



Neutral Citation Number: [2021] EWHC 207 (QB)

Case No: QB-2021-000028

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 5<sup>th</sup> February 2021

**Before :**

**MR JUSTICE FORDHAM**

**Between :**

**WEG (A protected party by his daughter and  
Litigation Friend JJJ)**

**Claimant**

**- and -**

**MR NICHOLAS BROWN**

**Defendant**

-----  
-----

**Roger Harris** (instructed by CL Medilaw Solicitors) for the **Claimant**  
**Marcus Dignum QC** (instructed by BLM Solicitors) for the **Defendant**

Hearing date: 05.02.21

Judgment as delivered in open court at the hearing

-----  
**Approved Judgment**

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

.....

THE HON. MR JUSTICE FORDHAM

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

**MR JUSTICE FORDHAM :**

1. I will deal first with anonymity. In accordance with the guidance of the Court of Appeal in X v Dartford and Gravesham NHS Trust [2015] EWCA Civ 96 [2015] 1 WLR 3647 (summarised in the White Book 2021 at p.736), and having at today's hearing invited any submissions from the parties and the press, I have made an anonymity order. That order prevents publication of the name and address of the Claimant, the Litigation Friend, members of the Claimant's family, or information which is liable to or might lead to their identification. The order also restricts access by non-parties to documents in the court record other than those which have been anonymised. It is because of the anonymity order that I am not using any names in this judgment.
2. The purpose of this hearing is so that the Court can decide whether it is appropriate to give approval to a proposed settlement in these proceedings brought by a protected party. The Claimant lacks capacity to conduct litigation, so a Part 8 claim has been brought on his behalf by one of his daughters as his litigation friend in order for the Court to approve that settlement. The daughter who is the Litigation Friend is also the donee of a registered lasting power of attorney for the Claimant's property and financial affairs, in respect of which the Claimant did have capacity to execute that instrument.
3. In 2018 the Claimant was hit by a car driven by the Defendant as he walked across a pedestrian crossing. As a result, he suffered a traumatic brain injury and multiple physical injuries. He was aged 82 at the time. Liability for the accident was admitted on behalf of the Defendant, but the issue of contributory negligence remained in dispute. In December 2020 the parties undertook a Joint Settlement Meeting (JSM) and agreed to compromise the claim in the sum of £500,000 gross: that is, inclusive of interim payments (which amount to £52,500) and Compensation Recovery Unit

recoverable benefit due to the Department for Work and Pensions (which amounts to £3,998.28). A draft Order has been prepared by the parties setting out the terms of their agreement. As is clear from the documents before the Court, the principal point of dispute between the parties related to whether the Claimant's ongoing cognitive problems are the result of the accident or whether they would have arisen in any event by reason of underlying dementia. The parties' experts reached differing conclusions on this point. In addition, there were substantial disputes as to life expectancy and the extent of care and case management that the Claimant would require in the future. As to contributory negligence, whilst this was not formally conceded, for the purposes of the JSM no deduction was claimed.

4. I have had the benefit of reading a clear, thorough and careful confidential Opinion of Roger Harris which sets out the reasons why the Claimant's legal team consider that a settlement in this form and in these figures is appropriate and in the Claimant's best interests. I have also been assisted by Mr Harris in oral submissions today. I need say no more than that, having considered it carefully, together with the other papers in the case to which I have been referred, and what I have heard today, I agree that this is a sensible settlement from the Claimant's point of view.
5. I am satisfied that the parties have considered whether the damages should wholly or partly take the form of periodical payments. All the circumstances of a case – including age and life expectancy and issues relevant to acceleration – will be relevant to that question. Understandably, as Mr Harris has accepted at today's hearing, in light of the issues raised, no offer from the defendant was put forward which included any periodical payment component. I am satisfied that the matter has properly been

considered and that the conclusion reached, in all the circumstances of this case, is sensible.

6. I approve that from the sum of £443,501.72 payments limited to the following sums should be made in respect of gratuitous assistance provided to the Claimant: £9,334 to the Claimant's wife; £9,739 to the Litigation Friend and £8,642 to the Claimant's other daughter: the Litigation Friend's sister. The distinct time sequences are set out in a recital to the Order.
7. As to control of money recovered on behalf of the Claimant, I am satisfied that no directions are necessary. The monies are to be paid into the Claimant's solicitors' account. This is in circumstances where the Litigation Friend is, as I have said, donee of a registered lasting power of attorney for the Claimant's property and financial affairs.
8. I am, therefore, happy to give my approval to the settlement. I will make an Order in the form proposed.

5.2.21