

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

**Claim No: F90MA361**

**BETWEEN**

**EGH**

**(A child proceeding by his  
Mother and Litigation Friend LMH)**

**Claimant**

**And**

**EAST LANCASHIRE HOSPITALS NHS TRUST**

**Defendant**

**ORDER**

**BEFORE** His Honour Judge Sephton sitting at the Manchester Civil Justice Centre as a Judge  
of the High Court on 19 July 2024

**UPON HEARING** Andrew Post one of His Majesty's Counsel, on behalf of the Claimant  
and Margaret Bowron one of His Majesty's Counsel, on behalf of the Defendant

**WHEREAS** the Claimant has made a claim (the “Claim”) against the Defendant for personal injuries suffered by him arising out of the Defendant’s negligence on or about the 17.07.2009 and in respect of which proceedings were commenced by the Claimant against the Defendant in the High Court of Justice Queen’s Bench Division on 27.11.2019

**AND WHEREAS** the Claimant is a Child and brings the Claim by his Mother and Litigation Friend, LMH

**AND WHEREAS** the National Health Service Litigation Authority (“NHS LA”) shall be responsible for and make the payments set out in the Schedule to this Order and for the benefit of the Claimant (referred to below as “periodical payments”)

**AND WHEREAS** the NHS LA has entered into an agreement with the Defendant which permits the NHS LA to be responsible for and make the periodical payments under this Order

**AND WHEREAS** the NHS LA is a Special Health Authority within the meaning of section 70 of the National Health Service Act 2006

**AND WHEREAS** the Defendant and the NHS LA agree with the Claimant that in the event of any failure to make the periodical payments or any alteration in the method or change in the identity of the source of payment the same shall give rise to a direct right of the Claimant to enforce the Order and all rights arising under it against the NHS LA in consideration of the Claimant agreeing to the terms of this Order

**AND UPON READING** the Advice from Counsel for the Claimant dated 2<sup>nd</sup> July 2024 and the report of Richard Cropper Independent Financial Advisor dated 8<sup>th</sup> July 2024.

**AND UPON** the Court being satisfied that:

- (a) The continuity of payment under the Order is reasonably secure pursuant to section 2(3) of the Damages Act 1996 and/or pursuant to section 2(4)(c) of the Damages Act 1996 and under the terms of the Order as herein set out
- (b) The periodical payments are to be paid free of taxation under section 731-734 of the Income Tax (Trading and Other Income) Act 2005
- (c) The Order set out below is agreed by the Claimant and the Defendant as being the preferred Order that should apply
- (d) The form of the Order is that which best meets the Claimant's needs and CPR 21 and 41 have been complied with

**AND WHEREAS** a Deputy (Anna Elizabeth Bond, Fieldfisher) has been appointed for the Claimant

**AND UPON** the Claimant having given the following undertakings to the Court

1. The Claimant, his Litigation Friend and/or his Deputy will not institute any proceedings against the Defendant or any other party or person whomsoever in connection with the Claim save by way of enforcement of this Order

**AND UPON** the parties having agreed in full and final settlement of the claim that the Defendant shall pay to the Claimant the sum of £9,350,000 (nine million, three hundred and fifty thousand pounds) inclusive of interim payments of £1,285,000 (one million two hundred and eighty five thousand pounds) and CRU of £19,753.45 (nineteen thousand seven hundred and fifty three pounds and forty five pence) and interest to 28 days after the date of the Order approving the agreement together with the periodical payments contained in the Schedule annexed to this Order

**AND UPON** the Court having approved the terms of this Order and the Schedule annexed to this Order

## **BY CONSENT**

(1) **IT IS ORDERED** that the Defendant shall make payments to or for the benefit of the Claimant as follows in full and final settlement of the claim

(a) By 4pm on 16 of August 2024 the Defendant shall pay (having taken into account any interim payments and/or CRU and/or interest to that date) the sum of £7,858,021.55 (seven million, eight hundred and fifty eight thousand and twenty one pounds and fifty five pence.)

into the Account of the Deputy (A BOND & P MCNEIL RE: ETHAN HOLT, account number 35763414, sort code 23-05-80) subject to a first charge pursuant to Section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or as subject to any transitional and saving provisions as applicable to Section 16(6) of the Legal Aid Act 1988 or Section 10(7) of the Access to Justice Act 1999, which sum shall be there to be dealt with as a fund of a protected beneficiary and as the Deputy in his/her discretion shall think fit

(b) It is noted that the Defendant has paid to the Department of Work and Pensions the CRU benefits amounting to £19,753.45 (nineteen thousand seven hundred and fifty three pounds and forty five pence)

(c) By 4pm on the 16 of August 2024 the Defendant shall pay to the Claimant's solicitors the sum of £187,225.00 (one hundred and eighty seven thousand, two hundred and twenty five pounds) which sum shall include interest thereon to 28 days after the date

of this order in respect of damages to be held on trust for the Claimant's parents in respect of gratuitous past care

- (d) Further, the sums as specified in the attached Schedule be paid by the Defendant as stipulated in the Schedule and be funded in accordance with section 2 (4) (c) of the Damages Act 1996 with the sums payable to comprise damages for future care and case management, such that the NHS LA shall be responsible to the Claimant for and make such payments to the Claimant

- (2) **AND IT IS FURTHER ORDERED** that the Defendant do pay the Claimant's costs on the standard basis such costs to be the subject of a detailed assessment, if not agreed and that the Defendant shall make an interim payment of £150,000 (one hundred and fifty thousand pounds) on account of the Claimant's costs (in respect of costs and disbursements incurred by his present Solicitors Fieldfisher) by 4pm 16 August 2024.

- (3) **AND IT IS FURTHER ORDERED** that there be permission to have a detailed assessment of the Claimant's costs in accordance with the Civil Legal Aid (Costs) Regulations 2013 or as subject to any transitional and saving provisions as applicable with Regulation 107 of the Civil Legal Aid (General) Regulations 1989 as amended, Article 5 of the Access to Justice Act 1999 (Commencement No.3) Order 2000, Article 4 of the Community Legal Service (Funding) Order 2000 and the Civil Legal Aid (General) (Amendment) Regulations 2000 as amended, save that in the event that the Claimant's solicitors waive any claim to any further costs beyond those referred to above, they have permission to dispense with any Legal Aid Assessment

(4) **AND IT IS FURTHER ORDERED** that all further proceedings in this action be stayed except for the purpose of implementing the terms of this Order and the terms set out in the attached Schedule, for which purpose there be permission to apply to the Claimant, the Defendant and to the NHS LA, and if necessary to add the NHS LA as a party to enforce the terms of this Order

(5) **AND IT IS FURTHER ORDERED** that there be permission to restore

Dated 19<sup>th</sup> July 2024

## **SCHEDULE TO THE ORDER**

### **Part 1 of the Schedule to the order**

Each sum payable under part(s) 2 and 3 of this schedule is a “periodical payment” subject to the conditions set out in paragraphs 1-8 of this part

1. Unless specifically stated, all the periodical payments under part(s) 2 and 3 of this schedule will continue during the lifetime of the Claimant
2. No minimum number of periodical payments under part(s) 2 and 3 of this schedule shall be made
3. Payment of the periodical payments under part(s) 2 and 3 of this schedule will cease on the death of the Claimant
4. The final periodical payment under part(s) 2 and 3 of this schedule will be pro-rated for so much of the final year that the Claimant had survived and any balance owing to the NHS LA or its successor will be repayable to it out of the Claimant’s estate, subject only to deduction by the Claimant’s estate of such sums as the Claimant’s estate may be liable for in respect of the termination of the employment of any persons employed to care for the Claimant
5. The NHS LA shall be entitled to require the Claimant to produce evidence in a form reasonably satisfactory to the NHS LA that the Claimant remains alive before making any periodical payment
6. The periodical payments under part(s) 2 and 3 of this schedule are to be made by BACS to the Court of Protection (or its successor) for the benefit of the Claimant under reference FFW-DOCS.FID5747534 (where applicable)
7. Under part(s) 2 and 3 of this schedule the NHS LA shall provide to the Claimant and/or the Deputy in writing:

- 7.1 At the time of each periodical payment an explanation of how it has been calculated;
- 7.2 If reclassification or a change of methodology occurs within the meaning of part 3 of this Schedule then when a periodical payment is made or in the event of a deferred periodical payment as soon as practicable following such a reclassification or a change of methodology, the relevant calculation(s) under paragraph 6 and the numerical value of 'AR' as defined in paragraph 7.1.4 of that part applicable to any current and/or future periodical payment to be made under that part.
8. The NHS LA shall pay the relevant annual sums set out in part(s) 2 and 3 of this schedule on 15 December of each year, save that:
- 8.1 If the Office for National Statistics [ 'ONS' ] does not publish by 17<sup>th</sup> November in the relevant year all the relevant data and as a result the NHS LA is unable to perform the relevant calculations under part(s) 2 and 3 to recalculate the periodical payment(s) due to the Claimant before 15 December of the relevant year, the NHS LA shall on 15 December of the relevant year make the periodical payment(s): (a) in the same sum as that paid in the previous year; or (b) in the increased/decreased sum recalculated in accordance with the relevant data for the previous year where in the relevant year the annual sum was due to be increased or decreased or commenced under the relevant subparagraph of paragraph 1 of part(s) 2 or 3.
- 8.2 Any balancing payment due to the claimant or the NHS LA shall be made within 28 days after the publication of all the relevant data by the ONS.
- 8.3 The NHS LA shall pay interest at the then applicable Judgment Act rate on any outstanding periodical payment or part of a periodical payment not paid on 15 December in any year from 16 December in that year until full payment is made, except that in the circumstances contemplated in paragraphs 8.1-2 interest due on any balancing payment shall only be payable by the NHS LA from 28 days after publication of all the relevant data until full payment is made.
9. For the period from 15<sup>th</sup> December 2024 to 14<sup>th</sup> December 2025 to represent the periodical payment under part 2 of this schedule for that period the Defendant do pay

the sum of £126,000 (one hundred and twenty six thousand pounds) and that sum shall be paid 4.00 pm on the 15<sup>th</sup> December 2024 .

## **Part 2: The ASHE 6115-Linked Periodical Payments**

1. The following present value annual sums as recalculated in accordance with paragraphs 3-10 shall be paid in advance
  - 1.1 The annual sum of £126,000 (one hundred and twenty six thousand pound payable on 15<sup>th</sup> December in each year from 2025 until 15<sup>th</sup> December 2027 inclusive, with the first such payment to be made on 15<sup>th</sup> December 2025
  - 1.2 The annual sum of £180,000 (one hundred and eighty thousand pounds payable on 15<sup>th</sup> December in each year from 2028
  - 1.3 The expiry of one period and the commencement of another period under the above sub-paragraphs constitutes a “step change” under this Schedule
2. The relevant earnings data are the gross hourly pay for “all” employees given by the present Standard Occupational Category [ ‘SOC’ ] for (Care assistants and home carers) [ ‘6115’ ] at the relevant percentile shown below (currently in table 26.5a at the tab for “all” employees) of the Annual Survey of Hours and Earnings in the United Kingdom [ ‘ASHE’ ] published by the ONS. The original relevant percentiles are:
  - 2.1 80th percentile shall be applied to paragraphs 1.1- 1.2 above

### **First payment of periodical payments under each step**

3. Unless paragraphs 5-10 below apply, the annual periodical payments referred to in paragraph 1 [1.1 to 1.2] above shall be recalculated in November prior to payment on the 15<sup>th</sup> December of the same year from November 2025 in accordance with the following formula

$$PP = C \times \frac{NP}{A}$$

3.1 Where

3.1.1 ‘PP’ = the amount payable by way of periodical payment in each year being calculated in November and paid on the 15<sup>th</sup> of December the first ‘PP’ being the payment on the 15<sup>th</sup> of December 2025

3.1.2 ‘C’ = the relevant annual sum set out in paragraph 1 [1.1 to 1.2] above respectively

3.1.3 ‘NP’ = the “*first release*” hourly gross wage rate published by the ONS for the relevant percentile of ASHE SOC 6115 for “*all*” employees for the year in which the calculation is being carried out, the first NP being the figure applicable to the year 2025 published in or around October 2025

3.1.4 ‘A’ = the “*revised*” hourly gross wage rate for the relevant percentile of ASHE SOC 6115 for all employees applicable to 2024 and published by the ONS in or around October 2025. In the event of a correction by the ONS it will be the replacement “*revised*” figure issued by the ONS

#### **Subsequent payment of periodical payments under each step**

4. Unless paragraphs 5-10 below apply, the annual periodical payments referred to in paragraph 1 [1.1 to 1.2] above shall be recalculated annually in subsequent years in November in each year prior to payment on the 15<sup>th</sup> December of the same year from November 2026 in accordance with the following formula

$$PP = C \times \frac{NP + (NF - OP)}{A}$$

4.1 Where in addition to the definitions previously set out

- 4.1.1 ‘*NF*’ = the “*revised*” hourly gross wage rate published by the ONS for the relevant percentile of ASHE SOC 6115 for “*all*” employees for the year prior to the year in which the calculation is being carried out, the first *NF* being that applicable to the year 2025 and published in or around October 2026
- 4.1.2 ‘*OP*’ = the “*first release*” hourly gross wage rate published by the ONS for the relevant percentile of ASHE SOC 6115 for “*all*” employees for the year prior to the year in which the calculation is being carried out, the first *OP* being the figure applicable to the year 2025 published in or around October 2025.

**Payments upon reclassification of the SOC or a change of methodology by the ONS**

- 5        Reclassification for the purposes of paragraphs 6-9 below, and subject to paragraph 6.1.2, occurs when the ONS publishes for the same year “*revised*” hourly gross wage rates for both:
- 5.1        the previously applied SOC (for which the “*revised*” wage rate is defined as ‘*AF*’ in paragraph 6.1.1 below) and
- 5.2        for a new SOC (for which the “*revised*” wage rate is defined as ‘*AR*’ in paragraph 7.1.4 below) that includes those currently defined as “*home carers*” in ASHE SOC 6115

Or alternatively, where the ONS publishes *AR* for a new SOC that includes those currently defined as “home carers” in the previously applied SOC but does not publish *AF* for the same year, then reclassification is nonetheless deemed to have occurred.

Unless the Court otherwise orders pursuant to paragraph 11 below, in either event the new SOC shall be applied.

- 6        The relevant annual sum referable to the sums at paragraph 1 [1.1 to 1.2] above following reclassification shall be known as ‘*CR*’ and shall be calculated only in each year of reclassification, in accordance with the following formula

$$CR = C \times \frac{AF}{A}$$

6.1 Where in addition to the definitions previously set out

6.1.1 ‘AF’ = the final published “*revised*” hourly gross wage rate for the relevant percentile of the previously applied SOC for “*all*” employees

6.1.2 If, for the year of reclassification, the ONS does not publish AF, then the “*first release*” hourly gross wage rate published for the relevant percentile of the previously applied SOC for “*all*” employees (which is defined as ‘OPF’ in paragraph 7.1.3 below) shall be applied in its place

6.1.3 If reclassification has previously occurred then C will be the numerical value of CR calculated when reclassification last occurred and A will be the numerical value of AR calculated when reclassification last occurred

7 When reclassification occurs the first payment only shall be

$$PPR = \left[ CR \times \frac{NPR}{AR} \right] + \left[ C \times \frac{AF - OPF}{A} \right]$$

The second bracket of the above formula shall not apply where at the time of reclassification, either (a) there has been no periodical payment made in the previous year or (b) where at that time a step change in the annual sum is due under paragraph 1 above and in those circumstances the first payment shall be calculated in accordance with the following formula

$$PPR = \left[ CR \times \frac{NPR}{AR} \right]$$

Where reclassification has occurred on more than one occasion prior to the first payment then successive applications of paragraph 6 above must be carried out first to

arrive at the present numerical value of CR and C shall represent the numerical value of CR previously calculated

7.1 Where in addition to the definitions previously set out

7.1.1 ‘*PPR*’ = the amount payable by way of periodical payment in each year following reclassification

7.1.2 ‘*NPR*’ = the “*first release*” hourly gross wage rate published for the relevant percentile of the new SOC following reclassification for the year in which the calculation is being carried out

7.1.3 ‘*OPF*’ = the final “*first release*” hourly gross wage rate published for the relevant percentile of the previously applied SOC for “*all*” employees

7.1.4 ‘*AR*’ = the “*revised*” hourly gross wage rate for the published percentile of the new SOC, which, when first published, is closest to *AF*, and the relevant percentile of the new SOC shall be the percentile to which *AR* corresponds

8 Until further reclassification the formula for calculating subsequent values of *PPR* shall be

$$PPR = CR \times \frac{NPR + (NFR - OPR)}{AR}$$

8.1 Where in addition to the definitions previously set out

8.1.1 ‘*NFR*’ = the “*revised*” hourly gross wage rate published for the relevant percentile of the new SOC following reclassification for the year prior to the year in which the calculation is being carried out

8.1.2 ‘*OPR*’ = the “*first release*” hourly gross wage rate published for the relevant percentile in the new SOC following reclassification for the year prior to the year in which the calculation is being carried out

- 9 Further reclassifications shall be dealt with in the same way by the application of paragraphs 5-8 above
- 10 For the purposes of this part a change of methodology occurs when the ONS publishes two sets of data for the applied SOC. In that event, the same process as set out in paragraphs 6-9 above shall be undertaken. However, in these circumstances references to
- 10.1 *‘reclassification’* shall be treated as being a reference to *‘a change of methodology’*,
- 10.2 *‘the new SOC’* shall be treated as being a reference to *‘the existing SOC using the new methodology’*, and
- 10.3 *‘the previously applied SOC’* shall be treated as being a reference to *‘the existing SOC using the old methodology’*.

### **Miscellaneous**

- 11 In the event of a dispute between the parties arising out of the application of this part, there be liberty to apply.

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