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| *Judgment: approved by the court for handing down (subject to editorial corrections)** | *Delivered:* | 12/09/2025 |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**KING'S BENCH DIVISION**

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**BETWEEN:**

**BETH LYNAS**

**Plaintiff**

**and**

**ULSTERBUS LTD**

**Defendant**

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**Mr Colm Keenan KC with Mr Gary Potter KC (instructed by PJ McGrory & Co, Solicitors) for the Plaintiff**
**Mr Stuart Spence (instructed by Macaulay & Ritchie, Solicitors) for the Defendant**

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**COLTON J**

*Introduction*

[1] The plaintiff was born on 11 October 1998. She sustained serious injuries as a result of a bizarre accident which occurred on 21 August 2018 when she was walking along the footpath at the Falls Road, Belfast. As she did so a bus owned by the defendant passed her on the highway when its rear door opened and struck the plaintiff throwing her to the ground.

[2] By these proceedings she seeks compensation for the personal injuries, loss and damage she sustained arising from this accident. Liability has been admitted by the defendant.

*The plaintiff*

[3] Before analysing the consequences of this accident it is appropriate to say something about the plaintiff. It will be seen that she was aged 19 at the time of the accident. She had just obtained her A level results achieving grades of A*, B, C and D. She had applied for and received offers to study law at university in Brighton,

Magee College in Derry and the University of Ulster at Jordanstown. The latter offer was received the day after the accident. Her evidence was, and I accept, that she fully intended to take that place commencing in September 2018 were it not for the subject accident.

[4] At the time of the accident she lived with her mother and two siblings at the family home.

***The personal injuries sustained by the plaintiff***

[5] The court heard evidence from the plaintiff herself and her mother.

[6] The court received a significant bundle of medical reports, reflective of the complex injuries sustained by the plaintiff.

[7] The following reports were obtained on behalf of the plaintiff:

***Orthopaedic reports***

- Mr Paul Nolan FRCS dated 12 August 2019.
- Mr Paul Nolan FRCS dated 29 November 2021.
- Mr Paul Nolan FRCS dated 16 May 2023.

***Psychiatric reports***

- Dr G Loughrey FRCPsych dated 1 November 2019.
- Dr G Loughrey FRCPsych dated 30 September 2021.
- Dr G Loughrey FRCPsych dated 9 May 2023.
- Dr G Loughrey FRCPsych dated 22 February 2025.

***Additional medical reports***

- Dr Suzanne Maguire, Consultant in Rehabilitation Medicine dated 15 May 2019.
- Dr O T Muldoon, Consultant in Anaesthesia and Pain Medicine dated 18 June 2021.
- Mr B J Fogarty, Consultant Plastic Surgeon dated 16 January 2020.
- K McManus, Consultant Thoracic Surgeon dated 1 July 2020.
- Mr M O'Hara, Occupational Psychologist dated 20 June 2022.
- Mr M O'Hara, Occupational Psychologist dated 21 January 2025.
- Mr J J McKnight, Consultant Neurological Surgeon dated 14 September 2020.
- Mr J J McKnight, Consultant Neurological Surgeon dated 24 March 2023.
- Dr T Tham, Consultant Physician and Gastroenterologist dated 1 March 2021.

[8] The court received the following reports prepared on behalf of the defendant:

*Orthopaedic reports*

- Mr Andrew Adair FRCS dated 11 November 2020.
- Letter from Mr Andrew Adair FRCS dated 11 February 2025.

*Psychiatric reports*

- Dr N Chada FRCPsych dated 21 September 2020.
- Dr N Chada FRCPsych dated 7 January 2021.
- Dr N Chada FRCPsych dated 18 February 2025.

[9] The court heard oral evidence from Mr Nolan.

[10] Whilst the medical evidence is also relevant to the assessment of special damages, I propose to deal firstly with the assessment of general damages for the personal injuries sustained by the plaintiff.

*Physical Injuries*

[11] The plaintiff sustained a significant spinal cord injury. She was taken by ambulance to the Royal Victoria Hospital. X-rays, CT scan and an MRI scan confirmed an unstable burst fracture of T-8 with retropulsed fragment. She also was noted to have multiple rib fractures. She sustained a laceration to her right middle finger.

[12] The major concern related to the spinal cord injury. On admission she had zero power and significantly reduced sensation from the level of the injury down. She was taken to theatre on the day of the injury when she underwent a posterior stabilisation and decompression.

[13] She remained in the Royal Victoria Hospital for approximately three months. She was then transferred to the Spinal Cord Injuries Unit in Musgrave Park Hospital for one month.

[14] She was followed up regularly in the Fracture Clinic and the Spinal Injuries Unit Clinic.

[15] These aspects of her injuries were dealt with by Mr Nolan, Consultant Orthopaedic Surgeon. He has commented that in the context of the severity of her injuries, the plaintiff has made a remarkable recovery. His evidence was that she was only one of a handful of cases where he has seen such a recovery. This is undoubtedly a tribute to the skill of the surgeons who treated her, but also to the plaintiff's positive attitude to her rehabilitation.

[16] That said, the plaintiff complains of significant ongoing problems with back pain, neuropathic leg pain, and bowel and bladder problems.

[17] The defendant made much of this recovery. Thus, records from Musgrave Park Hospital leading to her discharge on 7 December 2018, recorded that the plaintiff was independent using a level access shower on the ward, seated on a shower stool, was independent dressing, toileting and in transfers. On assessment in the Occupational Therapy Department, she was able to ascend stairs with a handrail and one crutch.

[18] After discharge she had difficulty negotiating flights of stairs. She used a wheelchair for six weeks to assist with distances outdoors. Further records confirm that she was improving and was attending physiotherapy. In his report in May 2019, Mr Nolan was of the opinion that her injury will have led to significant pain and discomfort at a high level for three to four months and then diminishing "discomfort" for up to 18 months. His prediction at that time was that she would continue to experience some "low level discomfort after vigorous physical activity or in colder or damper weather." He noted that neurologically she nearly had full function but did remain somewhat unsteady.

[19] The reports confirm that since the accident the plaintiff was exercising in a gym using a treadmill and cross-trainer. Mr Nolan and Mr Adair both refer to the plaintiff being able to walk independently but that there was evidence of unsteadiness.

[20] Against this background, the plaintiff gave evidence that she continues to suffer from back pain, neuropathic leg pain and bowel and bladder problems. She has ongoing urinary frequency problems. She has problems vacating her bowels. It can take on average 30-40 minutes to achieve this. She requires medication and laxatives.

[21] Relying on the medical notes and records, Mr Spence challenged the plaintiff's credibility. Some of this challenge related to psychiatric complaints to which I will refer later.

[22] He called evidence in relation to surveillance of the plaintiff on 29 March 2025 which shows her walking from the front door of her house to the car parked immediately outside. I did not find this surveillance at all helpful. The plaintiff took a few short steps. The plaintiff's primary complaint related to walking for long periods. It would be impossible to draw any conclusion about her mobility from this short snapshot. Indeed, significantly, despite extensive surveillance this is the only evidence of the plaintiff leaving the premises, which suggests, as per her evidence, that she is living a very sedentary lifestyle because of her injuries.

[23] Importantly, Mr Nolan gave evidence in support of the plaintiff. Notwithstanding comments in his previous reports and the records to which Mr Spence referred, Mr Nolan accepted that the plaintiff would have chronic back

pain forever. He indicated this would have to be managed by exercise which the plaintiff was addressing.

[24] He accepted that her neuropathic leg pain would be permanent. He noted that she had issue with pain and discomfort in her right leg and that her left leg gives way. His evidence was that her pain would be difficult to treat. She has taken strong medication, including Amitriptyline and Gabapentin. These medications have side effects and can affect cognitive functioning. Even with medication she will never be completely pain free. When examined by Mr Adair, he noted, "there is an unsteadiness to her gait. She has a shorter stride length on the left side; she is not as confident placing the left leg to the ground. She has obviously reduced balance."

[25] In relation to her bladder and bowel problems, he accepted that she would be left with residual problems which were entirely consistent with the injury. He described these as "not uncommon." His evidence was that her symptoms would be permanent and will get worse. In particular, they will deteriorate if she has children. As a result of pregnancies, she may lose bladder and bowel function with a loss of sensation and loss of control. I note that the plaintiff was pregnant at the time of the hearing.

[26] Overall, Mr Nolan's evidence was that whilst the plaintiff had made a remarkable recovery, nobody who sustained this type of injury will get a complete symptom free result.

[27] He said that the outcome would be difficult to predict but, importantly, he accepted that her symptoms were reasonable and related to the accident.

[28] I have no hesitation in accepting the plaintiff's account of the consequences of her injuries. Reference in medical notes and records to the plaintiff being "pleased with her physical recovery" – see Dr Chada dated 17 February 2024 – must be seen in the context of the recovery she has made from a very serious injury. Understandably, in those circumstances, the plaintiff and those treating her are pleased with the extent of the unexpected and unusual recovery she has made.

[29] Overall, therefore, the plaintiff has sustained a very significant spinal cord injury, which required extensive medical treatment, a prolonged stay in hospital, prolonged rehabilitation with ongoing significant and permanent injuries. It is important to recognise that when the plaintiff sustained these injuries, she was only 19 years of age.

[30] In addition to the sequalae I have described, it is also significant that the plaintiff has been left with significant scarring arising from her medical treatment. She has been left with a 19cm long vertical oriented linear scar in the back that is violaceous in colour and would be visible at conversational distance. Mr Fogarty, Consultant Plastic Surgeon, describes this as "a significant scar."

[31] The plaintiff sustained numerous rib fractures.

[32] The report from Mr McManus confirms that she suffered fractures of her right 8th to 10th ribs. He suspects that she may also have suffered fractures to the 4th to 6th ribs. Mr McManus's opinion in his report dated 1 July 2020, almost two years post-accident, is that the plaintiff suffered costal cartilage and costochondral pain which usually settles in 18 months to two years post injury. The plaintiff has not complained of any symptoms at this stage. Understandably, the chest injury paled in insignificance to her back injury. It is unsurprising that there are no clinical references to this injury after she was discharged from hospital.

[33] The plaintiff also sustained a laceration to the palmar aspect of her right middle finger. The laceration was sutured when she attended hospital. The plaintiff makes little complaint in relation to this injury. She referred to some mild discomfort when seen by Mr Fogarty on 8 October 2019, just over a year post-accident. She has been left with, what Mr Fogarty described as, "an obliquely oriented 17mm long linear scar on the volar aspect of the proximal interphalangeal joint of the right middle finger. She describes a closed nerve injury to the digital nerves in the form of stretching of the nerves with intact sensation to the middle finger pulp, although there is altered/reduced sensation in the area around the scar."

[34] These were devasting and life changing injuries for a young plaintiff.

**[35] I consider that the appropriate award for the physical injuries suffered by her is £240,000.**

[36] This figure is assessed on an award of £200,000 for the back injury and its related consequences, £20,000 for the chest injury and £20,000 for the finger injury.

[37] I note that these figures are entirely consistent with the guidelines for the assessment of general damages in personal injury cases in Northern Ireland. (7B(a), 6A(g) and I.)

***Psychiatric injuries***

[38] Unsurprisingly, given the nature of her injuries and the effect it has had on her future plans – more of which below, the plaintiff has suffered from psychiatric injury. As was the case with the physical injuries, the parties disagree on the extent of these injuries. Specifically, Dr Loughrey on behalf of the plaintiff, diagnosed that the plaintiff suffers from post-traumatic stress disorder whereas Dr Chada has diagnosed a moderately severe adjustment disorder with depressive anxiety and some trauma symptoms.

[39] Both consultant psychiatrists spent considerable time analysing the notes and records relating to the plaintiff's treatment.

[40] I do not place any great significance on isolated notes which refer to the plaintiff doing well or being pleased with her recovery.

[41] It is clear from the notes and records that the plaintiff has sought treatment for psychiatric injury both from her GP by way of medication and, more importantly, from Dr Suzanne Carson, Clinical Psychologist.

[42] Ultimately, not much turns on the exact diagnosis here. What is relevant for the court's consideration is the extent of the plaintiff's symptoms. There is no doubt that the symptoms about which she complains are related to the accident. I note that the plaintiff had a past psychiatric history when she attended for treatment arising from bullying at school in 2012. I do not consider this of material relevance for the assessment of her current symptoms arising from the accident, other than that she may be someone who was vulnerable to psychiatric injury.

[43] Dr Loughrey describes the plaintiff's symptoms as including anxious preoccupation, a marked level of sensitivity to reminders, hypervigilance and somatic anxiety symptoms. He also described troubling dreams in respect of the incident. Further, he described significant symptoms of generalised emotional disturbance, including low mood, tearfulness, poor concentration, irritability and feelings of despair about the future. He notes that her appetite was quite chaotic when he first saw her in May 2019.

[44] As indicated, her symptoms are supported by attendances with her general practitioner and when she received therapy from Dr Carson. When Dr Loughrey re-examined the plaintiff in September 2021, he was of the view that the plaintiff had improved but that her post-traumatic stress disorder was in partial remission.

[45] By 9 May 2023, he was satisfied that there was compelling evidence of settlement of her long-term problems over time. At that time, she still had some post-traumatic symptoms attributable to the accident, including poor sleep, anxiety in response to reminders and the degree of chronic stress and irritability arising from her pain. Although she had obtained her driving test and was driving, she still suffered from an element of travel anxiety.

[46] Unfortunately, she was involved in another accident on 5 September 2022, which resulted in a set back in her symptoms.

[47] The impression I am left with from Dr Loughrey's report is that the plaintiff's psychological issues had largely resolved. Leaving aside any disagreement about diagnosis, the psychiatric problems were of clinical significance, necessitating treatment, both in the form of medication and a high level of psychological therapy. That said, however, in the longer term he was of the opinion that the plaintiff will remain sensitive to reminders of the accident to a diminishing degree.

[48] Dr Chada stood by her diagnosis and refers to evidence of psychological adjustment in the intervening years post-accident. In terms of timescale, she accepts that the symptoms from which the plaintiff suffered continued for 18-20 months. She accepts that specific anxiety in relation to travel on buses has persisted for somewhat longer. She does not anticipate any long-term psychological sequalae. Unsurprisingly, she says that resolution of the proceedings would be in the plaintiff's best interests. She has no doubt that the ongoing proceedings and the significant dispute on quantum between the parties has contributed to the plaintiff's stress and anxiety.

[49] As indicated, I will deal later in this judgment with the overall impact of the plaintiff's injuries on her life in terms of education and employment, which overlap with the assessment of both physical and psychiatric injuries.

[50] The plaintiff is entitled to a figure for the psychiatric injury she sustained. As indicated, I do not consider that the dispute as to the precise diagnosis between the psychiatrists is fundamental to the assessment of damages.

[51] I accept the account given by the plaintiff of her symptoms. I accept that they were significant and disabling. I am influenced by the extensive treatment she required from both her general practitioner and from a clinical psychologist. I also accept that the symptoms largely resolved after two years, but that she remains vulnerable in the future.

[52] **I would assess damages for the psychiatric injury at £75,000.**

[53] I then look to the guidelines and see that at Band 4B(b), p11 a moderately severe PTSD attracts a range of values from £60,000 to £150,000. A diagnosis of moderately severe psychiatric damage Band 4A(b) also attracts damages of £60,000 to £150,000. The defendant says that the appropriate range is that at page 12 at 4A(c) which refers to moderate psychiatric damage as providing a range of between £15,000 to £60,000.

[54] Standing back, I consider that the figure of £75,000 is well within the guidelines. The plaintiff can establish that she suffered from either a moderately severe PTSD or moderately severe psychiatric damage, albeit at the lower end which makes a figure of £75,000 an appropriate award.

***Impact of the accident on the plaintiff's education and employment***

[55] At the time of the accident, the plaintiff had accepted one of three offers to study law. It was her ambition to qualify as a solicitor and specialise in family law.

[56] Self-evidently, because of her injuries, the plaintiff was unable to take up her offer to study law at the University of Ulster.

[57] The impact of the accident has resulted in a very different life for her than the one she anticipated. In this action, she claims compensation for loss of opportunity to attend university and graduate, and importantly, an opportunity to fulfil her ambition to qualify as a solicitor.

[58] In summary, the plaintiff's evidence was that she initially focused on her physical rehabilitation, which prohibited any prospect of her taking up her place in university as planned in 2018.

[59] Initially, she hoped that she might be able to start in Jordanstown in September 2019. Relevant correspondence from the university at that time indicates that the plaintiff felt she was neither physically nor mentally able to take up her university place. A particular issue for her was transport. At that time, she was a non-driver and would have to rely on public transport. Understandably, she was anxious around buses. Her home did not have easy access to public transport. It was a townhouse high on a hill. Whilst travel was a major issue for her, it is important to understand that her attitude to university and to work was influenced by multiple factors. Physical complaints in relation to back pain, neuropathic leg pain and, in particular, her bowel and bladder problems made it difficult for her to commit to full-time education or employment.

[60] The court does not underestimate the influence of the plaintiff's psychological condition on this issue. She had to watch her peers and friends go to university while she laboured to recover from her devastating injuries.

[61] It is clear from her evidence, and from all the medical reports, that she did not simply sit back and give up. This is reflected in the way in which she approached her rehabilitation, something which has been commented on positively by the medical experts.

[62] Having decided, understandably, that a law degree was not an option, she considered studying English and applied for and obtained an offer to study English in the Ulster University at Coleraine. She hoped that she would take up this option in the Autumn of 2021. However, again for multiple reasons, including travel problems, she was unable to take up this option.

[63] Ultimately, she felt that a university course was beyond her. To her credit, she obtained employment working for NFU Insurance in April 2022 as an insurance handler. She experienced difficulties with this employment. Initially, she worked largely from home, but the employer's needs required her to attend in the office. Her symptoms, in particular, her bladder and bowel problems, meant it was difficult for her to work in the office environment. She felt that her employer did not provide the necessary degree of flexibility and reasonable adjustments and adaptations that were necessary for her to work in the office. Occupational health assessments at the relevant time confirm that this was being considered by her employer. It was noted that her spinal injury condition put her at risk of higher rates of sickness and absence

compared to an unaffected peer group. When her symptoms were at their most severe this would affect her concentration and the pace at which she worked.

[64] Having been dissatisfied with the approach of her employer, she obtained work with the AA from January 2023. She remains in this employment. An important factor is that this job allows her to work from home.

[65] There was a major dispute between the parties as to how the court should approach this aspect of the plaintiff's claim. The plaintiff put forward a claim on the basis that but for the accident she would have obtained a law degree and secured employment as a solicitor. It is argued, therefore, that she is entitled to a figure which represents the loss of income and pension entitlements she would have earned had she fulfilled that ambition.

[66] The defendant argues that the plaintiff was able to attend university in due course had she so desired. It is submitted that her ability to attend university was deferred by reason of her injuries for between one and four years. On that basis, the plaintiff's loss of income should be confined to a figure representing the delay in her becoming fit for work, a period which may be for about two years.

[67] The parties instructed forensic accountants who have provided detailed reports based on various scenarios. It was agreed between the parties that the court would set out the principles upon which any future compensation would be awarded and that the accountants would then provide the relevant calculations.

[68] In assessing this matter, I have had regard to the entirety of the medical evidence, and importantly, the evidence of the plaintiff.

[69] In relation to the medical evidence, it is correct to say that at various stages the doctors were hopeful that the plaintiff would avail of opportunities to attend university and obtain employment after her injuries. Thus, in December 2020, Dr Chada concluded that there was no cognitive reason why the plaintiff could not attend a university course. In November 2021, Mr Nolan believed that the plaintiff could pursue the occupation of an English teacher and that she would be able to pursue most administrative type jobs. They also hoped that she would be able to work to retirement. Mr Adair was of the opinion that the plaintiff would have been physically capable of resuming her studies in September 2020 and would be suitable for all forms of office work and would be capable of undertaking the duties of a journalist and lawyer.

[70] That said, Mr Nolan when he examined the plaintiff on 15 March 2023, noted that:

> "It is not unreasonable that she was unable to proceed with a university career. She may well have found this challenging and difficult."

[71] Overall, I was very impressed by the plaintiff when she gave her evidence. I think it is also clear that this was the view of the medical practitioners who examined her. In particular, Dr Chada described the plaintiff as "…warm, reactive, witty, funny and spontaneous." She described her as "a bright, articulate and intelligent young woman."

[72] I am influenced by the very positive approach she took to her physical injuries. That positive attitude persuades me that she has adopted a similar approach to her education and work. She is, undoubtedly, a very well-motivated person.

[73] It is significant that Mr Nolan said of the plaintiff in his final report, which he endorsed in his oral evidence:

> "The plaintiff sustained a very significant group of injuries, and it is to her considerable credit, that she has returned to some form of work. In my experience, the majority of individuals who sustain a significant spinal fracture, in association with an incomplete spinal cord injury, will often not return to any form of work. This will be due to many factors including, but not limited to, the nature of the injury and the degree of ongoing symptoms, any other associated injuries, and the nature of the employment and support from the employer and the individual personal motivation."

[74] As regards future loss, the evidence from the occupational therapists is supportive of the plaintiff. Thus, Mr O'Hara, Chartered Occupational Psychologist, who provided two detailed reports to the court, said in January 2025:

> "It is important to acknowledge that Ms Lynas has been very fortunate in securing work with her current employer (AA) where full-time working from home is permitted. Her experiences working with her previous employer (NFU) and the challenges with securing agreement on homeworking is indicative of the differing views on full-time homeworking. Indeed, it is noted that many employers are now asking staff to come into the office on at least a hybrid working arrangement. I, therefore, suggest it is reasonable to accept if Ms Lynas was to come out of work for a prolonged period to bring up her family, and then return to seek a new job, she may find it difficult to re-enter the labour market. At this time she will be a jobseeker already with a need for workplace adjustments and to be seeking an additional

> accommodation in the form of permanent working from home arrangements. These adjustments may limit the type and amount of jobs Ms Lynas may be able to compete for and the chances of making a return to paid employment.
>
> Ms Lynas's concerns about her ability to manage the demands of work as she ages are noted. The medical experts have highlighted a likelihood of deterioration of her condition, and it may be accepted that this may impact on work performance and sustainability. This may mean that Ms Lynas may not be able to sustain employment over the years as she would have otherwise done, had she not been involved the said incident."

[75] The court, therefore, proposes to assess the loss of earnings claim on the following basis.

[76] The court accepts that but for the accident, the plaintiff would have obtained a degree in law from Ulster University in 2021.

[77] As to whether she would have qualified as a solicitor, this is more problematic. To qualify from the Institute of Professional Legal Studies ("IPLS") as a solicitor, she would have needed to gain entry to the IPLS and obtain a two-year training contract as a solicitor.

[78] The defendant has produced evidence which confirms the court's anecdotal impression that a very high number of law graduates do not achieve this. The court was referred to correspondence dated 9 January 2025 from Queen's University, Belfast, which related to information in relation to applicants to the IPLS.

[79] In the three years for which the information is provided, about 44% of applicants to the IPLS were offered and able to secure a place in it. More than 55% of applicants did not secure a place either because they were not offered a place or because they could not obtain a training contract in a solicitor's practice. Many of those who do secure admission include those who have advantages such as family connections which allow them to secure a training contract, an advantage which the plaintiff did not enjoy. Leaving aside whether the plaintiff would have obtained a place in the Institute, one must also consider that many students who obtain law degrees decide not to take up a career in law.

[80] Inevitably, this exercise involves a significant degree of speculation, but the court must do its best based on the evidence before it.

[81] The court has concluded that the fair and reasonable approach is to make an assessment on the basis the plaintiff would have obtained a degree, and her future

loss of earnings should be assessed in accordance with scenario B described in the forensic accountant's report from Sumer NI dated 19 November 2024. Upon completion of her degree the plaintiff would have commenced full-time employment on 1 September 2021, with earnings of £22,000 increasing over an eight-year period until they were equivalent to the medium earnings of a full-time skill level 4 female employee per ASHE remaining at this level until her retirement at age 68.

[82] The court also concludes that the plaintiff would have continued to work part-time for Poundstretcher while she completed her degree, working on average 20 hours per week earning the minimum wage for her age until she commenced full-time employment on 1 September 2021.

[83] When these figures are calculated, there will need to be a deduction for residual earnings up to the date of this judgment. In addition, there should be a deduction for saved university fees of £12,965 as per the Sumer Report at 3.6.

[84] As to the reduction for future residual earnings, I note that the plaintiff is now in a permanent relationship with her partner and that she is due to give birth in July 2025. Her hope is to have two children. This has a potential impact on future residual earnings.

[85] I consider that future residual earnings should be calculated in accordance with the Ogden Tables 8th Edition.

[86] Whilst the plaintiff is currently in employment, there is no doubt that as a result of her injuries she suffers a restriction in the labour market. In this regard, I note the comments of Mr O'Hara referred to at para [7] above.

[87] I am satisfied, therefore, that the assessment of residual earnings should be made on the basis that the plaintiff is disabled, based on the Ogden definition of disability as set out in the Disability Discrimination Act (DDA) 1985.

[88] She has an illness or a disability which has or is expected to last for over a year; the impact of the disability has a substantial adverse effect on her ability to carry out normal day-to-day activities and the effects of her disability limit the kind or the amount of paid work she can do. In this regard, I note that substantial is defined in the DDA Code of Practice as meaning "more than minor or trivial."

[89] That being so, to what extent should the multiplier be reduced to take into account her level of disability?

[90] I consider this should be approached in accordance with option 1 of the report from Sumer in 3.11, namely that the accountants should assume a disablement disadvantage of 100% of the employed, disabled, level 2 discount of 58%, resulting to a reduction in future earnings of 41% (58% discount minus 17% discount, the employed, not disabled discount).

[91] The loss of employer's pension contributions should be calculated in accordance with scenario B of the Sumer Report – 3.15.

[92] I will, therefore, leave it to the respective accountants to produce a calculation for compensation in respect of loss of earnings, past and future, in accordance with the principles determined above.

[93] I confirm that the appropriate discount rate of 0.5% applies.

***Care***

[94] The plaintiff claims that as a result of her injuries she has received care to date in respect of which she is entitled to compensation and that she will also require care in the future to accommodate the consequences of her injuries.

[95] As was the case regarding loss of earnings, this was a matter of significant dispute between the parties.

[96] The plaintiff's relied on her own evidence, that of her mother and an expert care report prepared by Laura McClintock, Sandra Sherlock Associates, Nursing Care Consultants. The defendant relied upon an expert care report from Dr Marie O'Neill, Nursing Consultant, dated 23 August 2023.

[97] As was the case with special loss, the parties were happy that the court receive the expert reports and having reviewed all the evidence set out the principles upon which any care claim should be assessed. Having done so, the accountants would make the appropriate calculations.

[98] In relation to the law on care, I happily adopt the comments of Humphreys J in *McKeever v Redmond* [2021] NIQB 30:

> "[29] It is well established that a Plaintiff is entitled to recover damages in respect of care gratuitously provided by family members. Such damages are held on trust for the benefit of the carer, following *Hunt v Severs* [1994] 2 AC 350. In that case Lord Bridge defined the entitlement:
>
> > 'the reasonable value of services rendered to him gratuitously by a relative or friend in the provision of nursing care or domestic assistance of the kind rendered necessary by the injuries the plaintiff has suffered.'

[30] From the extensive caselaw on the subject, the following principles can be divined in relation to such claims:

(i) The care or attendance in question must be 'over and above' that which would be given anyway in the course of normal family life – *Guy v Ministry of Justice* [2013] EWHC 2819 (QB);

(ii) The question to be asked, in assessing damages is what is reasonable for this Plaintiff to pay those who have cared for him as a reward for what has been done – *Housecroft v Burnett* [1986] 1 All ER 332;

(iii) Benefits paid to a carer by way of carer's allowance should be deducted from the cost of past care to ensure no double recovery – *Massey v Tameside NHS Trust* [2007] EWHC 317 (QB);

(iv) A percentage discount should be applied to the commercial rate in respect of non-commercial care – *Fairhurst v St Helens Health Authority* [1995] PIQR Q1;

(v) The cost of hospital visits arising out of normal family affection are not recoverable – there must be some service provided which is not provided by the hospital: *Evans v Pontypridd Roofing* [2001] EWCA Civ 1657."

[99] In relation to care up to the time of trial, the starting point put forward by Mrs McClintock relates to care provided by her mother to the plaintiff whilst she was in hospital. I heard evidence from her mother. She took six months off work to care for her daughter. She attended daily with her daughter whilst in the Royal Victoria Hospital. She stayed on the ward with her, assisting with her direct care, providing psychological support, providing additional meal options, toiletries and liaising with various health care professionals regarding her rehabilitation, attending at her physiotherapy sessions.

[100] For this, Mrs McClintock put forward a claim for the period between 21 August 2018 to 8 November 2018 of six hours per day at the rate of £9.09 per hour. The rates of care used by her are aligned to Agenda for Change mid-point Band 2 for a health care support worker. Mr Spence counters that the cost of hospital visits arising out of normal family affection are not recoverable. The hospital provided meals. Nursing staff would have provided any service required to the plaintiff

whilst she was in hospital. He argues that the cost of care for this period is not recoverable.

[101] Having heard the plaintiff's mother's evidence, I am satisfied that she did provide a service over and above that which would be given in the course of normal family life and during hospital visits arising out of normal family affection. I consider that the care she proved was truly exceptional. The court accepts, however, that it must have regard to the fact that the provision of care was primarily the responsibility of the hospital. On this aspect of the claim, I am prepared to allow three hours per day for this period. The rate should be the relevant commercial rate less 25% to reflect that the care was provided gratuitously.

[102] The next period claimed is between 9 November 2018 to 11 November 2018, a period of three days when Ms Lynas was discharged for a weekend "home visit" to her mother's home as part of her rehabilitation programme. I have no doubt that very considerable assistance was required at this stage. She visited her home in her wheelchair, assisted and accompanied by her mother. She required a substantial level of direct care and assistance with washing/dressing, toileting over a 24-hour period, mobilising and on meal provision as was as providing reassurance and psychological support.

[103] Again, it must be remembered that care must be "over and above" that which would be given during normal family life.

[104] For this short period, I allow four hours per day. The relevant rate should be the commercial rate less 25%.

[105] From 12 November 2018, the plaintiff transferred to Musgrave Park Hospital for further rehabilitation where she remained until 6 December 2018.

[106] The vast majority of her care here was provided by health professionals, although her mother did visit and assist directly with her rehabilitation.

[107] The court is prepared to allow two hours per day at the commercial rate less 25% for this period.

[108] In relation to periods of home leave between 16 November 2018 to 18 November 2018, 23 November 2018 to 26 November 2018, 30 November 2018 to 3 December 2018, I am prepared to allow four hours per day. As per above, I allow three hours per day whilst the plaintiff was an inpatient in the Royal Victoria Hospital and two hours per day when she was an inpatient in Musgrave Park Hospital.

**[109] I allow £1,000 for travel costs to date including family visits while the plaintiff was in hospital and travel to medical appointments.**

[110] After her discharge from hospital, I am satisfied that the plaintiff would have required significant care over and above that normally provided by her mother. In her report, Mrs McClintock breaks this down into various periods and identifies particular requirements of the plaintiff. In this regard, I discount any assistance with elimination day and night in light of the medical evidence.

[111] I recognise that the first six weeks after discharge the plaintiff was using a wheelchair.

[112] The approach I intend to take is to allow for care up to the commencement of her employment in February 2022. It seems to me this was a significant date in terms of her rehabilitation. I also note that she moved into a flat of her own in May 2022. Her current partner moved in with her in October 2022 and they have been living together since.

[113] The allocation of hours for care is an imprecise exercise, notwithstanding the detailed reports I have received from the experts. Dr O'Neill has allowed a period of two hours per day from 7 December 2018 to 31 January 2019, one hour per day between February 2019 and 30 June 2019, five hours per week between 1 July 2019 to 31 December 2019, three hours per week between 1 January 2020 and 31 January 2022, and one hour per week on an ongoing basis to the date of trial. Mr Spence describes this as "generous" given the extent to which the plaintiff was independent throughout this period.

[114] On the basis of the evidence, I accept that throughout this period, notwithstanding her substantial improvement, the plaintiff was receiving care over and above that which would normally be provided by a mother during this period and that this was subsequently complemented by her partner Rhys. I consider that the fair way to assess this is to allow two hours per day for the six-week period after the plaintiff's discharge from Musgrave Park Hospital. Thereafter, I allow one hour per day, that is seven hours per week to the date of trial.

[115] I accept that this may result in a potential under compensation for the initial period up to 2022, balanced by a potential over-compensation between then to the date of trial. However, as indicated, this is not an exact science. I consider this to be a fair approach and reflects what would be appropriate compensation for the care provided to the plaintiff in the intervening years. Again, the relevant rates should be the commercial rates less 25%.

[116] I think this fairly reflects the opinion of Dr O'Neill, on behalf of the defendant, who states in her report dated August 2023 that:

> "Ms Lynas is essentially independent in activities of living. Her only need now is for an element of some minor aspects of household tasks, eg bedlinen changing, cleaning involving heights or bending low such as

> bathroom cleaning, hence, an element of help with cleaning/household tasks is what she needs into the future."

***Future care***

[117] This issue is problematic. The plaintiff claims that she is entitled to care in the short term, medium term and long term. Between the ages of 23 and 30 years (2023-2028) Mrs McClintock puts forward a claim of 1.5 hours assistance per day, focused on assistance in meal preparation and assistance with the heavier household duties and tasks. The reasons for the need for ongoing future care are summarised in her report in the following way:

> "Given Ms Lynas's ongoing reduced mobility, balance issues, weakness and chest injuries, combined with ongoing chronic pain, she will struggle to maintain her fitness levels and, thus, will be at risk of gaining weight over time which will result in increased risk to her cardiovascular system, with increased risks of hypertension, hypercholesterolaemia, diabetes, stroke and could leave her vulnerable to developing further comorbidities which have the ability to adversely affect her long-term outlook. Weight gain may also impact on her balance and mobility issues and could increase her risk of falls further."

[118] I am not persuaded that much of this comes within the expertise of Mrs McClintock, but even at its height, this is described as a possibility and is clearly speculative.

[119] In terms of medium-term care, Mrs McClintock puts forward a claim between the ages of 30 and 45 (from 2028 to 2043) for three hours care per day.

[120] As to long-term care needs from age 45 to 65 years and beyond, a claim is put forward for four hours care per day.

***Extra care required for care of children/care giver***

[121] It is submitted on behalf of the plaintiff that she will require over and above care when her baby due in July arrives. Having regard to the medical evidence, and the plaintiff's own evidence, it is submitted that she will be substantially less able to cope with looking after her child and/or possibly a second child than would be the case if the accident had not occurred.

[122] Mrs McClintock assumes maternity leave of one year and a forty-hour working week thereafter, with the plaintiff ordinarily returning home from work

between 5pm and 6pm. She therefore assesses six hours per day Monday to Friday for the first year after the birth and three hours thereafter assuming a return to work. She reduces the number of hours per week required but continues to claim care until the child is seven years old.

[123] Dr O'Neill does not envisage any loss of childcare outside of an increase in heavier household tasks associated with having children assessed at three hours weekly.

[124] Obviously, it is difficult to know what will occur after the birth of the baby and any future child. It is unclear whether the plaintiff would return to work after maternity leave, work part-time or give up work. Much will depend on how matters develop. The cost of a childminder may be a deciding factor.

[125] The plaintiff's mother, with whom I was very impressed, gave evidence that she would take 30 days leave to assist after the birth of the child.

[126] No doubt Mrs Lynas and Rhys will perform their roles as father and grandmother as one would expect.

***Aids and equipment***

[127] Finally, in relation to this aspect of the case, the plaintiff puts forward a claim for aids and equipment both past and future. These relate to extra bedding, extra heating costs, extra washes and a lifeline pendant.

[128] There was also a modest claim for additional vehicle costs in relation to a requirement to have her car washed, the cost of breakdown cover and roadside assistance. I was not persuaded that this was a viable claim. I have no real evidence about washing cars etc. The plaintiff has an automatic vehicle.

***Overall conclusion re future care***

[129] Returning to the assessment of these various headings, Mr Keenan draws the court's attention to the opinion of Mr Nolan dated 15 March 2023, where he said:

> "The probability is her pain will not significantly deteriorate in the short to medium term. If she maintains a reasonable degree of physical functioning and conditioning, then she should reduce the risk of a more significant deterioration. As she gets older the risk of back pain will generally increase. This is due to a combination of disc degeneration and reduction in muscle mass. The probability is that in several decades (the plaintiff is 26 at present) she may experience increasing back pain which would be greater and more intrusive

> than she would have experienced in the absence of this accident…
>
> I would reiterate that in the short to medium term there is no structural reason that she should experience a significant deterioration. In the long term as she ages and undergoes spinal disc degeneration and reduction in muscle mass, she may be at increased risk of spinal pain."

[130] This was elaborated on in his evidence in court when he stated that as the plaintiff gets older, her muscles will become weaker, and her pain and discomfort will increase. He did accept that there was a risk of falling when pain increases. He accepted that her bowel and bladder function would deteriorate. Mr McKnight, Consultant Neurological Surgeon, in his report dated 23 March 2023, said that given her level of injury, the plaintiff remains at risk of deterioration of her urinary symptoms which could lead to the need for self-catheterisation to reduce bladder pressures or injection of Botox into her bladder. She will require ongoing neurological surveillance.

[131] Dr Tham, Consultant Physician and Gastroenterologist, in his reported dated 1 March 2021, accepted that her bowel problems were likely to be chronic.

[132] I propose to deal with the claim for future care in the following way.

[133] I will allow a continuation of seven hours per week from the date of trial until the plaintiff attains the age of 45 years. Thereafter, for the remainder of life I will allow 14 hours per week.

[134] In relation to additional care required on the birth of her child I will allow an additional two hours per day (on top of the care already allowed) for a period of five years. In doing so, I have regard to the fact that the plaintiff, notwithstanding her significant injuries, will be able to provide a level of care in the normal course of events. The hours allowed, in my view, fairly represent what would be provided "over and above" by her partner and mother. The cost of future care should be based on gratuitous care, that is the commercial rate less 25%. I do not propose to make a further allowance for an additional child. This is too speculative a claim. Should the plaintiff give birth to a second child, I consider that the provision for care already awarded is sufficient.

[135] Overall, I was not impressed by the claim for aids and equipment which primarily related to extra bedding, extra heating costs, extra washes and a lifeline pendant.

[136] On this aspect of the case, I preferred the evidence of Dr O'Neill. I am not persuaded that this aspect of the claim has been established.

[137] In relation to vehicle costs, I am prepared to allow the plaintiff the additional cost of an automatic car at £229 per annum. I am not persuaded that the plaintiff is entitled to costs of AA membership or additional car washing/valet costs.

***Housing adjustments***

[138] I require further submissions from the parties on this aspect of the case.