertheless informally contact Mrs Hemmings for advice or guidance when she was not at work, and that she responded in a helpful manner, but this is not something which she was instructed, requested or encouraged to do by her managers. It happened out of work hours and there was no evidence that her managers expressly or tacitly approved of it (although it is fair to say that there was also no evidence that they told kitchen staff not to contact Mrs Hemmings when she was not at work). Mr Lawrence accepted in cross-examination that Mrs Hemmings would be working when she answered such queries, but I am not persuaded that her responding to such queries was part of her work. Accordingly, this item should not be included in her job description.

(6)(v) Clara Hemmings: Issues 7 and 8

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
7	As part of supervising and inducting kitchen staff in how to use kitchen appliances correctly, JH would record any instructions provided using the Training Record Form (FS7) for that particular member of staff contained within the Food Safety Manual.	The kitchen staff were all employed prior to the JH's promotion to Head Chef (save for one who joined less than one month later) and so would not have been inducted by the JH. The FS7 forms were not used.
8	The JH was responsible for noting instructions and demonstrations given by her on the individual's Training Record Form. Where she did not sign off training records, she would record any instructions provided in the forms contained within the Food Safety Manual – Training Record Form (FS7)	The Defendants dispute that the JH was responsible for training records. JH has confirmed she did not sign off training records and was not responsible for them. The FS7 forms were not used.

143. The Claimants revised proposed wording was as follows:

“The JH was responsible for carrying out inductions for any new members of the kitchen staff in accordance with Avery’s “Food Safety Management System” (“FSMS”) (October 2010).

During this induction, the JH would emphasise the importance of food hygiene, and talk the new employee through the Essentials of Food Hygiene (Form FS10). The JH would also explain the relevant parts of the FSMS to them. She would then record any training that she had given on the employee’s Training Record Form (Form FS7).

During the induction, the JH would also demonstrate how to use various pieces of kitchen equipment, including, for example, the meat slicer, a probe thermometer and blender. The JH would then record that she had done so on Form FS7.”

144. Given the terms of the FSMS, I accept that that this was one of Mrs Hemmings’ roles. However, it is appropriate to record how frequently this happened. Mrs Hemmings’ evidence was that she provided this training to only 4 members of staff, at least two of whom were not new members of the kitchen staff. I accept this evidence, despite the fact that the relevant forms cannot now be located. So the Claimants’ wording should be included in Mrs Hemmings’ job description, with the addition of the following paragraph:

“The JH provided this training to one new member of the kitchen staff and to three others whom she considered to be in need of it.”

(6)(vi) Clara Hemmings: Issue 9

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
9	The JH would conduct basic food hygiene training for all Care Staff involved in handling and delivery of food. The JH would carry out demonstrations of how food should be served and presented as set out in the Food Safety Manual to ensure the standards were maintained particularly in the correct usage of the probe thermometer and how to record the temperatures in accordance with the Food Safety Manual as the care staff were responsible for serving cooked breakfast in the mornings.	Food Hygiene training for kitchen staff is conducted by Home Trainers or external providers as part of the staff induction procedure and not by the JH. JH would have had no reason to show care staff how to use the probe thermometer or record temperatures.

145. The Claimants’ revised proposed wording was as follows:

“The care staff were responsible for serving cooked breakfasts to residents in the morning. However, the JH remained responsible for maintaining food hygiene standards and ensuring food was served at a safe temperature.

The JH therefore demonstrated to carers involved in the breakfast service how to use a probe thermometer, in accordance with the guidelines set out in Appendix 2 to the Avery FSMS.

The care staff would use the probe thermometer to check and record the temperatures of the first and last meals to be served. That information would then be returned to the kitchen on the trolley. The JH or another member of the kitchen staff would then enter the temperatures onto Form FS4 (the Daily Kitchen Form). On other occasions the JH would ask the carers to complete Form FS4 themselves.

The JH also demonstrated to care staff how food should be presented for service to residents.”

146. I accept Mrs Hemmings’ evidence that she provided these demonstrations to care staff. Mr Lawrence’s evidence was that they ought not to have been necessary, because care staff ought not to have been serving hot breakfasts or recording food temperatures. There was no evidence as to when and how this practice began. Mrs

Hemmings did not suggest that she initiated it, rather than taking over an existing practice. Nor was there any evidence that the managers discouraged this practice.

147. With one change, I consider that the Claimants’ proposed wording should be included in Mrs Hemmings’ job description. The change is that it should begin “The care staff served ...” rather than “The care staff were responsible for serving ...”

(6)(vii) Clara Hemmings: Issue 11

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
11	The JH planned the menu for the home, doing this four weeks in advance and dedicating one full day a month to this. While JH used previous HC-One menus when planning the menu (in addition to including local/resident preferences), and although the Catering Manager reviewed the menu from time to time and did not raise objections to any of the menu items, she had full responsibility for the menu.	The JH may have had some involvement in planning the menu, but this generally involved little more than following previous menus and adopting ideas from her previous supervisor and Group Catering Manager who provided a seasonal menu with gaps for local preferences.

148. The Claimants’ revised proposed wording was as follows:

“The JH spent one full day per month planning the menu for the Home, for the next 4 week period.

In carrying out this task, the JH relied mainly on previous menus used by the Home when it was owned by HC-One. However, she would also include local dishes and suggestions made to her by residents; as well as adapting ideas from seasonal menus provided by the Group Hotel and Catering Manager.”

149. The issue here was the extent of the discretion given to Mrs Hemmings with respect to menu planning. The Defendants accept that she had some discretion, at least to the extent of filling gaps in the menus sent to her by Mr Lawrence on one occasion. However, a number of documents indicated that she had a greater discretion than that, especially in relation to seasonal items, locally-sourced items, and residents’ preferences. Accordingly, I consider that the Claimants’ proposed wording should be included in Mrs Hemmings’ job description.

(6)(viii) Clara Hemmings: Issue 12

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
12	Upon starting her shift, the JH would prepare and bake various	The Defendants dispute that the JH would bake various confectionery

	confectionery snacks to serve alongside the morning smoothies. This would take approximately 30 minutes on 4 days a week.	snacks this often.
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150. The Claimants’ revised proposed wording was as follows:

“At least 4 days per week, upon starting her shift, the JH would prepare and bake various confectionery snacks to serve alongside the morning smoothies.

The preparation of the various cake, biscuit and pastry mixtures would take her on average approximately 30 minutes each morning.”

151. On the balance of probabilities, I find that this is accurate and should be included in Mrs Hemmings’ job description.

(6)(ix) Clara Hemmings: Issue 15

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
15	JH chose to carry out her own internet research regarding areas of nutritional information for residents who had diabetes or food allergies as well as keeping up to date with information that was published on the Environmental Health Office website, general cooking news, recipes and trends, which she would then disseminate to her team.	The JH was not required to do this and the Defendants make no admissions as to whether this was done.

152. The Claimants’ revised proposed wording was as follows:

“The JH would spend approximately 1 hour per week on the Environment Health Office website, reading the latest updates. She would share any relevant updates with the other members of her team, either verbally or by printing out the relevant information.

The JH would also search online for recipe ideas, especially for snacks such as biscuits and cakes, or for residents with allergies or diabetes. If she saw a recipe she thought the residents would like she would make a note of it, and then later complete the Avery Standard Recipe Form (Form FS5).”

153. I accept that Mrs Hemmings did both of these things. Looking for recipes was part of her role in devising menus. I am not persuaded, however, that looking at the EHO website was part of her work. Her employers had systems for dealing with EHO matters which were relevant to their care homes. There was no evidence that her

managers instructed, requested or encouraged her to look at the EHO website, nor that they expressly or tacitly approved her doing so. Accordingly, only the second of these two paragraphs should be included in Mrs Hemmings’ job description.

(6)(x) Clara Hemmings: Issue 24

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
24	<p>For nine months from February 2015 until December 2015 the JH would, with some exceptions, commence work before the start of her agreed start time (and earlier than recorded) so as to allow her to prepare fresh fruit smoothies and baked snacks.</p> <p>She would enter the kitchen through the kitchen door situated at the back of the care home and would not clock in until just before her stated start time as she was informed that she would not be paid for commencing work earlier.</p>	<p>This was before the material date.</p> <p>The JH would not commence work earlier than her clock in times as staff must clock in immediately upon arrival for health and safety reasons. While some records from February 2015 – December 2015 show the JH clocking in before she was due to start (usually by 10-15 minutes), she was not required to do so. The JH would not come in early to make smoothies as these were meant to be served fresh at 11am, and dispute that the JH baked confectionary snacks daily.</p> <p>If the JH was required to come in early, she would be paid for this time and it would need to be authorised by the Home Manager. From November 2015 onwards (at the material time) the clock in records often show the JH clocking in late, citing transport problems.</p>

154. Mrs Hemmings’s pay was calculated by reference to the hours which she worked. On some occasions, she clocked in earlier than her usual start time of 7.30 or 8 am. I assume that she was paid for this additional time. However, she claimed that she regularly started work 10-15 minutes before she clocked in. Her evidence was that the Home Manager told her that she would not be paid for starting her shift significantly early. She does not claim that she challenged that, for instance by saying that her job took longer than the time allowed in a shift. Instead, by delaying her clocking-in, Mrs Hemmings was acknowledging that she was not going to be paid for the additional time spent at work.
155. In my judgment, it would not be appropriate to treat as part of her work time for which she was told, and which she knew, that she would not be paid. This item should not be included in her job description.

(6)(xi) Clara Hemmings: Issues 27 and 28

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
27	The JH is at daily risk of anti-social behaviour and mental / verbal abuse from residents (she had a domino thrown at her once and although that was the only episode of anti-social behaviour she experienced herself, she witnessed residents spitting at and/or swearing at members of the kitchen team and care staff and other residents).	As kitchen staff only walk through the units to deliver the trolleys and check fridges, they are at a low risk of being exposed to such behaviour; such exposure would be occasional.
28	The JH is at daily risk of physical threats and violence. Residents suffering from certain conditions such as dementia had the potential to threaten physical violence towards the JH.	There is no real risk of any physical threat or physical violence to kitchen staff.

156. In their closing submissions, the Claimants proposed the following revised wording:

“The JH worked primarily in the kitchen, where she would not be in direct contact with residents.

However, she also had some direct contact with residents on a daily basis, for example when she delivered the food trolley to the dining room, served meals on the Nursing or Memory units, or checked fridges on the units.

On those occasions, the JH was exposed to the risk of anti-social behaviour, mental, verbal and physical abuse from residents. The risk was greatest from residents with dementia.

On one occasion a resident threw a domino at the JH. She also witnessed residents spitting and/or swearing at members of the kitchen team, care staff and other residents.”

157. In my judgment, the Claimants’ proposed revised wording should be included in Mrs Hemmings’ job description, with the second sentence of the third paragraph being amended to read:

“The risk manifested itself only infrequently, but was greatest from residents with dementia.”

(7) Stephanie Garwood

158. Mrs Garwood was employed at Bowood Mews from 22 April 2013 to 25 July 2016, initially as a care assistant, from 7 November 2014 as a senior care assistant and from 18 June 2015 as a care team leader.
159. In relation to Mrs Garwood's work, the Defendants relied on the evidence of Mrs Philpott. Mrs Philpott did not work at Bowood Mews. Her involvement with Bowood Mews dated from Adept's acquisition of Bowood Mews on 19 January 2016. Between January and July 2016 Mrs Philpott visited Bowood Mews two or three times a week in order to familiarise the home manager with Adept's processes and procedures and to help to address the issues which had led to an unsatisfactory CQC report which had been published on 21 June 2016.

(7)(i) Stephanie Garwood: Issue 3

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
3	The JH had a role in sales and marketing activities to the extent that if there was a vacant room and somebody wanted to look round it she may be involved in assisting with that (including discussing pricing)	Only if the Home Manager or Deputy Manager was not on duty (which would be rare) might the Claimant be involved in assisting to show someone round a vacant room. She would not have discussed pricing as she did not have the knowledge to discuss this.

160. The Claimants' revised proposed wording was as follows:

“The Home Manager or Deputy Home Manager would usually show a prospective resident's family around the home if there was a vacant room. If, as was occasionally the case, the family of a prospective resident visited outside the working hours of the Home Manager or Deputy Home Manager, and the Claimant was on shift, she would do this. The JH would provide the available price information as part of this task.”

161. I was told that this was agreed, with the exception of the final sentence. Mrs Garwood accepted that it was no part of her role to discuss pricing. All that she might do was to tell the family what price was displayed in the manager's office. However, she did not do that after Adept acquired Bowood Mews on 19 January 2016, so it was certainly not part of her work at the Material Date. Even in respect of the period before 19 January 2016, the final sentence proposed by the Claimants would be inappropriate. Without qualification, it would risk giving an exaggerated impression of what Mrs Garwood did in relation to prices.
162. So Mrs Garwood's job description should include the agreed wording, but not the final sentence.

(7)(ii) Stephanie Garwood: Issues 4-6

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
4	The JH every month, once a month would do a stock control of all medication and carry out the ordering.	Stock control would have been carried out by the Deputy Manager or Home Manager. The JH was involved in ordering residents' medication to the extent that she would send faxes to the GP surgery requesting repeat prescriptions when the medication had run out but would not do the monthly order.
5	The JH had the responsibility of ensuring that the medication was properly sorted for each patient, logged corrected and ready on a monthly basis. This would take a number of hours, sometimes into 2am at night even if the JH had been on a day shift that same day. She accepts that the Deputy Manager may have done it on occasion but says ordinarily she did it with Shakira Dean.	This was the Deputy Manager's responsibility, and the JH did not work these hours.
6	Every month, once a month, the JH would compare green prescription forms for each resident as sent over by the GP surgery with each resident's MAR form to ensure the medication / information was the same, e.g. to check if the doctor had stopped certain medications or prescribed additional ones and update the MAR forms.	This task would have been the responsibility of the Deputy Manager.

163. The Claimants' revised proposed wording was as follows:

“Medication for the residents ran in monthly cycles.

Each month, the Home would receive prescription forms from the GP's surgery for each of the residents. There would usually be one or two forms per resident for different types of medication. There were up to 32 residents at the Home when it was full.

The medication cycle was carried out in 2 stages.

1. Checking prescription forms

This stage was usually carried out by the JH together with the other CTL, Shakira Dean (“SD”).

Each of the resident’s had their own Medication Administration Record (“MAR”). This would show if there had been any changes to the resident’s prescription in the last month.

The JH and SD would check each of the resident’s new prescription form(s) against their MAR. If the forms included medication that had been stopped or changed, they would amend or cross out the relevant entry on the form.

If they had any queries about the prescriptions, or any prescriptions were missing, the JH or SD would contact the GP surgery.

Once they had finished checking or amending all of the forms, the JH would then send them to the GP, who would order the medication from Boots.

This process took around 2 hours per month.

2. Checking-in new medication

The JH would carry out this process together with SD or the Deputy Manager, depending on which of them was on duty.

Each floor of the Home had a medication trolley that was used for the medication rounds. This had a separate drawer for each of the residents marked with their room number. Each drawer had to contain 1 month’s supply of that resident’s medication.

At the end of the monthly cycle, after the last medication round of the day (at 8pm), the medication trolleys should therefore be empty. There would only be medication left over if, for example, the resident had refused it or their prescription had been changed. If so, the JH would complete a “Destroyed or Returned Medication” form setting out the details. Unused medication was then returned to Boots.

The next month’s medication would arrive from Boots together with a new MAR for each resident. The JH would check the new MAR against the old one, and amend the new MAR as necessary to reflect any changes that had been made in the last month.

The JH would then check that each of the medications that had arrived for each resident was correct and in the correct amount. She would then place them into the resident’s allocated drawer on the trolley.

This process would be completed after the last medication round of the evening, before the first medication round the next morning. The JH would

work beyond the end of her shift into the evening to complete this task, sometimes until as late as 2am the following morning.

Aside from her involvement in the monthly cycle, the JH was also involved in medication audits and ordering interim prescriptions.

Medication audits

Several times per month, the JH carried out an audit of one or more resident’s medication.

This was a stock check of the medication held by the Home for the resident concerned. The JH would check that this tallied with the amount of medication received and taken by the resident that month, and enter the details into an “Individual Medication Audit” form.

Interim prescriptions

The Home would sometimes run low on a particular medication, or require a new medication, part-way through the monthly cycle.

If so, then the JH would write to the GP to request a new “interim prescription”.”

- 164. I did not find Mrs Garwood’s evidence on these issues to be reliable. In particular, a significant claim which she made was that every month, at the end of the medication cycle (which finished on a Wednesday), she worked late (i.e. after the completion of her shift at 8 pm) on the medication, working into the night and as late as 2 am on the Thursday morning. However, the clock-in records for the first 6 months of 2016 provided no support for this claim. I do not consider that those records can be dismissed, as the Claimants submitted, on the basis that she sometimes forgot to clock out.
- 165. It follows that I find that the Claimants have not proved their case in relation to the monthly cycles. I accept the Defendants’ submission that the proposed wording in relation to medication audits goes beyond the issue as defined for the trial and ought not to be included in Mrs Garwood’s job description. The Defendants accepted in their response to issue 4 that Mrs Garwood dealt with interim prescriptions and the proposed wording under the heading “Interim prescriptions” should be included in her job description. With that exception, the Claimants’ revised proposed wording should not be included in Mrs Garwood’s job description.

(7)(iii) Stephanie Garwood: Issue 7

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
7	The JH may on occasion have visited residents in hospital and on returning to the home reported / recorded for care plan purposes the condition of the resident. If the	The admission and re-admission assessment would usually be carried out by the Deputy Manager or Home Manager. Visiting residents in hospital and reporting their condition in the

	<p>resident came back from hospital following a period of illness the JH would assist the HM or DHM to assess the resident and review the care plan. The JH would liaise with the hospital and doctors/nurses caring for the residents and/or GP (Dr Duncan Gordon at Hill View Medical Centre) when obtaining information about the resident.</p>	<p>care plan was not part of the JH's role and the Defendants have no knowledge that she did this.</p>
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166. The Claimants' proposed revised wording in relation to this issue was as follows:

“The JH was occasionally asked by the HM/DHM to visit a resident in hospital and report back on the resident’s condition.

The JH would visit the resident to assess their condition and discuss this with the nursing staff. The JH would consider, for example, whether the resident’s mobility and any risk factors had changed since they were admitted to hospital. On at least one occasion the JH was also accompanied by the DHM, and discussed the resident’s condition with her.

The JH would then return to the Home and record the condition of the resident for the purposes of updating their Care Plan.

On at least one occasion, the JH agreed with the DHM that it would not be appropriate for a resident to return to the Home because the Home could no longer meet his needs.”

167. Mrs Garwood acknowledged that these occasions were not frequent, but I accept that they did happen. She also accepted that it was for the home manager or deputy home manager to decide whether the resident should be readmitted to Bowood Mews. Moreover, it was their decision, whether or not Mrs Garwood agreed with that decision. Her only role was to report back on what she had seen.

168. The Defendants submitted that these hospital visits were not part of Mrs Garwood’s work because she should not have visited the hospital and should have remained in the home at all times, but she was doing what she was asked to do by the home manager or deputy home manager and, in those circumstances, I consider that her visits to the hospital were part of her work.

169. I find, and Mrs Garwood’s job description should state, as follows:

“On infrequent occasions the JH was asked by the HM/DHM to visit a resident in hospital and report back on the resident’s condition (including, for example, whether the resident’s mobility and any risk factors had changed since they were admitted to hospital), to inform the HM/DHM’s decision whether the resident should be readmitted to the home.

On returning to the Home the JH would record the condition of the resident for the purposes of updating their Care Plan.”

(7)(iv) Stephanie Garwood: Issue 8

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
8	The admission assessment would usually be carried out by the Deputy Manager or Home Manager. The JH’s role was to attend some visits to assess potential residents, but she did not complete the paperwork.	The JH did not attend visits to assess potential residents.

170. The Claimants’ revised proposed wording was as follows:

“On two occasions the DHM asked the JH to accompany her when she met with a potential new resident to assess their needs.

The JH and DHM met with the residents and discussed their needs, looked at their mobility and the extent of their dementia and risk factors, and then considered how their needs could be met by the Home.

The final assessment was made by the DHM.”

171. I accept that this is factually accurate. However, I do not consider that this was part of Mrs Garwood’s work as at the Material Date. On each of the two occasions referred to, the deputy home manager who asked Mrs Garwood to accompany her to the hospital was Jackie Wells. Ms Wells left Bowood Mews in February 2016. No other home manager or deputy home manager made such a request, and they would not be expected to do so.

(7)(v) Stephanie Garwood: Issues 9 and 10

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
9	The JH had the responsibility of writing up social health care plans for new residents, regarding all aspects of their care needs such as mobility, medication, family circumstances.	These tasks were undertaken by the Home Manager and Deputy Manager. The JH was required on the floor and could not have been absent for long periods of time to do tasks such as this as it would adversely impact the care of residents. As previously noted, medication would not have been documented in care plans.
10	The JH had to carry out a risk assessment when a resident came into the home for using equipment such as a hoist and	This was done by the Deputy or Home Manager.

	record it in the Care Plan.	
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172. The Claimants’ revised proposed wording was as follows:

“Between 22 June 2015 and 18 January 2016, the JH was responsible for writing up Care Plans for new residents. This involved assessing and recording various aspects of the residents’ care needs and how these needs were to be met, such as the resident’s mobility, mental health capacity, medication and family circumstances.

[Parties’ Note to the IE: The IE is asked to include this task in his valuation of the JH’s role. The IE is also asked to inform the parties if the inclusion of this task has a material impact on whether or not he considers this role to be of equal value to that of the JH’s Comparators]

As part of this process, the JH had to carry out a risk assessment and record details in the Care Plan. This would address any risks to the resident, including any associated with using equipment such as a hoist.

The JH was also required to review care plans and risk assessments for existing residents, to check that they were still current, and to amend or update them as required. She reviewed one or two care plans per day.

Between 19 January 2016 and 25 July 2016, after the Home had been acquired by Adept, the JH was no longer required to write up care plans and risk assessments from scratch.

However, she continued to review care plans and risk assessments in the same way as before.”

173. There was no substantial dispute as the factual position in relation to what was undoubtedly a change in Mrs Garwood’s work. I have already dealt with the question whether I should adopt the Claimants’ proposal for dealing with such issues. I conclude that the Claimants’ proposed revised wording should be included in Mrs Garwood’s job description, with the addition of the words “(and, if so, what impact)” after “material impact” in the second paragraph.

(7)(vii) *Stephanie Garwood: Issue 16*

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
16	The JH “buddied up” new staff members with experienced staff members to show them how things worked when they joined.	The decision of which staff to buddy up new staff members with would have been decided at the point the rota was done and would have been decided by the Home Manager or Deputy Home Manager.

174. Mrs Garwood accepted that this was a decision for the deputy home manager and not her. This issue should not be included in her job description.

(7)(viii) Stephanie Garwood: Issues 18 and 19

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
18	The JH contends that on regular occasions she had to work through her break due to staff shortages.	The Defendants say that after Adept took over the home on 19 January 2016 there were no staff shortages; it always had agency staff if needed, and if a member of staff was sick, the deputies would step in and support the floor so there were never any staff shortages. It is not agreed that JH worked through her breaks.
19	The JH worked hours of overtime mainly when the Home was short staffed in order to ensure the needs of residents were met and regularly stayed beyond her allocated hours.	The Home was not short staffed at the Material Date and the JH did not have to work after her shifts.

175. In their closing submissions, the Claimants proposed the following revised wording:

“A couple of times per week, the JH worked through her morning and afternoon 30-minute breaks, to ensure all of her tasks were completed.

Sometimes the JH also worked past the end of her normal shift at 8pm, for the same reason. If the JH had to stay late, this was usually for several hours, and sometimes until about midnight.

These problems were exacerbated during periods when there were staff shortages at the home, and/or staff were absent due to sickness.”

176. I do not consider that these paragraphs should be included in Mrs Garwood's job description. As with other witnesses, her evidence about how often something happened was necessarily impressionistic. However, she did not claim that her managers ever instructed, requested or encouraged her to work through her breaks or to do any unpaid overtime, nor that her managers tacitly approved of her doing so. There was no suggestion that Mrs Garwood ever raised with her managers a concern that she was being required to work through her breaks or to do any unpaid overtime. There were a few contemporary documents which referred to absences though sickness or unauthorised leave, but nothing to suggest that these were more than normal operational issues. The CQC inspected Bowood Mews on 4 May 2016 and commented positively on staffing levels in its report dated 21 June 2016.

(7)(ix) Stephanie Garwood: Issue 24

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
24	The JH would on occasion check stock levels of cleaner's	This was not a requirement of the JH's role. Housekeeping would check

	gloves, aprons etc, find it was running low and inform the cleaners who would deal with the matter.	the stock levels and make the order. However, it is likely the JH may have mentioned to housekeeping if she noticed something was running low.
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177. The Claimants’ revised proposed wording was as follows:

“If the JH noticed that the Home was running low on stocks of items used for cleaning, like gloves or aprons, she would tell cleaning staff verbally, and they would arrange for extra stock to be ordered.”

178. While factually accurate, this needs to be placed in its proper context. I find, and Mrs Garwood’s job description should state, as follows:

“The JH had no responsibility for, and was not required or expected to check or to communicate with anyone about, stocks of items used for cleaning. However, if the JH noticed that the Home was running low on stocks of items used for cleaning, like gloves or aprons, she would tell cleaning staff verbally, and they would arrange for extra stock to be ordered.”

(7)(x) Stephanie Garwood: Issue 27

<i>Issue</i>	<i>Claimant’s Position</i>	<i>Defendant’s Position</i>
27	Contact with the Hospital a few times a month, the Claimants say when a resident was in hospital and the JH needed information about their condition.	The Defendants say it was not part of the Job Holder's role to request information. The Home would be contacted if the hospital needed information.

179. The Claimants’ revised proposed wording was as follows:

“If a resident was taken into hospital, the home would need to keep up-to-date on the resident’s condition, prognosis, and whether (and if so when) they were likely to return to the home.

On some occasions, the hospital would contact the home and provide this information.

On others, the JH would contact the hospital to obtain this information, and pass it on to the Home Manager/ Deputy Home Manager.

Whether or not the JH did so would depend on whether any of the home’s residents were in hospital. If a resident was in hospital, she might do so a few times in the same week.”

180. I accept that this is factually accurate and should be included in Mrs Garwood’s job description. The Defendants submitted that the hospital should not have provided information about patients to Mrs Garwood, but it seems that they did. The Defendants’ submission that the home would be contacted if the hospital needed

information misses the point: Mrs Garwood contacted the hospital because the home (not the hospital) wanted to know what was happening to their resident.

(7)(xi) Stephanie Garwood: Issue 29

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
29	The JH would drive to a hospital assessment if required, a few times a year for approximately one hour.	The JH did not do this; driving was not part of her role.

181. The Claimants revised proposed wording was as follows:

“A few times per year, the JH drove during her shifts. This would either be to the GP surgery to collect urgent prescriptions for residents (around 6 mins drive from the Home), or to the hospital in connection with residents (around 10 mins drive).”

182. I find that this was factually accurate and should be included in Mrs Garwood's job description, but with a preface to place it in context, as follows:

“It was not a requirement of the JH's role that she do any driving, but, without being obliged to do so, the JH drove during her shifts a few times per year. This would either be to the GP surgery to collect urgent prescriptions for residents (around 6 mins drive from the Home), or to the hospital in connection with residents (around 10 mins drive).”

(7)(xii) Stephanie Garwood: Issues 32 and 34

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
32	The JH experienced an incident with a resident acting aggressively who was only in the home for around five days (the JH cannot recall the name of the resident but it was in the evening in summertime) who was only there on respite and became upset as their family had not come to collect them. The gentleman exhibited challenging behaviour and started to throw things around. She says the JH and other members of the team had to keep him restrained in the garden and the JH contacted the Police, mental health	The Defendants reserve their position on whether this incident took place at all and if so if it was at the material time.

	team and the doctor; it took 6 hours for the doctor and mental health team to come and assess the resident.	
34	The JH experienced an incident with Resident 4 who became aggressive towards other residents and staff, pushing over chairs and coffee tables. The JH called the police but the out of hours duty was contacted; eventually the JH was able to de-escalate the situation. This was approximately half way through the JH’s period of employment at the home.	The Defendants reserve their position on whether this incident took place and on its relevance (if any) to the assessment at the material date.

183. In their closing submissions, the Claimants proposed the following revised wording:

“The JH was exposed to a daily risk of physical and verbal aggression from residents.

On one occasion a male resident who was in the home for a few days for respite care began to act aggressively and became upset as his family had not come to collect him. He started to throw things around. The JH and the other members of the care team had to keep him in the garden to keep the other residents safe. The JH also contacted the police, the mental health crisis team and the GP “out-of-hours”. Eventually, after around 6 hours from the start of the incident, the GP and the mental health team came to assess the resident. He left the Home shortly afterwards.

On another occasion, a different resident became aggressive towards other residents and staff in the Ground Floor lounge area, pushing over chairs and coffee tables. The JH called the police and the “out-of-hours” GP, but eventually she and members of the maintenance team were able to de-escalate the situation by giving the resident some space. The GP eventually came out some hours later, by which time the resident had settled.

On a third occasion, while the JH was carrying out personal care for another male resident, he swore at her and grabbed her by the wrists very hard, pushing her against the bedroom door. The JH tried to reassure him and called for another carer to help her because he would not let go.”

184. The second of these examples is said by the Claimants to have occurred approximately half way through Mrs Garwood’s employment. That would put it before her appointment as a care team leader. No date was given for the first example, and I am not persuaded that it was during her time as a care team leader. In my judgment, her job description should state as follows:

“The JH was exposed to a daily risk of physical and verbal aggression from residents. This manifested itself infrequently, and usually only when the JH was providing personal care to residents.

On one occasion, while the JH was carrying out personal care for a male resident, he swore at her and grabbed her by the wrists very hard, pushing her against the bedroom door. The JH tried to reassure him and called for another carer to help her because he would not let go.”

(7)(xiii) Stephanie Garwood: Issue 35

<i>Issue</i>	<i>Claimant's Position</i>	<i>Defendant's Position</i>
35	The JH says she spent 70% of her day on her feet.	The Defendants say around 40%.

185. The Claimants' revised proposed wording was as follows:

“During a typical day at work, the JH spent about 70% of her time either standing or walking around. She was mainly on her feet when carrying out the medication rounds, providing personal care and serving meals.

The other 30% of her time that she spent sitting down was mainly spent completing written tasks, such as care plans, records of professional visits and daily notes.”

186. According to agreed parts of Mrs Garwood's job description, she spent 9.1% of her time on carrying out the medication rounds and 53.09% of her time on a combination of supervising the care assistants and providing personal care and serving meals herself. Doing the best I can, I find that she spent about 55% of her time on her feet. Her job description should include the revised wording proposed by the Claimants, but with 55% and 45% instead of 70% and 30%.

(8) Tomy Thomas

187. Mr Thomas was employed as a maintenance operative at Birchwood Grange from 5 July 2010 to 25 May 2015, which is his Material Date. He did not produce a witness statement and he did not give evidence at trial. One of the Defendants' solicitors spoke to him in August 2018 about his draft job description and made changes to that draft which are said to reflect what Mr Thomas told the (unidentified) solicitor.

188. In relation to Mr Thomas' work, the Defendants relied on the evidence of Mr Bird. He has been the manager of Birchwood Grange since 20 October 2014.

(8)(i) Tomy Thomas: Issue 23

<i>Issue</i>	<i>Defendants' Position</i>	<i>Claimants' Position</i>
23	The JH's plumbing work included identification and removal of “dead legs” (which pose a legionella risk), and	The Claimants dispute this.

	fitting showers and washbasins.	
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189. I accept Mr Bird’s evidence that these are tasks which Mr Thomas would have been expected to perform. However, he could not cite any specific examples of Mr Thomas doing any of these things. I find, and the job description should state, that:

“The JH’s plumbing work included identification and removal of “dead legs” (which pose a legionella risk), and fitting showers and washbasins. These are tasks which he was required to perform only infrequently.”

(8)(ii) Tomy Thomas: Issue 26

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
26	The JH worked on a project where he converted a kitchen into a sensory room for residents. This included removal of a sink, which involved isolating and dead legging pipes.	The Claimants dispute this.

190. The evidence for this comes from what Mr Thomas told the unidentified solicitor when they met in August 2018. But Mr Bird accepted in cross-examination that what Mr Thomas was supposed to have said was wrong in at least one respect, since the kitchens were still in place when Mr Bird arrived at Birchwood Grange in October 2014. On the balance of probabilities, I am not satisfied that Mr Thomas carried out the project described. While I accept that it is possible that Mr Thomas did some work in relation to the sensory room at Birchwood Grange, the hearsay evidence is not a reliable guide to what he actually did. This item should not be included in his job description.

(8)(iii) Tomy Thomas: Issue 28

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
28	The Job Holder also completed larger projects requiring joinery work. For example, he converted a store room into a cinema room for the residents. This involved stripping the room of shelving, installing fixed cinema seats, appending the TV to the wall and installing an aerial connection to the room. The conversion of the kitchen into a sensory room involved removing cupboards and base units.	The Claimants dispute the JH carried out or ‘managed’ such projects.

191. Again, the evidence for this comes from what Mr Thomas told the unidentified solicitor when they met in August 2018, and this is an unreliable guide to what he actually did. Moreover, Mr Bird’s evidence was that he did not regard the room as a cinema room or its refurbishment as a project. On the balance of probabilities, I am not satisfied that Mr Thomas carried out the project described. This item should not be included in his job description.

(8)(iv) Tomy Thomas: Issue 29

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
29	The Job Holder was expected to contribute to wider refurbishment and redecoration plans around the home in conjunction with the home manager, for example, planning and designing the cinema room project described above.	The Claimants dispute this.

192. I have already dealt with the cinema room. In his evidence on this issue, Mr Bird focused on the redecoration of residents’ rooms. I accept his evidence that Mr Thomas was expected to identify rooms which needed painting and to paint them, supported as it is by a job description prepared by HC-One. So the job description should state:

“The JH was expected to identify rooms which required redecoration and to redecorate them.”

(8)(v) Tomy Thomas: Issue 30

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
30	The JH would occasionally do carpet laying. Contractors would be engaged for this work too on occasion however.	The Claimants dispute this.

193. Again, the only evidence of this was what Mr Thomas is alleged to have said to the unidentified solicitor. The only specific example given is the cinema room. Moreover, Mr Bird’s evidence was that there were no new carpets in Birchwood Grange when he arrived. This item should not be included in Mr Thomas’ job description.

(8)(vi) Tomy Thomas: Issue 31

<i>Issue</i>	<i>Defendants' Position</i>	<i>Claimants' Position</i>
31	The JH stained garden benches.	The Claimants dispute this.

194. Mr Thomas is alleged to have said to the unidentified solicitor that he stained garden benches, but Mr Bird's evidence was that Mr Chakkummoottil stained garden benches annually, and that he was not aware of Mr Thomas doing this. On the balance of probabilities, I am not persuaded that Mr Thomas stained garden benches. This item should not be included in his job description.

(8)(vii) Tomy Thomas: Issue 33

<i>Issue</i>	<i>Defendants' Position</i>	<i>Claimants' Position</i>
33	The JH was a qualified electrical technician in India, but not in the UK. He had a Diploma in Electrical Maintenance and Repair. This qualification was received in India and the JH is not qualified to carry out electrical works in the UK under the Wiring Regulations.	The JH was not a qualified electrical technician in this country, and the Claimants make no admission as to what the Indian qualification involved.

195. The evidence for this was scanty. I find, and the job description should state, that:

“The JH had an Indian qualification, the details of which are unknown, but was not qualified to carry out electrical works in the UK under the Wiring Regulations.”

(8)(viii) Tomy Thomas: Issue 37

<i>Issue</i>	<i>Defendants' Position</i>	<i>Claimants' Position</i>
37	Project management was a key part of the JH's role. For example, for significant redecoration projects the JH was asked to advise the Home Manager on the tasks that would be required to result in the desired room, including whether any finishes would require specific expenditure as well as how long each of the required tasks would take. The JH would then apply his	The JH did not undertake project management.

	<p>planning and organisation skills to plan the decoration or building work required. Once approved by the Home Manager, the JH would be responsible for the project management of the task including managing the performance of any external contractors and hitting project deadlines. The Job Holder would have to manage these complex projects, in a way which would ensure the safety of himself and others around the home.</p>	
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196. The only examples of such alleged projects given by Mr Bird for the period before October 2014 were the sensory room and the cinema room. I have already dealt with them. Moreover, Mr Bird said in cross-examination that on his arrival at Birchwood Grange he could not see any evidence of any project work.
197. I accept Mr Bird’s evidence that Mr Thomas would advise on and manage the refurbishment of a resident’s room. There is an issue between the parties whether this should be described as a project or a task. That is a matter of evaluation, which is ultimately for the expert. I find, and the job description should state, that:

“When a room was to be refurbished, the JH was asked to advise the Home Manager on the tasks that would be required to result in the desired room, including whether any finishes would require specific expenditure as well as how long each of the required tasks would take. The JH would then apply his planning and organisation skills to plan the decoration or building work required. Once approved by the Home Manager, the JH would be responsible for the management of the work, including managing the performance of any external contractors and hitting project deadlines.”

(8)(ix) Tomy Thomas: Issue 42

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
42	<p>The effective discharge of the JH’s responsibilities was a critical part of ensuring compliance with applicable Care Quality Commission standards and thus allowing the home to continue to operate safely and in accordance with the law. The Defendants dispute the</p>	<p>The Claimants say there are 16 essential CQC standards but the only ones applicable to this role are limited to safety and suitability of premises (outcome 10) and safety, availability and suitability of equipment (outcome 11.)</p>

	<p>Claimants’ premise regarding the “relevance” of applicable CQC standards to particular roles; the significance of the JH in the context of a CQC or indeed HSE inspection is that the JH has a number of very specific responsibilities that he would be the point person for, for example check window restrictors, legionella tests, fire alarms tests, ensuring inspection of hoists and lifts, maintaining the maintenance book and records and so on (as set out below). The JH was the only person in the home who was the point person for a number of areas and regulations, other than the Home Manager.</p>	
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198. This concerns the proposed list of Fundamental Standards to which Mr Thomas’ work was relevant. I have already dealt with that issue.

(8)(x) Tomy Thomas: Issue 44

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
44	The JH is a trained first aider who was required to come to the aid of any member of staff, visitor or resident who required emergency first aid.	The Claimants do not concede that the JH was a trained first aider.

199. I am not satisfied on the balance of probabilities that Mr Thomas was a trained first aider. No training record has been disclosed. Mr Bird recalled seeing him listed as the home’s first aider, but no record of this has been disclosed. This item should not be included in his job description.

(8)(xi) Tomy Thomas: Issue 47

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
47	The Job Holder would often take a leading role in religious events.	The Claimants cannot agree this, as it is not referred to in any person specification or any of the other documents disclosed by the defendants.

200. The Claimants did not deny that Mr Thomas did this. Instead, they denied that this was part of his job. I am not persuaded that it was something which Mr Thomas could have been required to do, but he was certainly encouraged to do it, since his employers were keen to stage activities which were appreciated by their Gujarati residents. In my judgment, it formed part of his work and should be included in his job description, with a caveat, as follows:

“Although it was not a requirement of his job, the Job Holder was encouraged to, and would often, take a leading role in religious events.”

(9) Anil Chakkummoottil

201. Mr Chakkummoottil worked at Birchwood Grange as a maintenance operative from 24 July 2012 to 6 April 2018, initially as a “bank” maintenance operative and then, from January 2013, as a full time employee. Mr Chakkummoottil did not produce a witness statement and did not give evidence at trial.
202. In relation to Mr Chakkummoottil’s work, the Defendants relied on the evidence of Mr Bird.

(9)(i) Anil Chakkummoottil: Issue 26

203. This issue, which concerns the CQC and the Fundamental Standards, is the same as issue 42 in relation to Mr Thomas.

(9)(ii) Anil Chakkummoottil: Issue 31

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
31	The JH would often take a leading role in religious events at the home and where events were celebrated in other locations, the JH would accompany residents.	The Claimants cannot agree this, as it is not referred to in any person specification or any of the other documents disclosed by the defendants.

204. I deal with this issue in the same way as issue 47 in relation to Mr Thomas. Mr Chakkummoottil’s job description should state:

“Although it was not a requirement of his job, the Job Holder was encouraged to, and would often, take a leading role in religious events and where events were celebrated in other locations, the JH would accompany residents.”

205. In their closing submissions, the Claimants appeared to seek to expand this issue to include a dispute over a matter (i.e. educating staff about the customs and beliefs of the Gujarati people) which had originally been included, but then agreed. This may have been inadvertence. However, no reason was given for seeking to reopen a matter which was agreed, and I do not consider that it would be appropriate to do so.

(10) Robert Brooks

206. Mr Brooks was employed at Bowood Mews as a maintenance operative from January 2012 to 24 February 2017, which was his Material Date.
207. In relation to Mr Brooks’ work, the Defendants relied on the evidence of Mrs Philpott. As I have said, she did not work at Bowood Mews, her involvement with Bowood Mews dated from Adept’s acquisition of Bowood Mews on 19 January 2016 and she visited Bowood Mews two or three times a week between January and July 2016.

(10)(i) Robert Brooks: Issues 7, 15 and 16

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
7	<p>If, in carrying out water temperature checks, the JH found that maximum temperatures were exceeded he would investigate it in the first instance by cleaning the mixer valve, refitting it and checking the temperature again.</p> <p>If the clean unsuccessful, he would then remove and replace the mixer valve.</p> <p>If a replacement valve could not be immediately fitted, the JH was responsible for isolating the outlet and ensuring it could not be used until the problem was fixed.</p>	<p>The Claimants have not accepted whether the JH cleaned mixer valves.</p> <p>The JH never changed mixer valves.</p> <p>There is no evidence the JH would take a bath, basin or shower out of use if the temperature exceeded the maximum temperature and the Claimants have not accepted that this occurred.</p>
15	<p>In carrying out the TMV tests, the JH would repair and replace broken valves.</p>	<p>The JH did not conduct repairs or replacements of broken valves. Valves were repaired by contractors.</p> <p>There is no evidence of the bath, basin or shower being taken out of use when the recorded temperature was hotter than the guidance stated.</p>
16	<p>In carrying out the TMV tests, the JH would decide whether a valve service was required, which was triggered by variable temperatures being identified, and would</p>	<p>The JH did not service the valves and any reference to service of valves in the maintenance action plan was not carried out by the JH.</p>

	service the valve by dismantling it, cleaning and disinfecting the filters by soaking them in milk acidic solution and then reassembling it.	
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208. These tasks were expected of Mr Brooks according to the Avery maintenance manual. However, Mr Brooks' evidence was that he did not know how to remove, clean, refit or replace a thermostatic mixer valve ("TMV"). This appears to have been acknowledged, because training was arranged for him in February 2016. There was a problem with the training, which was described in a contemporary email as "some resistance" to the training, but which Mr Brooks attributed to the trainer telling them that they did not have the necessary tools. I was not shown any further evidence of any steps taken to instruct Mr Brooks how to do these tasks, and Mrs Philpott accepted that he did not do them and that he said that he did not know how to do them. That situation appears to have continued from February 2016 until February 2017.
209. In those circumstances, I am not persuaded that the tasks referred to in issues 8, 15 and 16 formed part of Mr Brooks' work.

(10)(ii) Robert Brooks: Issue 11

<i>Issue</i>	<i>Defendants' Position</i>	<i>Claimants' Position</i>
11	When checking the condition of internal fire doors, the JH was expected to adjust and if necessary, re-hang a fire door or fit a new intumescent strip.	The JH never hung a fire door; he reported faults, but did nothing to remedy these as shown by 50% of the doors being recorded as non-complaint for over 11 months.

210. I accept Mr Brooks' evidence that he did not re-hang fire doors, as opposed to other doors, because he considered that he lacked the skill to do so within the necessary tolerances. There was a debate whether the reference in his HC-One job description to hanging replacement doors included fire doors, but there was no evidence that his failure to re-hang fire doors was ever the subject of complaint. He did not dispute the other aspects of the proposed wording, so I find, and his job description should state, that:

"When checking the condition of internal fire doors, the JH was expected to adjust a fire door or fit a new intumescent strip."

(10)(iii) Robert Brooks: Issue 12

<i>Issue</i>	<i>Defendants' Position</i>	<i>Claimants' Position</i>
12	When visually checking emergency lighting, the JH would replace any light bulbs	A contractor performed the routine service of lights.

	that were not working.	
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211. The Claimants agreed the proposed wording, but contended that the following should be added:

“In practice, he did so once in his six years’ employment.”

212. I did not understand this proposed additional sentence to be in accordance with Mr Brooks’ evidence. It should not be included in his job description.

(10)(iv) Robert Brooks: Issue 20

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
20	<p>The JH would visually check all the fire walls for any damage, using a ladder and a torch.</p> <p>The JH would be expected to identify and report breaches of fire safety through this visual check in order to arrange the repair.</p>	<p>The JH would visually check all the fire walls for any damage. Normally this would be done as part of general maintenance rounds although on one occasion it was with a ladder and torch.</p> <p>On the basis that the job description should not record expectations, the Claimants do not accept that the JH would be expected to identify and report breaches of fire safety through this visual check in order to arrange the repair.</p>

213. Avery’s maintenance manual stated that Mr Brooks was required to check fire compartmentalisation annually, which included checking the integrity of all fire walls, entering the roof space only if a risk assessment had been completed and it was safe to do so. As set out above, the Claimants’ stated position was that Mr Brooks did check the fire walls for damage, albeit only once using a ladder and torch to do so. Mr Brooks’ evidence was that he only used a ladder and torch to do this once and that he did so on that occasion because there had been a fire report, but there was no evidence that his managers ever told him that he did not need to enter the roof space or that other arrangements had been made for checking the fire walls in the roof space. I conclude that checking the fire walls, including those in the roof space, remained part of Mr Brooks’ work.

214. Having accepted that Mr Brooks checked the fire walls for damage, it is curious that the Claimants contended that he was not expected to identify and report breaches of fire safety, since that leaves one wondering what, on the Claimants’ case, was the purpose of checking the fire walls in the first place: why look for damage if you are not going to get any damage you find repaired? I conclude that it was part of Mr Brooks’ work to identify and report breaches of fire safety in order to arrange repair.

215. Accordingly, I conclude that the Defendants’ proposed wording should be included in Mr Brooks’ job description.

(10)(v) Robert Brooks: Issue 22

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
22	The JH was required to attend Fire Marshal training although it is unclear from relevant records whether and when he did so. Each day the JH used this training as part of the overall visual check of all internal areas to ensure that no breaches of fire procedures were identified, as well as in his monthly fire drills.	The JH was not a Fire Marshal

216. The Defendants accepted that they could not confirm that Mr Brooks in fact received Fire Marshal training. I do not consider that a requirement which was not enforced in the five years of his employment formed part of his work.

217. In their closing submissions, the Defendants proposed the following alternative wording:

“The JH had various responsibilities relating to fire safety. He was required to undertake the regular checks on fire safety equipment and alarms as set out in the Maintenance Manual. He is described as the Fire Safety Manager in the home’s fire safety risk assessment. He trained and supervised other staff on fire safety and fire drills. He was responsible for triggering the alarm to start the monthly fire drill, observing and timing the drill, turning off the alarm, and reporting any problems identified to the Home Manager. On occasion, he also took the register. He received training in the fire safety-related tasks set out in the Maintenance Manual, training relating to fire safety issues as part of a standard suite of induction training and some computer-based, fire safety specific training.”

218. In response, the Claimants contended, and I accept, that much of this was already included in agreed parts of the job description. This proposed alternative wording should not be included in Mr Brooks’ job description, save that, if the Defendants agree, changes should be made to that job description as proposed by the Claimants in paragraphs 10 and 11(a) of Appendix 3 to the Claimants’ Further Submissions dated 6 March 2019.

(10)(vi) Robert Brooks: Issue 31

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
31	The JH completed assignments	The JH was involved in the creation

	<p>requiring planning and design. For example, he was involved in the creation of a bar and barbecue area by designing and erecting shelving and a bar top. The JH purchased the timber and ranch posts, which he then cut to length and fitted. He then installed decorative flower planters and a gate and fence for resident safety. Initiative and creativity had to be used in the performance of this task which involved steps such as ordering relevant materials and using his carpentry and other skills to complete the conversion.</p>	<p>of a bar and barbecue area, involving the purchases of timber and ranch posts, which were cut to length and fitted. He then installed decorative flower planters and a gate and fence. The Claimants deny this required the JH to plan and design.</p>
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219. The Claimants, and Mr Brooks, did not accept that what he did in relation to the bar area involved a significant degree of planning or design. Since that is an evaluative issue, it is appropriate that the job description should be expressed in neutral terms. I find, and Mr Brooks’ job description should state, that:

“The JH was involved in the creation of a bar and barbecue area, erecting shelving and a bar top. The JH purchased the timber and ranch posts, which he then cut to length and fitted. He then installed decorative flower planters and a gate and fence.”

(10)(vii) Robert Brooks: Issue 32

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
32	<p>The JH was required to contribute to wider refurbishment and redecoration plans around the home by identifying which rooms required painting (and whether this was a full re-paint or touch up) or other maintenance work (in conjunction with the home manager and head housekeeper) such as new carpet or new curtains, filling holes from pictures and repairing any damage when a resident vacated their room. It was the JH’s</p>	<p>The JH had no involvement in the planning or organising of any decoration. He simply touched up any blemishes in the paintwork when a room was vacated and would only do a full re-paint when he no longer had the original paint the room was initially painted in. He would check shelves were in order when carrying out this touch up. The JH would simply be informed by the Housekeeper which rooms needed any work. Contractors would carry out refurbishments and the renovation of bedrooms beyond painting.</p>

	<p>responsibility to know what was going on around the home, including which rooms were vacated and ready to decorate. He was responsible for ensuring the completion of the renovations in time for new residents. The JH would source relevant materials and would provide updates to the Home Manager at Head of Department meetings.</p>	<p>The Head Housekeeper would decide when a new carpet or vinyl floor was needed and then inform the Home Manager.</p>
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220. The Claimants agreed with parts of the proposed wording, but disputed others. Doing the best I can to reflect Mr Brooks’ evidence and that of the relevant contemporary documents, I find, and his job description should state, as follows:

“The JH contributed to the refurbishment and redecoration of the home by advising whether rooms required painting (and whether this was a full re-paint or touch up) or other maintenance work such as new carpet or new curtains. When a resident vacated their room, the JH would fill holes from pictures and repair any damage and sometimes repaint the room. The JH would source any relevant materials which he required and would provide updates to the Home Manager at Head of Department meetings.”

8(viii) Robert Brooks: Issue 43

221. This issue, which concerns the CQC and the Fundamental Standards, is the same as issue 42 in relation to Mr Thomas.

8(ix) Robert Brooks: Issue 48

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
48	The JH was on-call in case of emergency maintenance issues and attended three call outs during last 12 months of his employment.	The JH attended these call outs, but he was not on-call. Home Manager agreed with JH he should not be regarded as being on call.

222. In their closing submissions, the Defendants proposed the following revised wording:

“The JH was on call (in the sense that he was expected to attend the home when needed) in the case of emergency maintenance issues. He attended three call outs during the last twelve months of his employment. Four or five times per year, the JH would work a twelve hour night shift to carry out his job of refurbishing residents’ rooms. He would also work weekends to carry out refurbishments.”

223. The Claimants proposed the following revised wording (with the final paragraph being included in the alternative to their primary submission, i.e. that nothing should be said at all about Mr Brooks' working overtime to carry out refurbishments):

“Before 24 April 2014, the JH was not required to be “on-call”.

From 24 April 2014, the JH was required to be “on-call” until 8pm only. Thereafter, in an emergency, staff were to be required to contact the “on-call” phone. The Home Manager would then decide whether the issue was sufficiently important to contact the JH.

In the last 12 months of his employment, the JH was only called out on (at most) 2 occasions.

[Note to the IE: The IE is asked to include this task in his valuation of the JH's role. The IE is also asked to specify in his report:

1. Whether the inclusion of this task affects his assessment of the value of the role;
2. If so, what effect it has; and
3. In particular, what effect, if any, it has on his scoring for this role.]

In the last 12 months of his employment, on four or five occasions, the JH worked a 12-hour night shift painting residents rooms.

Early in the JH's employment, he spent 7 days per week for a month carrying out refurbishments.”

224. Mr Brooks' contract, dated 29 December 2012, provided that he was to be “on call when needed”. This was never expressly varied. On the balance of probabilities, I am not persuaded that his contractual obligation was varied, whether on 24 April 2014 or otherwise. Mr Brooks objected to being called out unnecessarily, and steps were implemented in April 2014 to prevent this, but he continued to attend the home on occasion after 8 pm when that was necessary.
225. As for his working additional shifts to complete refurbishment, I consider that this formed part of his work which should be acknowledged in his job description, but that its nature as (optional) overtime should be acknowledged.
226. Accordingly, I find, and Mr Brooks' job description should state, as follows:

“The JH was on call (in the sense that he was expected to attend the home when needed) in the case of emergency maintenance issues. He attended three call outs during the last twelve months of his employment.

The JH agreed (but was not obliged) to work additional shifts where this was needed to complete the refurbishment of rooms. For instance, early in his employment, he worked 7 days per week for a month to enable him to carry out refurbishments; and in the last 12 months of his employment, he worked

an additional 12-hour night shift painting residents’ rooms on four or five occasions.”

8(x) Robert Brooks: Issue 51

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
51	The JH had an impact on effective financial management of the home in that his repairs, maintenance and identification of issues had a direct correlation with the home’s expenditure on replacement equipment and external contractors.	The JH did not have an impact on effective financial management of the home. Using expensive equipment does not constitute effective financial management.

227. The Defendants proposed the following revised wording:

“The JH had an impact on the effective financial management of the home in that his repairs, maintenance and identification of issues had a direct correlation with the home’s expenditure on replacement equipment and external contractors. The JH also ensured he kept all maintenance costs within budget.”

228. The Claimants’ rival proposal was as follows:

“The JH had an impact on effective financial management of the Home in that the way in which he carried out his role had a direct impact on the home’s expenditure.

If the JH did not carry out his role properly this could cause the Home to incur additional expenditure, for example the cost of engaging contractors or replacing expensive equipment.”

229. There is little between the parties. I prefer the Claimants’ revised formulation, which strikes me as more specific, and it should be included in Mr Brooks’ job description.

8(xi) Robert Brooks: Issue 53

<i>Issue</i>	<i>Defendants’ Position</i>	<i>Claimants’ Position</i>
53	The JH was responsible for maintaining the security of storage for COSHH chemicals (substances which are hazardous to health and covered by the Control of Substances Hazardous to Health Regulations, for example certain cleaning fluids)	The JH was not responsible for maintaining the security of the cupboard, this was the Domestic staff and the JH never repaired shelves or checked that they were adequate for the loads.

	by checking shelving was adequate for the loads and checking appropriate locks were in place.	
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230. In their closing submissions the Defendants proposed the following alternative wording:

“The JH was responsible for the integrity and security of the domestic assistants’ cupboard where COSHH chemicals (which are substances hazardous to health and covered by the Control of Substances Hazardous to Health Regulations, such as certain cleaning fluids) were kept, for example by maintaining adequate shelving and appropriate locks.”

231. It seems to me that this overstates the position. The evidence showed that Mr Brooks would change locks or put up shelves in this cupboard as in others, but not that he was “responsible for the integrity and security” of the cupboard. This wording should not be included in his job description.

(9) Summary and Next Steps

232. I have tried to deal in this judgment with all of the remaining issues between the parties. If I have omitted any, the parties will no doubt point this out and I will rectify the omission. Likewise, if I have purported to decide an issue which has in fact already been agreed, that part of my judgment should be disregarded.
233. I have also tried in this judgment to make clear what the various job descriptions should say on all of the disputed issues. If there is any uncertainty, it can be resolved, either on the basis of written submissions or at a hearing. Subject to any such clarification, I trust that the job descriptions can now be finalised and given to the expert.
234. Finally, I have to repeat the thanks which I expressed at the conclusion of the hearing for the considerable efforts of all solicitors and counsel involved in this case. The issues which I have had to decide have only been the tip of a very substantial iceberg, much of which has, very sensibly, been dealt with by agreement. A great deal of work has been done to get the job descriptions to this stage and to make my task easier, and I am grateful to everyone who has been involved in that work.

(10) Postscript

235. In the light of the parties’ helpful submissions on the draft of this judgment, I add the following:
- (1) In paragraph 37 I quoted from Mr Thomas’ job description. The Defendants invited me to say more about how that part of his job description came to be agreed. If that becomes a material issue at a later stage, it can be addressed then. I do not consider that it is necessary to go into that issue in this judgment.

- (2) The Defendants invited me to change the word “challenging” to “difficult” in the wording set out in paragraph 95 above for inclusion in Mrs Shore’s job description. Rather than change the wording, I provide the following clarification. The word “challenging”:
 - (a) is not intended to mean anything different from “difficult”, which is used in the wording in paragraphs 118 and 126 above;
 - (b) is not used in any technical sense or by reference to any particular definition; and
 - (c) is illustrated by the examples given in the wording in paragraphs 95, 118 and 126.
 - (3) Both parties invited me to state how often Mrs Shore encountered challenging behaviour. I find that she experienced physical violence or verbal abuse from residents only infrequently.
 - (4) I confirm that my intention in paragraph 171 was that the wording quoted in paragraph 170 should not be included in Mrs Garwood’s job description. On the other hand, what she did on the two occasions referred to in that wording was part of her work. The Claimants proposed that this change in her work should be dealt with in the same way as other changes, with a note similar to that set out in, for instance, paragraph 113 above. I do not consider that it would be appropriate to adopt a suggestion such as this made after judgment was provided in draft. As indicated in paragraph 42 above, this would still leave any question as to the effect of this change in Mrs Garwood’s work to be dealt with at a later stage, if it needed to be dealt with at all.
236. The parties have agreed an order giving further directions, leaving me to resolve one point of difference between them concerning paragraph 10 of the draft order. I do not consider that paragraph 10 should include the words contended for by the Defendants, which would require the expert to produce his report in parts in a piecemeal fashion. While there are potential practical advantages to this course, the Claimants have a legitimate concern that the expert should address the whole picture and might be distracted from doing so if he was required to produce his conclusions in a piecemeal fashion.