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Claim No: HQ17P03805

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/03/2019

Before:

DAVID EDWARDS, QC (SITTING AS A JUDGE OF THE HIGH COURT)

Between :

AB	**Claimant**
(Personal Representative of the late GH)	
- and -	
KL	**Defendant**

Mr Robert Hunter (instructed by **Slater and Gordon UK Limited**) for the **Claimant**
Mr David White (instructed by **DWF LLP**) for the **Defendant**

Hearing dates: 26th February 2019

JUDGMENT WARNING: This judgment is issued subject to a reporting restriction

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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David Edwards QC (sitting as a Judge of the High Court):

1. These proceedings arise out of the tragic death of the late GH. GH died as a result of a collision between his motorcycle and a vehicle driven by KL that occurred in Waltham Abbey, Essex shortly before 10pm on 16 September 2015.

2. GH was born on 21 October 1962 and was 52 years old at the date of the accident. He had been married twice. He married his first wife on 2 September 1989 and they had a son, AB, on 17 December 1992. They divorced in December 1998. In October 2000 GH married his second wife, IJ. They had two sons, twins, CD and EF, who were born on 9 October 2003. The marriage broke down in 2010 and GH moved out of the matrimonial home in October of that year. GH and IJ divorced in December 2012. They remained, however, on good terms, and it is apparent from the evidence that I have heard that GH was a loving and generous father who took an active interest in the lives of his three children.

3. At the time of his death, and for some years prior to that, GH was working in the building trade as a self-employed Project Planner (under a trading name) mostly for Hill Partnerships, a house-building firm. AB, his eldest son, subsequently came to work for the same firm.

The Proceedings

4. These proceedings were commenced by a Claim Form issued on 18 October 2017. The Claimant is AB, who is the executor of GH's estate. He brings proceedings on behalf of the estate pursuant to the Law Reform (Miscellaneous Provisions) Act 1934 and also on behalf of GH's dependants, AB, CD and EF, pursuant to the Fatal Accident Act 1976 (as amended). CD and EF act through their mother, IJ, as their litigation friend.

5. Liability had been admitted by KL prior to the commencement of proceedings; he had previously pleaded guilty to, and had been convicted of, causing death by careless driving. On 15 June 2018 Master Thornett gave judgment for the Claimant at 100 percent damages, to be assessed. Directions were given for a trial of quantum issues, which was listed to take place before me on two days over 25 and 26 February 2019. In the event, and subject to the provision of one additional authority after the hearing, it was possible to complete the trial of quantum issues in a single day.

6. I heard evidence at the trial from AB and from IJ on behalf of the Claimant; the Defendant adduced no evidence. AB and IJ both gave their evidence in a straightforward, composed, unexaggerated way, readily accepting that exactly how far GH would have gone to support his dependants in the future involved some speculation and guesswork. I will deal with one particular point concerning AB's evidence in due course, but in general I accept that they were both honest witnesses doing their best to assist the court in what were inevitably sad and trying circumstances.

7. Both parties were represented at the trial by counsel, in the case of the Claimant by Robert Hunter and in the case of the Defendant by David White. I am grateful to them both, and to the solicitors behind them, for their assistance and for the sensitive and efficient way in which they conducted their respective client's cases.

8. At the start of the trial, in light of a number of matters, in particular the age of two of the dependants and the nature of some of the matters (and the evidence) I was required to consider, I raised with counsel the question of whether it was appropriate for me to make an anonymity order under CPR 39.2(4). Counsel considered the matter, and they confirmed later the same day that they both regarded such an order as appropriate, a view which I had provisionally formed myself. For the reasons set out in a separate oral judgment I gave at the end of the first day, I made such an order. This judgment has therefore been anonymised appropriately.

The Areas of Dispute

9. As indicated above, the claim brought by the Claimant is made on behalf of both GH's estate and his dependants. It is convenient to divide the issues up into those two categories, though by the end of trial there was very little dispute in relation to the claim on behalf of the estate where most of the claimed items were agreed.

10. The parties' initial and updated Schedules and Counter-Schedules of Loss followed different structures. In light of this, Mr White produced, as an appendix to his Skeleton Argument, a summary of the parties' respective positions on quantum, identifying by item the nature of the claim, the amount claimed and the amount (if any) offered, and a brief description of the dispute between the parties. The appendix contained some minor inaccuracies, and, in relation to some items, concessions were made and the parties' positions changed. I found it, nonetheless, a very useful document.

A. The Estate Claims

11. There were three heads of claim made on behalf of the estate under the Law Reform (Miscellaneous Provisions) Act 1934; using the lettering in Mr White's appendix, these were:

    B. General Damages;

    C. Special Damages and Subrogated Claim; and

    D. Funeral Expenses.

12. The claim for General Damages (B) concerned the pain, suffering and loss of amenity that GH experienced as a result of the accident and before he died.

13. The evidence in that regard was contained in AB's witness statement and was unchallenged. GH was conscious and lucid immediately after the accident; he was taken to hospital from the accident site and was sedated upon arrival; his heart stopped several times on the way from the accident site to the hospital and once in theatre; he died in theatre without regaining consciousness.

14. Mr Hunter and Mr White both agreed that this case fell within Chapter 1 Category (D) of the Judicial College Guidelines (Immediate Unconsciousness/Death within One Week). The guideline contains a bracket for general damages of £1,200.00 to £2,450.00. Both counsel submitted that an award towards the bottom end of the scale was appropriate: Mr White suggested a figure of £1,200.00 – right at the bottom - and

Mr Hunter a higher figure of £1,500.00. In my judgment, the appropriate figure is £1,400.00.

15. Item C - Special Damages and Subrogated Claim – was agreed at £1,000.00 (representing £450.00 in respect of the excess on GH's motor insurance and £550.00 for the damage to his clothing and helmet; a much larger sum in respect of the damage to his motorcycle, I was told, had been paid by KL's insurers already). Funeral Expenses (D) were agreed at £8,365.80.

16. The sums that I award as damages in respect of the claim made on behalf of the estate are accordingly the following:

B. General Damages - £1,400.00;

C. Special Damages and Subrogated Claim - £1,000.00; and

D. Funeral Expenses - £8.365.80,

thus £10,765.80 in all (as indicated below, I leave over for further argument, if required, all questions concerning interest).

B. Dependency Claims

17. The dependency claims were brought under the Fatal Accidents Act 1976 (as amended) on behalf of GH's dependants, his three sons.

1. Counselling

18. The bulk of the claims were for past and future financial and services dependency. I deal with these below.

19. There was, however, one distinct item. This appeared separately in Mr White's appendix under the heading for estate claims (although I am not sure it properly fell into that category); it was unlettered, but for convenience I will call it D1:

D1. (Past) Counselling for AB.

As the label suggests, this item concerned the cost of bereavement counselling which AB had undergone after his father's death. A similar claim was made in relation to possible future counselling which I will call item L1.

20. Whilst these items were included in the Claimant's original and updated Schedule of Loss, they were ultimately not pursued at the hearing. I accordingly make no award in relation to them.

2. General Points

21. The remaining dependency claims comprise past and future financial and services dependency. Whilst the twins can sensibly be dealt with together, different considerations arise in relation to AB.

22. I will deal first with the past financial services dependency claims (E and F in Mr White's appendix); then with the past services dependency claims (G, H and I); then with future financial dependency claims (K and L); and, finally, with the future services dependency claims (M and N). Inevitably, there is some overlap, and insofar as possible I will avoid duplication.

23. I do not propose to deal in this judgment with item J – interest. I will invite the parties to make submissions on what should be included in respect of interest (to the extent it cannot be agreed) and in relation to other consequential matters, including the capitalised cost of the future dependency claims and apportionment, in light of my decision on the principal items.

24. There are three general points that it is convenient to deal with first before I embark on the detail. The first concerns GH's character and the evidence I heard as to the relationship between GH and his sons, which inevitably bears on the extent to which he would have provided for or assisted them, in particular in financial terms. The second concerns GH's financial position and the money at his disposal to be used for these purposes. The third concerns the approach I should take to the question of how GH would have behaved towards his sons had he not died, an issue which, as both parties accepted, inevitably involves some, and perhaps a considerable, element of uncertainty.

GH's character and his relationship with his sons

25. So far as the first point is concerned, as I observed earlier there is no doubt on the evidence I heard that GH was a loving and generous father who took an active interest in the lives of his three sons.

26. AB was 22 years old at the date of GH's death. He had graduated in July 2014 from the University of Reading (where he achieved a II.i) and he had been working for around one year as an Assistant Contracts or Quantity Surveyor. He was living with his mother and his step-father to whom he was paying rent. AB's evidence was that he saw his father two to three times a month prior to university, and that, whilst he was at university, he saw his father when he was back in London during the Christmas, Easter and Summer breaks. His relationship with his father was inevitably changing – by the time of his father's death they were both adults – but, he said, was blossoming. He went fishing with his brothers, he would cook together with his father and go to the pub. In March 2015, some six months before his death, GH took AB on (and paid for, at a cost put by Mr Hunter at £1,777.68) a father-and-son skiing holiday to Andorra. They had talked about doing similar things in the future.

27. Financially, there was evidence that GH provided support to AB whilst he was at university: AB's bank statements showed two transfers, each for £1,000.00 from GH in October and December 2011, and the bank statements included references to cheques and cash paid into AB's account for significant sums which I also understand had or may have emanated from GH. AB's oral evidence was that GH gave him all manner of things whilst he was at university. On 12 June 2014 GH transferred £1,500.00 to AB to pay for driving lessons.

28. There were also birthday and Christmas presents. So far as that is concerned:

i) The Claimant's Preliminary Schedule of Loss included a claim for past dependency in relation to presents of £150.00 per year and future dependency at £100.00 per year;

ii) The updated Schedule of Loss revised this figure to £350.00 per year, explaining that AB had realised that his father was, in fact, more generous than he had first thought, although (the schedule said) the position was complicated by the fact that gifts for birthdays and Christmas in the years leading up to GH's death were mostly during the period when AB was at university, which I take to mean that there was a degree of overlap or uncertainty as to the nature or purpose of particular payments;

iii) In his witness statement AB said that GH would regularly give him between £500.00 and £1,000.00 for birthdays and Christmas (which I take to be an aggregate figure for both). AB confirmed these figures in his oral evidence, explaining that £350.00 per year he felt was a realistic figure. He rejected the suggestion that £100.00 per year was a fair approximation, saying that there was never anything that low. There was, he said, no particular method by which presents would be given: it might be banknotes inside a card or a bank transfer.

In my judgment, an average figure of £350 per annum is indeed a realistic figure for the aggregate value of birthday and Christmas presents given by GH to AB in the years preceding GH's death.

29. The twins, CD and EF, were just under 12 years old at the time of GH's death and were living with their mother, IJ. The matrimonial home was sold in December 2012, and from January 2012 (prior to their divorce) GH agreed that he would pay IJ £750.00 per month to help support the twins. GH's bank statements and IJ's bank statements confirmed that such payments were made, and IJ told me that GH never missed a payment. There is an issue between the parties as to whether the amount of these payments would have increased, which I will address later.

30. In addition to these regular maintenance payments, IJ gave evidence that GH would make additional, ad hoc contributions when needed for school uniforms, school trips and clothes.

31. GH had CD and EF every other weekend from Friday evening until Sunday evening and for four weeks over the school holidays (two weeks over the summer holiday and a further two weeks during the course of the year). During the weekends, GH would do what IJ described as "the usual dad stuff" with the twins: activities, day trips, going to the cinema and the like. In the course of her cross-examination about sums he would spend on the twins (within item E in Mr White's schedule) and whether these might really amount to £250.00 per twin per annum, she explained that the twins would often come home after they had stayed with their father with extra things; £250.00 per twin per annum, she explained, amounted to £10.00 per twin per weekend; that, she said, was nothing, an xBox game was £50.00, a new tracksuit was £80.00. Her evidence in this regard was entirely credible, and I accept it.

32. As for holidays, there was evidence that GH had taken the twins on holidays in July and August 2013 to Southend and to Centre Parcs and in February and August 2014 to Poland (skiing) and to Almeria, Spain. So far as the 2013 holidays were concerned, Mr

White agreed that the costs involved for GH and the twins totalled £1,665.69, and so around £555.00 for each twin. The costs for the 2014 holidays were not agreed and were not easy to discern with precision from GH's bank statements because of the limited descriptions contained within them, but I find that the cost of the Poland trip was not less than the figure of £2,897.79 put forward in Mr Hunter's skeleton argument (which did not include some entries which may have been attributable to the trip) and the cost of the Almeria holiday was not less than Mr Hunter's figure of £1,924.77 (for the same reason). The combined cost of the 2014 holidays was, accordingly, at least £4,822.56 or £1,607.52 each. Substantially less was spent in 2013 than in 2014, but over the two years together GH spent £4,325.04 on holidays for the twins, or £2,162.52 each.

GH's financial position

33. It will be apparent from what I have just described that, prior to his death, GH had spent significant sums on trips, holidays and the like for his three children, and that he was invested in his children and was prepared to spend money on them.

34. So far as GH's broader financial position is concerned, the amount of his earnings from his self-employment were common ground. The trial bundles included income and expenditure accounts for GH's business (his mother was named as a partner, but I accept that, whilst she may have been named as a partner for tax purposes, the profits of the business were the product of GH's labour) for the years ending 31 March 2012, 2013, 2014 and 2015, and for the five month period from 1 April to 31 August 2015, i.e., to shortly before GH's death. The relevant figures were as follows:

Year End / Period	**Income (£)**	**Expenses (£)**	**Profit (£)**
March 2012	100,647	22,743	77,904
March 2013	113,098	19,932	93,166
March 2014	96,918	16,452	80,466
March 2015	96,145	17,260	78,885
April – August 2015	57,908	12,719	45,189

35. Like many self-employed people, GH's profits were variable, but the average profit for the four complete years was a little over £82,000.00; the inclusion of the figure for the incomplete year to end August 2015 would result in a slightly higher figure. The effect of tax and national insurance contributions is likely to have resulted in average net earnings over those years in the region of £55-60,000.00, with changing tax thresholds leading to a modest rise by the time of trial. It is not necessary for the purposes of this case to be any more precise.

36. In assessing GH's disposable income, and thus the funds available to him to spend on his dependants, it is necessary to take into account his own living expenses. The

evidence in this regard was limited and to some extent uncertain. GH's bank statements (I was shown, in this context, the statements for a sample month) show direct debit payments for his mortgage, pension contributions, utilities and other similar recurring items totalling around £2,000.00 per month or £24,000.00 per year (this excludes the regular £750.00 maintenance payment), but that figure does not include payments for food or other essential items not dealt with in this way. The updated Schedule of Loss suggested that GH's fixed living expenses were around a quarter or less of his net income; I do not accept that, and I think it more likely that they were nearer one half. But I accept that this left him with significant funds which he could spend to support his sons.

The proper approach

37. I turn finally to the approach I should take to the question of how GH would have behaved towards his dependants and the amount of any financial support he would have provided. This is, inevitably, a hypothetical exercise: no-one can know exactly how GH would have acted and how generous he would have been had he not died.

38. In some cases, there is evidence of GH's past behaviour in relation to the item in question which can be drawn upon; in deciding how much GH would have spent on birthday and Christmas presents for his sons in the future, for example, one can look to see how generous he had been in the past, although I accept that one should not necessarily assume that a father would spend as much on Christmas presents for an adult son aged 30 as he might have spent whilst the son was under 18. In other cases, however, there is no such evidence, and the exercise involves one or more layers of uncertainty.

39. The two most contentious (and in financial terms the largest) items were the extent to which GH would have given money to each of his sons to help them buy a first home; and the extent to which he would have contributed to the cost of any future weddings. I was invited to find that he would have given each son £15,000.00 towards the cost of a first home and that would have paid one half of what was said to be the typical £25,000.00 cost of a wedding for each son, i.e., £12,500.00, and to award damages accordingly.

40. I will deal with these items in more detail below, but each plainly involves substantial uncertainty.

41. So far as each son's purchase of a first home is concerned, though some people (for different reasons) may prefer to rent rather than to buy a property, I would be prepared to accept that each son would be likely to want to purchase a home in due course and that each would probably do so. I would also accept that some, perhaps many – but by no means all – parents choose to help their children get on the property ladder if they can. But, even then, there is uncertainty as to:

    i) Whether GH would have wanted to help;

    ii) Whether, if he did, he would have helped by gifting money, rather than providing a loan (on commercial or non-commercial terms) or in some other way; and

iii) Whether, if he would have given money, how much he would have given?

42. AB, as it happens, has purchased a home with his long-standing girlfriend since GH's death, and he told me that he used his inheritance towards the deposit (I was reminded that section 4 of the Fatal Accidents Act 1976 requires me, in assessing damages, to disregard any benefits which have accrued as a result of the death), but none of GH's sons had purchased a property before he died. Although one can consider GH's character and generosity in the round, subject to a point made in AB's evidence which I will come to, the issue of whether he would have contributed to a property purchase had simply not arisen before.

43. The position in relation to a contribution to the cost of weddings is even more uncertain. AB is now living with his long-term girlfriend; he told me that they were approaching their 11-year anniversary. They have purchased a house together. I cannot know whether they will ultimately marry (or enter into a civil partnership), but these facts are obviously indicators that they very well might. The twins, on the other hand, are currently only 15 years old. It is impossible to say whether they will or will not marry – one may do so, the other may not – or, if they do, when that will occur. Even if they do marry, similar difficulties will arise to those discussed above in relation to any contribution GH might make to the cost:

i) The cost of the wedding may depend on its nature and size; will it be a modest civil wedding, or a larger, more formal religious ceremony; how large and expensive will be it in terms of the number of guests, nature of reception and other matters?

ii) GH's children are all boys, but I accept that the parents of boys often make a significant financial contribution to the cost of a wedding. That is not to say, however, that the question of whom the sons marry, if they do, and the financial position of their partners' parents, will have no impact on the contribution, if any, that is required;

iii) So far as GH is concerned, there are questions as to whether he would have wished to contribute at all; whether, if he would, he would have been likely to contribute by paying part of the cost of the wedding or simply by buying the couple a significant wedding present; and, if he was prepared to contribute to the cost of the wedding, how much he would have contributed – whether he would have paid half (or perhaps half of one-half, with the boys' mothers paying the difference, if they could) and whether he would have been prepared to pay as much as £12,500.00 for each wedding.

44. In relation to these two matters – contribution to a first home and contribution to the cost of weddings – Mr White's primary submission was that there was so much uncertainty that the claims were essentially speculative and should be rejected in their entirety.

45. I was referred by Mr Hunter, however, to the following passage in *Kemp & Kemp: The Quantum of Damages* at 29-029 and to the citation within it of Lord Diplock's speech in *Mallett v McMonagle* [1970] AC 166:

"The approach of the court to the assessment of the loss caused by the death is similar to the approach on questions of fact in other personal injury actions. The court does its best to assess what would have happened, but for the death in question, evaluating the evidence as to what the deceased would have done, how his career would have progressed, how long the dependants would have remained dependant and so on.

The guidance given by Lord Diplock in *Mallett v McMonagle* should be borne in mind during this process. He contrasted the fact-finding task of a court in relation to past fact, decided on the balance of probabilities, with its task in relation to what will happen or would have happened in future but for the wrongful act. He said:

> '... in assessing damages which depend upon its view as to what will happen in the future or would have happened in the future if something had not happened in the past, the court must make an estimate as to what are the chances that a particular thing will or would have happened and reflect those chances, whether they are more or less than even, in the amount of damages which it awards.'

In relation to future pecuniary loss, the court uses the normal personal injury tool: multipliers to multiplicands.

Often the best evidence of dependency is that the person claiming was in fact dependent upon the deceased at the time of death so was being maintained by him but this is not a necessary precondition. Thus, a claimant may be able to show that there was a reasonable expectation of future maintenance even though that claimant had not in fact been dependent on the deceased at all during the deceased's lifetime. In the last 20 years more and more parents have supported their children long after their education has finished. With the high price of housing and the credit crunch many children live at home for many years after leaving school and dependency may therefore continue in some form.

Many of the claims made under the umbrella of loss of dependency include a significant element of hypothesis in that there is inherent uncertainty as to what would have happened if the deceased had not died. For this reason, the courts will often apply percentage reductions to mathematically reached sums to reflect the hypothetical nature of the claim. Sometimes the reduction appears arbitrary, and there is an element of the judge reaching a 'jury' award, that is, putting himself in the position of a jury awarding damages and finding the sum which appears to him to be reasonable compensation, looked at overall as a lump sum."

The editors' remark concerning the support given by parents to adult children in recent years is obviously pertinent to the claim in the present case for a contribution to the cost of purchasing a first property.

46. Also relevant is the extract from the speech of Lord Simon in *Davies v Taylor* [1974] AC 207, 220 quoted in *Kemp & Kemp* at 29-030:

> "... much proof depends on credibility, as to which probability is (at least, as yet) only one factor to be weighed. And when it comes to prediction, there are so many factors to be considered (not least the extraordinary vagaries of human nature) that mathematical theory can have in general only marginal significance. So the law ordinarily proceeds to treat probability according to certain easily understood standards. If a possibility is conceivable but fanciful, the law disregards it entirely on the maxim *de minimis non curat lex*. Most matters in civil litigation have to be proved on the balance of probabilities in other words, is it more likely than not?
>
> But the law is sometimes concerned with categories of probability which do not coincide with these broad ones. Merely by way of example, in assessing damages for personal injuries the court may have to consider and allow for the chance of osteo-arthritis supervening (a chance which, though more than fanciful, may be considerably less than 50-50). So, too, in the instant case, Bridge J. was misled into thinking that it was agreed that the correct test was whether he was satisfied that it was more likely than not that the appellant and the deceased would resume cohabitation – the only basis on which the appellant could prove loss of dependency. But this is one of those cases where a balance of probabilities is not the correct test. If the appellant showed any substantial (i.e. not merely fanciful) possibility of a resumption of cohabitation she was entitled to compensation for being deprived of that possibility. The damages would, of course, be scaled down from those payable to a dependent spouse of a stable union, according as the possibility became progressively more remote. But she would still be entitled to some damages down to the point where the possibility was so fanciful and remote as to be de minimis."

47. Both *Mallett v McMonagle* and *Davies v Taylor* were Fatal Accident Act cases like the present. The principle they reflect, that in certain circumstances issues of causation and loss should be assessed, not on the balance of probabilities but by assessing the chance of something happening, is, however, a general one and applies in other contexts; see, for example, the recent decision of the Supreme Court in *Perry v Raleys Solicitors* [2019] UKSC 5, a professional negligence case, at [15]-[20] per Lord Briggs commenting on the application of a "loss of a chance" approach in assessing what would have happened in a counter-factual situation or where the relevant events are in the future.

48. A number of matters that I have to decide fall into this category: they involve a counter-factual (what would have happened if GH had not died), consideration of future events (will his sons marry and will they purchase homes) or both (what assistance would GH have given his sons in those situations). I approach those matters with the principles reflected in *Mallett v McMonagle*, *Davies v Taylor* and *Perry v Raleys* in mind. The uncertainties around some of these events may be such that the prospects of their occurrence can be regarded as fanciful; in that case, no damages should be awarded. If they are not fanciful, however, damages may be awarded, though in an amount which reflects the likelihood of their occurrence, as the editors of *Kemp & Kemp* say applying a percentage reduction to reflect the hypothetical nature of the claim.

3. Past financial dependency claims

49. The twins past financial dependency claims are item E in Mr White's appendix. AB's past financial dependency claims form item F. The claims are "past" in the sense that they relate to the period prior to trial.

50. So far as the twins are concerned, the claims include six items:

1. Regular payments to IJ;
2. Ad hoc contributions: uniforms;
3. Ad hoc contributions: other expenses;
4. School trips;
5. Presents; and
6. Holidays.

51. As for the first item, as I explained earlier since January 2012, and thus for a period of over three years prior to his death, GH had been paying maintenance to IJ of £750.00 per month. Both parties accepted that these maintenance payments would have continued to trial. The dispute between them was as to whether the figure of £750.00 would have risen to £800.00 per month from September 2016. The Defendant's figure, reflecting no increase, was £30,750.00; the Claimant's figure, reflecting an increase, was £32,600.00.

52. There was some evidence on the issue. IJ said in her witness statement that things get more expensive as the years go by and that she felt confident that GH would have been agreeable to increasing the amount he paid each month by between £50.00 and £100.00. In cross-examination, she said that it would have had to have been raised between them, pointing out that the twins had started senior school which was more expensive. She and GH, she said, would have had a conversation. The relevant documents were not in the bundles before me, but she also said that her divorce papers required the level of maintenance payments to be reviewed.

53. Two additional points were advanced on behalf of the Claimant in the Schedule of Loss and in Mr Hunter's skeleton argument. The first was simply the effect of inflation; adjusting for RPI, it was said that £750.00 in January 2012 was now equivalent to nearly £900.00. I accept that. The second point was that the amount of £750.00 that IJ was receiving on a monthly basis was less than the figure that would have been assessed by the Child Maintenance Service. This point was not explored in argument, and it seems to me that in order to do a proper comparison it would have been necessary to take into account that, in addition to the monthly maintenance payments, GH was also making ad hoc payments in relation to various items.

54. Nonetheless, having regard to GH's resources and his character as I have described them, the fact that the amount of the monthly maintenance payment had remained the same for some time and the increased costs involved as the twins got older, I accept that an increase in the maintenance payment would have been agreed, and I accept that

it would have been increased by the (modest) amount of £50.00 from September 2016 to £800.00 per month. I accordingly award £32,600.00 in respect of this item.

55. The second item – ad hoc contribution: uniforms – is all but agreed. The claim is for an amount of £375.00 per year for both twins for the period to trial. GH had, in fact, transferred £375.00 to IJ to pay for school uniforms in the two months preceding his death. The difference between the figures in the parties' respective Schedules and Counter-Schedules of Loss is the result of a fractional difference in the multiplier (3.5 as against 3.44). I have used a multiplier of 3.5 and the figure I award is therefore £1,312.50.

56. The third item – ad hoc contributions: other expenses – is disputed. The Claimant claims £250.00 per twin per year, and thus £1,750.00 in all. This was said in the updated Schedule of Loss to be a notional sum to reflect other purchases that would have been made by GH for the twins, for example trainers, mobile phones and other technology (embracing, I assume, xBox games and the like – see paragraph 31 above). It is intended to catch sums that GH would have spent on the twins during the weekends that he spent with them, in addition, that is, to presents for birthdays and Christmas.

57. The Defendant allowed nothing for this item on the basis that the amount of £350.00 per twin per year claimed for birthday and Christmas presents (dealt with below), which the Defendant offered in full, was a sufficient overall sum for these items as well. I reject this. GH plainly did spend money on the twins at weekends; and, as IJ observed, the sum of £250.00 per twin per year amounts to little more than £10.00 per twin for each weekend he spent with them. I award the amount of £1,750.00 in full.

58. The fourth item concerns school trips. The figure for this is agreed at £1,190.00.

59. The fifth item – presents – I have touched on already. The figure of £350.00 per twin per annum is agreed, but there is a difference between the total amount claimed and that offered because of the use of a fractionally different multiplier. I have used a multiplier of 3.5 and I therefore award the Claimant's claimed figure of £2,450.00.

60. The final item under this heading is holidays. The claim presented in the Schedule of Loss proceeds on the basis that GH had taken, and would have continued to take, the twins away twice a year. A notional annual cost of £2,500.00 was claimed representing £1,500.00 in respect of a trip abroad and £1,000.00 for a trip in the UK. Applying a multiplier of 3.5, this gave an overall figure of £8.750.00. The Defendant's offer was £3,440.00 reflecting a figure of £1,000.00 per year, i.e., £500.00 per twin per annum.

61. The evidence of the holidays and trips GH had enjoyed and paid for with the twins in the years immediately preceding his death was that in July and August 2013 there were trips to Southend and to Centre Parcs (both in the UK) and in February and August 2014 there were trips to Poland (skiing) and Almeria, Spain. I explained what could be gleaned from GH's bank statements in relation to the cost of these holidays earlier in this judgment. Substantially less was spent in 2013 than in 2014, but over the two years together GH spent £4,325.04 on holidays for the twins, or £2,162.52 each.

62. I see no reason why the amounts spent by GH on holidays for the twins would have decreased. Bearing in mind the figures set out above, in my judgment a reasonable

sum is £2,200.00 (for both twins) per year, which, applying a 3.5 multiplier, gives a figure of £7,700.00 in all.

63. The sums that I award as damages in respect of the twins past financial dependency claim (E) are accordingly as follows:

1. Regular payments to IJ - £32,600.00;
2. Ad hoc contributions: uniforms - £1,312.50;
3. Ad hoc contributions: other expenses - £1,750.00;
4. School trips - £1,190.00;
5. Presents - £2,450.00; and
6. Holidays - £7,700.00.

The total awarded is £47,002.50.

64. AB's past financial dependency claim (F) involved three items:

1. Holidays;
2. Presents; and
3. Contribution to First Home.

65. So far as the first item is concerned, reliance is placed by the Claimant on the skiing trip in Andorra in March 2015 paid for by GH for himself and AB discussed above. The cost for the two of them was £1,777.68 and thus £888.84 for AB. The claim presented in the updated Schedule of Loss was for £500.00 per annum or £1,750.00 in total.

66. AB gave evidence about discussions he and his father had about further holiday breaks both in his witness statement and his oral evidence. In his witness statement he said that he and his father had enjoyed Andorra and had talked about having further breaks in the short-term and adventure breaks in the UK now he was no longer at university. He said in his oral evidence that they had discussed taking holidays together again. He said that he had no doubt that they would have gone away annually on something smaller, and that there would have been something bigger in the future.

67. The Defendant allowed nothing for future holidays. The point put to AB in cross-examination was that he was now an adult; he was settled living with his girlfriend in his own property and was more independent, the implication being that he would have struggled to find time and that his focus would have been his life with his girlfriend; and that, as he and his father were both working, if there had been a joint holiday, then, leaving aside drinks or a meal that his father might have paid for, he would have paid his own way.

68. There is some force in these points, though in terms of their respective incomes GH was earning substantially more than AB who was still at the start of his career (I was told that his gross salary was £36,000) and I consider it entirely plausible in these circumstances that GH would have been prepared to pay for, or at least heavily subsidise, any joint holidays. I accept also that, as AB said, he could, and probably would, have found time to go away with his father, at least for short breaks although not necessarily for a week every year. Bearing these matters in mind, the figure of £500.00 per year seems to me to be too high. I award £400.00 per year; the total, applying a 3.5 multiplier, is £1,400.00.

69. The second item concerns birthday and Christmas presents. I have touched on this topic already where I accepted that an average figure of £350.00 per year was a realistic figure for the aggregate value of birthday and Christmas presents given to AB by his father in the period before his death.

70. The claim presented in the updated Schedule of Loss includes annual sums in this amount for the period to trial. The Counter-Schedule allows £100.00 per year, pointing out that, at the date of GH's death, AB was 22 years old whereas the twins were only 11 years old. Mr White pointed out in argument that in the original Schedule of Loss the claim had been made for only £150.00 per year, which he said was more realistic, and that in the same schedule the claim for presents as part of the claim for future financial dependency was put at only £100.00 per year, thereby acknowledging that a smaller amount would be spent for presents for AB as he got older.

71. As Mr Hunter's skeleton argument reflected, it is difficult to view these items in isolation. The reality may have been that, as AB grew older, less was spent on presents as such and more on holidays, such as the skiing holiday they both enjoyed, or by way of contribution to the sorts of expenses that children in their early twenties can expect to incur: the cost of buying a car, or of purchasing or furnishing a new house. The parties have broken out the individual items in respect of which claims are made, and I have done the same in this judgment; but the sums I have awarded should be viewed in the round.

72. The appropriate sum to award in respect of this item, in my judgment, is £250.00 a year (for the period to trial; as set out below, I award smaller sums for the future) which, applying a 3.5 multiplier, gives a sum of £875.00 in all.

73. The final item under this heading is one of the two most controversial items: the claim for a £15,000.00 contribution to the cost of a first home. The Defendant offers nothing for this; the claim is dismissed as wholly speculative. Mr White said that he was not aware of any reported authority where such a claim had been made or allowed, although he made clear that he did not submit that such a claim might not be permissible on appropriate facts. That was, in my judgment, realistic. It is not difficult to imagine circumstances where such a claim would obviously be appropriate, for example where there the house purchase was imminent, where there had already been a specific discussion between parent and child about an amount that the parent would be prepared to contribute, and where the child had taken steps to purchase a home on the basis of that discussion but the parent had been killed before the purchase was actually made.

74. Those, of course, are not the facts here. At the time of his father's death, AB was living with his mother and step-father. There is no evidence that he had taken any concrete

steps towards buying a property of his own (with or without his long-term girlfriend) or that he was actively looking to do so. There was also no reference in either the original or the updated Schedule of Loss, or in AB's witness statement, to any specific conversation between AB and his father about his purchase of a property. The Schedules of Loss said (in paragraphs 44 to 46):

"44. Given the nature of his work, [GH] had formed certain views in relation to the property sector. He believed that renting was 'dead money'. He would have wanted his sons to gain a foothold on the property ladder as soon [as] reasonably possible.

45. Although it is expected that [AB] will need a deposit of at least £25,000, his father's contribution would be limited in the presence of financial commitments to his twins.

46. In the circumstances, the claim is limited to a contribution of £15,000 which would probably have taken the form of part payment of the deposit and/or gifts of furniture, white goods and the like. This amount would probably have been paid by the time of trial."

AB's witness statement (in paragraphs 26 and 27) said:

"26. Knowing my father as I did, I know that he was the sort of person who would want to make sure his children were okay in life. That is why he was encouraging of me to go to University, to get an education, to get a job, to get a career in the hope of then going on to get married and buy a house of my own like he had done.

27. I have no doubt in my mind that when the time had come my father would have wanted to help me get a first foot in the property market. The biggest challenge that people of my generation face these days in trying to get onto the property ladder is getting some initial money together for a deposit. That is where I feel sure my father would have definitely helped me out. I am sure that he would have helped me with a deposit to the tune of around £15,000.00. It could have been more, I just don't know, but I'm sure it would have been a substantial sum. I feel sure he would also have helped me with ad hoc payments for furniture and the like."

75. In his oral evidence, however, AB suggested that there had, in fact, been some more specific conversation:

i) It was put to AB in cross-examination that, whilst it was possible that his father might have helped him buy a property, he had not made a commitment. AB said that they had spoken about it. He said his father had spoken constantly about renting property being money down the drain;

ii) When it was put to AB that, if his father had said that he would contribute, AB would have said so in his witness statement, AB said that, whilst his father had not so much put a figure on it, he had asked AB whether he was looking to buy yet;

iii) It was put to AB directly that his father had never said, in terms, that he would make a financial contribution. AB's response was:

"He had said that to me, yes. He said, when you are ready to buy, I will help you out."

AB said that the omission of any mention of this in his witness statement was an oversight; but that, whilst there was no record of the conversation, and whilst no figures had been mentioned, it was something that had been spoken about. AB said that he thought the figure of £15,000.00 was reasonable, given the amount his father was earning, but he accepted that it represented just a guess as to what his father would have contributed.

76. In assessing what discussions took place between AB and his father on this topic, I have to take into account not simply AB's evidence (including his explanation of why matters were not mentioned in his witness statement) but also the probabilities and the broader context.

77. So far as that is concerned, I accept that there had been general conversations about buying a property; GH's views on (what he considered) the poor sense of renting had been expressed and were known. That GH should have spoken about property with his eldest son is, of course, unsurprising: they were both in the property business, and AB was 22 at the time of his father's death so that, even if not imminent, the possible purchase of a property by AB would have been on the horizon. Consistent with his views, I accept that GH may have spoken to AB in encouraging terms.

78. As to whether there was some more specific conversation, I am more doubtful. But I am satisfied that, whether something was specifically said or not, AB was given the impression by his father in these conversations that, when the time came, his father would help out; and – and more importantly – that, given GH's relationship with his eldest son, his generous disposition and his means, he would *in fact* have helped out. As AB accepted, there was never a discussion as to exactly how much his father might contribute; and, on balance, I find that there was no discussion as to exactly how he would have helped out either.

79. In addition to AB's evidence, Mr Hunter relied upon what he said was objective evidence of the difficulties that young people face these days, and the extent to which they are assisted by their parents, contained in a 2018 survey conducted by Legal & General Assurance Society Limited entitled "Bank of Mum and Dad". The publication opens with the statement:

"The Bank of Mum and Dad (BoMaD) continues to be a prime mover in the UK housing market. This year, it will be the equivalent of a £5.7bn mortgage lender. It's supporting more people than ever: 27% of all buyers will receive help from friends or family in 2018, up from 25% in 2017 – purchasing almost 317,000 homes."

The document goes on to describe the results of their survey, for example that the average BoMaD contribution has declined from £21,600 in 2017 to £18,000 in 2018; that nearly three out of five homeowners aged under 35 got help from family and

friends; that 41% of recent buyers in London received BoMaD assistance; and that the average financial help received from family and friends by buyers in London was £30,600.

80. This evidence is helpful as far as it goes, although it is entirely general and says nothing about GH's ability or willingness to help AB (or his other children) with their first property purchase. It has further limitations because, although it indicates that many parents help their children buy their first home, it does not indicate in what form that help is given. The Claimant's case is that GH would have given a gift of £15,000; however, the title "Bank" of Mum and Dad in itself contemplates that such help may take a different form, and there are numerous references within the document to the Bank of Mum and Dad being "a generous lender", a "major lender" or to "lending the money". There is, it should be said, one reference to parents "donating" money, but my impression is that the terms are used indiscrimately in the document. The reality is that some parents may be able, and may choose, to give a child cash; others may be prepared to lend money (on commercial or non-commercial terms); some may help by providing a parental guarantee; some may help in other ways.

81. Against a background, however, where many parents do help their children acquire a first property, and where I am satisfied that GH both had the resources to help and would have been disposed to help, in my judgment an award in respect of this item is appropriate. I do not regard the proposition that GH would have helped financially as fanciful; nor, given AB's age, do I regard the possibility of him purchasing a property as so far in the future that it should be regarded as entirely speculative.

82. There remains, however, significant uncertainty, both as to exactly how GH would have helped and in what amount. I bear in mind also that, at this stage, GH was also supporting his other children. Taking these matters into account, and applying the principles I summarised above, I do not consider that £15,000.00, which is a sizeable sum, is the right figure. In my judgment, a figure of £9,000.00 is appropriate.

83. The sums I award in respect of AB's past financial dependency claim are accordingly as follows:

1. Holidays - £1,400.00;
2. Presents - £875.00; and
3. Contribution to First Home - £9,000.00

thus, £11,275.00 in all.

4. Past services dependency claims

84. The past services dependency claim made on behalf of the twins (item G in Mr White's appendix) and on behalf of AB (item H) each comprise one item only, although they are different:

i) The twins' claim concerned the value of the services GH provided by looking after them every other weekend and in for four weeks during holidays;

ii) AB's claim was for the value of property maintenance services it was said GH would have provided.

85. So far as the twins' claim is concerned, the figure included in the Claimant's updated Schedule of Loss for this item was £38,287.20, calculated at £5,469.00 per twin per year (thus £10,938.00 per year) with a multiplier of 3.5 The figure of £5,469.00 per twin a combination of two elements: the cost of childcare during the weekend days calculated by reference to figures for the weekly net pay of a live-out nanny from a Nannytax survey included in a PNBA document (£4,569.00); the cost of care in the holidays assessed by reference to the daily cost of a holiday camp at Barracudas, the nearest provider to the twins' home (£900.00).

86. The offered figure in the Defendant's Counter-Schedule of Loss was £15,686.40, calculated by assuming child care for 8 hours per day over 76 days (48 weekend days and 28 holiday days) at £10 per hour, less a 25 percent discount on the basis that the care was being provided, not by a professional nanny or a day-care facility, but by IJ or by other family members. IJ confirmed in her oral evidence that this was how the twins were being looked after in the periods which they would previously have been with their father. She said that she had gone out less herself, and that she had not had enough money since the accident to send the twins to holiday camp.

87. In his skeleton argument, however, Mr Hunter accepted that the premise for his figure of £38,287.20, that during the weekend the twins would have one nanny *each*, would involve over-provision. Once this was stripped out, the Claimant's claim reduced to £19,451.50, an amount much closer to the Defendant's figure.

88. I was referred to a number of authorities that considered the basis upon which past and future services dependency should be assessed, in particular *Bordin v St Mary's NHS Trust* [2001] Lloyd's Rep. Med. 287 and *Knauer v Ministry of Justice* [2014] EWHC 2553 (QB).

89. *Bordin* was a Fatal Accidents Act case where a dependency claim was made on behalf of a child whose mother had died as a result of injuries sustained in childbirth. The child was cared for thereafter at different times by the father, by maternal and paternal grandparents, and by an aunt. Crane J explained (at 294RHC) that it was proper to ask what expense had been incurred to replace the mother's services, and that there was clear authority for using a commercial rate as a starting point even where no nanny had in fact been employed, though, he emphasised, having performed the necessary calculations, it was appropriate to stand back to check that there was no overcompensation.

90. *Knauer* was a case where a wife had died as a result of exposure to asbestos at her workplace leaving *her* husband and three sons who were aged 16, 20 and 22 years at the date of their mother's death. A claim was made for services dependency in respect of the housekeeping, gardening and decorating work the wife would have done measured by reference to the cost of engaging a resident housekeeper. An argument that, as no housekeeper had actually been engaged in the five years since the wife's death there should be no award, was rejected. Bean J said (at [26]):

"This submission, with respect, is misconceived, on basic principles of the law of tort. If a claimant's brand new Rolls-Royce is written off through the defendant's

negligence the damages must include its replacement value even if the claimant decides that he will change to a cheaper car or in future take public transport. The same principle applies to claims for loss of services under the Fatal Accidents Act."

In the event, the judge did not allow for the cost of engaging a resident housekeeper, but he *did* allow for the cost of contracting for the same services through an agency.

91. It is plain from these authorities that the commercial cost of providing the services formerly provided by the deceased can be used at least as a starting point for an award. *Bordin*, and the case of *Housecroft v Burnett* [1986] 1 All ER 322, are, however, also authority for the proposition that where, as here, replacement services are not obtained commercially, the award can be scaled down with a deduction of 25 percent or so to reflect savings on tax and national insurance and thus to reach a figure for the net value of the services.

92. So far as the competing figures are concerned, the £10 per hour figure used by the Defendant (and which Mr White says then has to be discounted) is too low. The information from the Nannytax survey to which I have already referred suggests that this is below the figure for a live-out nanny (itself a net figure) and within the range of the figures for the cost of engaging someone simply to perform cleaning services. In my judgment, the Claimant's figure of £19,451.50 (following the concession) is reasonable and I award it in full.

93. AB's past service dependency claim is for the value of property maintenance services it is said that GH would have provided. There was some evidence about this. AB's witness statement (and his oral evidence) explained that GH enjoyed DIY, that he owned a huge selection of tools and that he had undertaken advanced home maintenance before, hanging doors, installing a shower and sanding down floors. It is reasonable to think that he would have performed services of this nature for AB in any new home. (AB explained in his oral evidence that, because of the inheritance from his father, he and his girlfriend had been able to purchase a home in better condition and in need of less maintenance than they might otherwise have done, but I disregard that.)

94. The claim made is for £1,050.00, calculated as two days' work per year at £150 per day per year with a 3.5 multiplier. The PNBA document to which I referred earlier gives a (2017) day rate for a handyman in the London area of £309.00 per day. The Claimant's figure accordingly equates to a commercial rate of around one day of maintenance per year. That is a reasonable figure, and I award it in full.

95. The awards I make for the past services benefit claims are, accordingly as follows:

G. Twins' Past Services Dependency - £19,451.50; and

H. AB's Past Services Dependency - £1,050.00.

The total award under this head is accordingly £20,501.50.

5. *Regan v Williamson*; "services only a father can provide"

96. Item I is concerned with the intangible benefits provided by GH to his dependants over and above commercially replaceable services such as the cost of childcare or property maintenance. The Claimant claims £5,000.00 for each of the three sons, so £15,000.00 in all. The Defendant offers £6,000.00, representing £3,000.00 each for the twins and nothing for AB. Mr Hunter, in his skeleton argument, invited me to award the mid-point of £4,000.00 for each son, i.e., £12,000.00.

97. *Regan v Williamson* [1976] 1 WLR 305 involved the death of a mother who had four boys aged at the time of trial 14 years 3 months, 11 years and 10 months, 8 years and 10 months, and 3 years 3 months. The judge, Watkins J, took as a starting point for assessing the services dependency claim the cost of the housekeeper who had been employed since the death, but he applied an uplift to take into account services of a broader kind. He explained (at 309):

> "I am, with due respect to the other judges to whom I have been referred of the view that the word "services" has been too narrowly construed. It should, at least, include an acknowledgment that a wife and mother does not work to set hours and, still less, to rule. She is in constant attendance, save for those hours when she is, if that is the fact, at work. During some of those hours she may well give the children instruction on essential matters to do with their upbringing and, possibly, with such things as their homework. This sort of attention seems to be as much of a service, and probably more valuable to them, than the other kinds of service conventionally so regarded."

98. *Kemp & Kemp*, 29-052, lists a number of subsequent cases in which awards of this type have been made, with the sums awarded for dependent children ranging from £1,500.00 to £5,000.00. My attention was drawn to two of those cases:

i) *H v S* [2003] QB 965, where Kennedy LJ accepted a submission that the conventional maximum award was about £5,000.00 where the dependent child was very young; and

ii) *CC v TD* [2018] EWHC 1240 (QB), where HHJ Freedman made an award of £5,000.00 for each of three children aged at the time of trial 22 years (the child would have been 18 at the time of the deceased's death), 18 years and 15 years.

In *H v S*, the four children (three of whom were minors) had been living with the deceased, their divorced *mother*. In *CC v TD*, the deceased was the children's father, and the children had seemingly been living with him and with their mother until around 6 months before the father's death when the mother moved out of the matrimonial home with the two younger children.

99. It is clear from the authorities that there is no single "right" figure for a *Regan v Williamson* award and that it depends on the circumstances. In my judgment, the correct figure for the twins, bearing in mind their ages and the fact that they were not living with their father for most of the time, is £3,000.00 each. AB was much older and he was not living with his father at all. I consider that it is appropriate to award only a small sum in respect of him of £500.00.

100. The total amount I award under this head is accordingly £6,500.00.

6. Future financial dependency claims

101. In relation to both the twins (item K) and AB (L), their future financial dependency claims to some extent mirror their claims for past dependency.

102. The twins claim for:

1. Regular maintenance;
2. University expenses;
3. Driving tuition;
4. Birthday parties for the next 2.5 years;
5. Ad hoc contributions: clothing and other expenses for 3.5 years;
6. Ad hoc contributions: school trips;
7. Presents to age 30;
8. Holidays;
9. Contributions to first homes; and
10. Weddings.

AB's claim (excluding the item for counselling, which, as I explained earlier, was not pursued) embraces a smaller number of items:

1. Presents;
2. Holidays; and
3. Wedding.

103. I deal first with the twins. The figures I include below, for both the twins and AB, I should make clear are the basic figures included in the parties' arguments. They will need to be adjusted as appropriate for accelerated receipt; I will invite counsel to address this.

104. So far as the first item, maintenance, is concerned, the dispute between the parties is as to whether the monthly maintenance payments being made by GH in relation to the twins would have remained at £750.00 per month until age 18 (the Defendant's case) or would have risen (the Claimant's case). The Claimant's updated Schedule of Loss claimed maintenance at a rate of £900.00 per month for the period after trial.

105. I have already accepted (see paragraph 54 above) that the figure of £750.00 would have risen to £800.00 per month from September 2016. I consider that it would have been raised further for the period after trial, but to £850.00 rather than to £900.00 per month as claimed. Applying a 3.5 multiplier, this gives rise to an award of £35,700.00.

106. The second item concerns a contribution to the twins' living costs whilst at university. I had some evidence of the twins' academic progress at school, and there was no dispute that both twins were likely to attend university. It is assumed that their tuition fees would have been paid through the government-backed loan scheme. It will be recalled from earlier in this judgment that GH had given AB at least £2,000.00 when he started at university and probably more.

107. The Defendant accepts that GH would have been as generous with the twins as with AB and offers £2,000.00 per twin per year (pointing out that, as both twins would have been at university at the same time, it might have been difficult for GH to be more generous). The Claimant suggests that he would have paid £2,500.00 per twin per year (for an assumed three-year course). I consider that the appropriate figure is between the two, and award £2,250.00 per twin per year or £13,500.00 in all.

108. The third item concerns driving tuition. As set out in paragraph 27 above, GH gave AB £1,500.00 towards the cost of learning to drive. The Claimant asserts that he would have made similar contributions for each of the twins and claims an amount of £1,000.00 per twin. The Defendant offers £500.00 per twin. I consider the figure of £1,000.00 per twin to be appropriate, and thus award £2,000.00 in all.

109. The fourth item concerns the contribution GH would have made towards birthday parties for the twins for the next two and a half years, i.e., until they reached 18. IJ's evidence was that he would usually pay half of the cost of parties. Both parties accept than an award is appropriate; the dispute is as to whether the figure should be £50.00 or £100.00 per twin per year. I award £80.00 per twin per year or £400.00 in all.

110. The fifth item concerns ad hoc contributions for clothing and other expenses. The Claimant claimed £875.00 per year with the Defendant offering £375.00 per year (in each case for both twins). It will be recalled that in relation to the past financial dependency claim I awarded £375.00 per twin per year for school uniforms and £250.00 per twin per year for other expenses. Viewed in this light, the Claimant's claim of £875.00 per year for both twins is, in my judgment, reasonable and I award it in full for the 3.5 years claimed, thus £3,062.50.

111. The sixth item concerns school trips. The updated Schedule of Loss (consistent with IJ's witness statement) explained that GH had paid half of the cost of school trips up to his death: the cost had been £175.00 per child in Year 7; £600.00 per child in Year 8; and £415.00 per child in Year 9. The twins are currently in Year 10 and the cost of the school trip during this year has been dealt as part of their past financial dependency claims.

112. Next year, the twins GCSE year, they are due to go on a special school trip to Nepal. The cost is £3,250.00 per child, although students are tasked with trying to obtain sponsorship for the trip themselves. Mr Hunter submitted, and I accept, that it is almost inevitable, however, that a substantial parental contribution will be required, and he points out that as the twins are likely to be seeking sponsorship from the same pool of

family members and friends they will face particular difficulty raising funds. Recognising this, and the fact that IJ's ability to contribute financially is limited, the claim made is for £2,000.00 for each child, i.e., £4,000.00 in all. A further £1,000.00 is claimed as a contribution to a single (more modest) school trip when the twins are in the Sixth Form.

113. The Defendant's Counter-Schedule of Loss suggested that the claim for a contribution towards future school trips was speculative and made an allowance of £345.00 per year for both twins for the 3.5 years up to the time when they started at university. As IJ confirmed in her oral evidence, however, the Nepal trip is not speculative; the twins are booked on the trip, which is taking place in July 2020; IJ has already paid a deposit of £150.00 each; the twins have contributed or will contribute with money given to them for Christmas and are raising money.

114. On the basis, as Mr Hunter suggests, that the twins manage to raise sponsorship of £1,500.00 between them, there will be a £5,000.00 shortfall. I accept that, whilst he would normally pay one half of school trips, GH would have been likely to meet the bulk of that shortfall and would have paid £4,000.00. I consider, however, that the amount he would have paid for holidays for the twins for that same year would have been reduced to reflect this, and I take that into account in the figure I award for that item below. I think GH is likely to have contributed to one further school trip for the twins during their two Sixth Form years, but the figure of £1,000.00 is, I think, high. I award £750.00 for this. The total award for this item will therefore be £4,750.00.

115. The seventh item concerns presents: birthday and Christmas presents. The figure included in the past financial dependency claim was £350.00 per child per year, and the Claimant claims this same amount up to aged 30. The Defendant agrees the amount at £350.00 per child per year but allows this item only to age 21.

116. In my judgment, both approaches are unrealistic: the Claimant is unrealistic to assume that GH would have spent the same amount on presents for the twins when they were 29 as when they were 16; the Defendant is unrealistic to regard the prospect of GH buying birthday and Christmas presents for the twins after the age of 21 as so fanciful that no sum should be awarded for these later years. The claim includes the 14.5 years between the twins current age (15) and aged 30. I propose to award £350.00 per child per year for the first two and a half years (to age 18), £250.00 per child per year for the next eight years (to age 26 – reflecting the amount awarded to AB for his past dependency claim) and £100.00 per child per year for the four years thereafter. This results in a total award of £6,550.00.

117. The eighth item is holidays. The claim made in that regard in the updated Schedule of Loss comprises two elements:

i) £2,500.00 per year, reflecting two holidays, in the two and a half years until the twins reach 18 (£6,250.00);

ii) Two further large holidays "perhaps 'family get-togethers' that coincided with a significant birthday (for example the twins' twenty-first birthday) in, say 7 and 10 years", at a cost of £1,000.00 per dependant (£2,000.00).

The Defendant, in contrast, offers £1,000.00 per year until aged 21 (£5,500.00).

118. I think it is reasonable to draw a distinction between the period before and after the twins reached the age of 18. So far as the period up to 18 is concerned, as part of the twins' past financial dependency claim I awarded £2,200.00 per year for the period to trial. In principle, I think this same figure is the appropriate figure to use going forward, save that, to reflect the very significant contribution GH would have made to the Nepal trip, I would reduce this by £1,000.00 for next year. I would therefore award £4,500.00 for the period to aged 18. For the period after the twins turn 18, I think the holidays are likely to have become less frequent and/or less expensive. I propose to award £1,000.00 for each of the three years between 18 and 21, i.e., £3,000.00.

119. The total award in respect of this item is thus £7,500.00.

120. The ninth item concerns a contribution towards the cost of a first home. I have dealt with this already as part of AB's past financial dependency claim. Although the time at which such a contribution would have been made is some years in the future, I consider it no less likely that the twins would purchase a first home and that GH would have made a contribution towards that home than in relation to AB. I think GH would have been likely to make same level of contribution for all three sons. I accordingly award £9,000.00 to each of the twins, £18,000.00 in all.

121. The final item under his heading is the contribution it is suggested GH would have made to the twins' weddings. As I have explained already, however, there is considerable uncertainty about this since the twins (or one of them) may never have married at all, and the size and cost of weddings can vary enormously.

122. So far as cost is concerned, the Claimant's updated Schedule of Loss and Mr Hunter's skeleton argument put forward three sources of information:

    i) A 12 September 2016 article in Brides magazine entitled "How Much Does a Wedding Cost?" The article, which seemed to involve a certain amount of promotion for favoured suppliers, broke the costs down under a number of headings (stationery, bridesmaids outfits etc.) and came up with a total figure of £30,111.00;

    ii) An undated article on www.moneysavingexpert.com entitled "49 Cheap Wedding Tips". The article starts by saying "The average wedding costs £25,000, according to experts – but there are ways to cut back"; the article then goes on to explain exactly how that might be done;

    iii) A 18 July 2014 article on the BBC News website entitled "Hold the bubbly: How to have a wedding on a budget". This commences "Up to a quarter of a million couples will say their vows in the UK this year, a privilege that on average will cost them £21,000 each.

    On the basis of these figures, the Claimant suggests that the average cost is around £25,000.00 and claims an amount of £12,500.00 for each twin (adjusted for accelerated receipt).

123. Mr Hunter submitted that there were three factors which made it probable that GH would have contributed: his generosity; the fact that, by the time the twins came to marry, he would have been free from other recurring financial obligations towards his

sons; and that GH was modern in outlook and would not have adhered to the traditional (or, as Mr Hunter put it, "outmoded") view that the bride's parents should pay, and that he had no daughters.

124. Mr White accepted that weddings were expensive, but he submitted that the claim was speculative in relation to the twins (he accepted that it was less speculative in relation to AB); he said, further, that whilst some parents did contribute, others did not, and that there was uncertainty as to the form and amount any contribution might have taken.

125. I was shown two authorities in which claims for a contribution to a wedding for a dependant had been considered. The first, chronologically, was a decision by HHJ Ewbank in *Betney v Rowlands and Mallard* [1992] CLY 1786. This was a case where both parents were killed in a road traffic accident leaving three daughters aged (at the date of the accident) 20, 22 and 23 years. The judgment describes the family as close-knit with the parents devoting much time and energy to their daughters. There were claims for contributions towards the weddings of all three daughters. The claim in relation to each daughter was allowed, albeit in different amounts:

i) The marriage of the middle daughter (D) was already pending at the time of the accident and took place 12 months afterwards. The father had actually agreed to pay for the wedding prior to the accident. A claim for £4,000.00 was allowed;

ii) The eldest daughter (G) was living with her boyfriend at the time of the accident. Her wedding was anticipated to follow on the year after that of her younger sister, the cost of which would again have been borne by the father. Again, a claim for £4,000.00 was allowed;

iii) The youngest daughter (A) was living at home at the date of the accident. She had no plans to leave, and the evidence was that she was the most career-minded and the least marriage-orientated of the three daughters. As she was not in a settled relationship, the court considered the claim for future wedding costs to be speculative, but nonetheless awarded an amount of £2,500.00.

126. The second case is *CC v TD*, a case to which I have already referred. The deceased was the father and he left three children, aged 12, 15 and 18 years at the date of the accident. The principal issue in the case was whether the deceased and his wife, who were in the process of getting divorced, would have reconciled. The judge, HHJ Freedman, held that they would not. One of the causes of the breakdown in their relationship was their different attitudes to their children. Their eldest child (RC) had fallen into bad company when aged 15 and had been sentenced to a period of custody in a Young Offender Institution. The difference in approach of the two parents is reflected in the judge's remarks (at [20]) that:

"Whereas the claimant [the mother] was confrontational and interventionist, it seems that the deceased had a much more laissez-faire approach. According to the claimant, his attitude was that at the age of 16, RC should be allowed to live her life as she wished."

One of the grounds on which the mother apparently filed for divorce was the deceased's failure to provide appropriate care for the children. Against this background, though

the judge was prepared to award £5,000.00 for each child in respect of the loss of intangible benefits provided by their father (i.e., a *Regan v Williamson* award), he rejected the claim for additional sums to reflect gifts which the father might have made to the children and contributions to weddings as "too speculative and remote". The apparent attitude of the deceased to his children in that case was, as Mr Hunter submitted and I accept, very different to that of GH.

127. So far as the present case is concerned, although AB's future financial dependency claim falls to be dealt with later, in relation to this particular item it is easier to address his position first. As I explained earlier, he has just moved into a property with his long-standing girlfriend. They have been together, I was told, for just shy of 11 years. Though there is no certainty that they will ultimately marry, they are in a stable relationship and a wedding in the near future must be a real possibility.

128. Even then, however, I would not be prepared to make an award in the full amount of £12,500.00 claimed. There is uncertainty as to whether AB will marry, as to the cost of the wedding (though I have no better figures than those quoted above), and as to how much GH would have contributed. I bear in mind also that I have already awarded a sum of £9,000.00 by way of a contribution to a new home. Bearing all these matters in mind, it seems to me that the right amount is £7,500.00 which represents 60 percent of the amount claimed.

129. So far as the twins are concerned, I make clear at the outset that I do not suggest for a moment that GH cared for them less or would have wanted to be any less generous to them than to AB. There is, however, inevitably a much greater degree of uncertainty about the position in relation to possible weddings: the twins are only 15 years old at the moment; one or other (or perhaps both of them) may never marry; and if they do marry, it is likely to be many years in the future. Those factors have to be taken into account, and they mean that a similar financial award to that made in respect of AB would, in my judgment, be inappropriate.

130. I do not say, however, that the prospects of the twins marrying or of GH making a contribution to the cost of their weddings is fanciful such that no award should be made at all. That was, in effect, Mr White's submission, and I reject it. I do consider, however, that any award should be the subject of a substantial discount. In my judgment, the appropriate figure is £7,500.00 for both twins, i.e., £3,750.00 each (half that awarded in respect of AB).

131. The awards that I make for future financial services dependency in relation to the twins are accordingly as follows:

1. Regular maintenance - £35,700.00;
2. University expenses - £13,500.00;
3. Driving tuition - £2,000.00;
4. Birthday parties for the next 2.5 years - £400.00;

5. Ad hoc contributions: clothing and other expenses for 3.5 years - £3,062.50;

6. Ad hoc contributions: school trips - £4,750.00;

7. Presents to age 30 - £6,550.00;

8. Holidays - £7,500.00;

9. Contributions to first homes - £18,000.00; and

10. Weddings - £7,500.00.

The total award is thus £98,962.50.

132. AB's future financial dependency claim comprised three items: presents, holidays and a contribution to his wedding. I have dealt with the last of these already: I award £7,500.00 in respect of a contribution towards any wedding.

133. So far as the first item is concerned, presents, the Claimant's claim is for £350.00 per year for 4 years until AB is 30. In line with my comments above, I consider the figure of £350.00 is too high. I award £100.00 per year and thus £400.00 in all.

134. As for the second item, holidays, the claim is for the cost of two "special" holidays in the future (in the nature of family get-togethers) at £1,000.00 per occasion, i.e., £2,000.00 in all. This is denied by the Defendant on the same grounds as summarised above, essentially that AB is already 26, living with his girlfriend and in employment. I award one half of this: £1,000.00.

135. The awards I make for future financial dependency for AB are accordingly as follows:

1. Presents - £400.00;

2. Holidays - £1,000.00; and

3. Wedding - £7,500.00.

The total award is therefore £8,900.00.

7. Future services dependency claims

136. The final heads of claim are for future services dependency (items M and N). The twins' claim comprises two items:

1. Parenting services; and

2. Property maintenance.

AB's claim comprises only one:

1. Property maintenance.

137. So far as the twins are concerned, the updated Schedule of Loss accepts that, as the twins were 15 years old at the date of trial, the services they would have received from their father in the future would have changed; they would no longer have been (or have principally involved) childcare but instead lifts, help with schoolwork and emotional support.

138. The suggestion is that appropriate figures (for both twins) would be £5,000.00 to age 16 (i.e., for the first year after the trial) and £2,500.00 for each year thereafter to 18, thus £10,000.00 in all. The Defendant accepts this approach in principle but uses lower multiplicands: £3,000.00 for the first year and £2,000.00 for the second and third years leading to a total of £7,000.00. In my judgment, the appropriate figure is £8,500.00.

139. I have addressed property maintenance already in the context of AB's past services dependency claim where I awarded £300 per year for the services that GH would have provided by way of property maintenance. The difficulty in relation to the twins is that they are at present only 15 years old, they are unlikely to buy a property for some years, and even if they do there is no guarantee that they will purchase properties sufficiently close at hand that GH could have assisted with property maintenance. I am prepared to order only one half of the amount which I ordered for AB, namely £150.00 per twin per year for a period of five years, commencing, as suggested 10 years after trial (when the twins were likely to have purchased properties), i.e., £1,500.00 in all. So far as AB is concerned, bearing in mind the property maintenance already allowed in the past services dependency claim, I allow only a further two years at the rate of £300.00 per year already allowed, and therefore £600.00.

140. The amounts I award for the future services dependency claims are accordingly:

The twins

1. Parenting services - £8,500.00; and
2. Property maintenance - £1,500.00.

AB:

1. Property maintenance - £600.00.

Overall

141. The awards I make overall (following the scheme of Mr White's appendix) are as follows:

B. General Damages - £1,400.00;

C. Special Damages and Subrogated Claim - £1,000.00;

D. Funeral Expenses - £8.365.80;

D1. (Past) Counselling for AB – Nil;

E. Twins' Past Financial Dependency:

1. Regular Payments to IJ - £32,600.00;
2. Ad hoc contributions: uniforms - £1,312.50;
3. Ad hoc contributions: other expenses - £1,750.00;
4. School trips - £1,190.00;
5. Presents - £2,450.00; and
6. Holidays - £7,700.00

F. AB's Past Financial Dependency:

1. Holidays - £1,400.00;
2. Presents - £875.00; and
3. Contribution to First Home - £9,000.00;

G. Twins' Past Services Dependency - £19,451.50;

H. AB's Past Services Dependency - £1,050.00;

I. Services only a Father can Provide - £6,500.00;

J. Interest – To be assessed;

K. Twins' Future Financial Dependency:

1. Regular maintenance - £35,700.00;
2. University expenses - £13,500.00;
3. Driving tuition - £2,000.00;
4. Birthday parties for next 2.5 years - £400.00;
5. Ad hoc contributions: clothing and other expenses for 3.5 years - £3,062.50;
6. Ad hoc contributions: school trips - £4,750.00;
7. Presents to age 30 - £6,550.00;
8. Holidays - £7,500.00:
9. Contributions to first homes - £18,000.00; and
10. Weddings - £7,500.00;

L. AB's Future Financial Dependency:

1. Presents - £400.00;
2. Holidays - £1,000.00; and
3. Wedding - £7,500.00;

L1. (Future) Counselling for AB – Nil;

M. Twins' Future Services Dependency:

1. Parenting services - £8,500.00; and
2. Property Maintenance - £1,500.00;

N. AB's Future Services Dependency

1. Property Maintenance - £600.00.

The total amount awarded is, therefore, £10,765.80 in respect of the claim on behalf of the estate (B, C and D) and £203,741.50 on behalf of the dependants.

142. These figures are, however, "in principle" figures; the sums awarded for future losses take no account of accelerated receipt. Some figures in relation to this were included in the parties' Schedules and Counter-Schedules of Loss and in their skeleton arguments, but it was not clear to me that the calculations had been correctly or consistently done. I invite the parties to agree figures for this; in the event that there is a dispute, I will resolve it. The parties should also seek to agree interest (item J).

143. I will hear counsel in relation to any consequential matters arising from this judgment, including apportionment.