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Expert Witness Case Histories

Our credibility as expert witnesses is built upon our over 20 years experience in designing homes for severely disabled people. Our aim is to provide instructing solicitors acting for claimants or defendants concise, punctual, accurate and impartial expert advice.

Listed below are a number of notable and interesting cases which Mr Cosmos has been directly involved with in recent years.

Andrew Bruce Willis V Dr Steven Richard Stern *(Brighton County Court 2YM09976:2015)*

The Claimant suffered a spinal injury and allegations of medical negligence were made. The claimant previously resided in a large family home worth over £500,000 or so, but subsequently separated and moved to alternative housing with a new partner in an unusual mixed use residential and commercial property worth only around £200,000. A claim was made for adapted future accommodation as a result of injury, however this was based on housing similar to the former large family home, but no evidence was disclosed relating to the proceeds of sale or the actual circumstances appertaining to that property. The case proceeded with legal arguments both regarding liability and differences of medical opinion regarding the capabilities of the claimant and for property losses based on the former large family home. Mr Cosmos was instructed by the defendant in this case.

Brock v Rollinson *(Eady, J 13 June 2012)*

The Claimant, whilst riding a scooter was the victim of an RTA and suffered serious injuries as a result of which he developed a severe psychological illness which led him to withdraw cooperation with consultants seeking to examine him. He was uninterested in the litigation or in securing any award of damages – he simply wished to be left alone. His Litigation Friend (his mother) was opposed to any form of order which might perpetuate the litigation in any way.
The Defendant made a Part 36 Offer on the eve of trial constituted by a capital payment plus yearly index-linked periodic payments for the Claimant's life. This was accepted on behalf of the Claimant subject to Court approval.

The Defendant Insurer's made an application for the insertion of a provision requiring the Claimant to submit to future medical examination for the purpose of securing quotes for suitable annuities even though the Claimant was prepared to agree to a provision that the Insurers might satisfy their liability for periodic payments by the purchase of an annuity. Mr Justice Eady dismissed the application. Mr Cosmos was instructed by the claimant in this case.

Sedge v Prime *QBD (2012)*

An interim payment was awarded to enable Claimant to move from residential care home for a trial care regime in his own accommodation; doing so would not prejudice the Defendant by rendering the "level playing field" uneven. The 26 year old Claimant sustained serious brain injury in a road traffic accident in June 2006. He is confined to a wheelchair and requires 24 hour care. His cognitive and intellectual functions remained unclear and his life expectancy was not agreed. He had been cared for at a residential home since the time of his injuries.

Sitting in the High Court, John Leighton Williams QC held that the issue of deciding whether community based care met the Claimant's reasonable needs in the long-term was ultimately for the trial judge to decide (rather than for him) - applying the test of "reasonable needs" and not what is in the Claimant's "best interests" within the meaning of s.1(5) MCA.

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The judge was satisfied that it was reasonable for community care to be tried but was not satisfied that the £300,000 sought was reasonable. An interim payment of £150,000 was allowed and the judge stated that if community care was successful then an application for a further interim payment should be sought.

This case confirms the approach in Eeles v Cobham Hire Services Ltd [2009] remains the court's position when considering the appropriate level for interim payments of damages. Mr Cosmos was instructed by the defendant in this case.

Molly Johnson v Derbyshire Royal Hospitals NHS Trust (2009) Lawtel

Judge Bullimore made an award of a further interim payment. A property had been purchased with an initial interim award, however it required adaptation and this could not be carried out unless a further interim payment of £200,000 was made.
He observed that:

"I think this is a peculiarly difficult decision. I think the difficulty that has arisen (and this is not a criticism; it is merely my perception of what has happened here) is because, prior to Cobham, there was not that careful analysis of what the final judgment sum would be and what that meant that we now have from the Cobham decision. There was a general perception that, if the pot could be measured in millions, quite frankly a claimant could have out of it almost anything.
The Court of Appeal recognised that there were these exceptional cases and I suspect there will be fewer exceptional cases as people begin to understand more fully what the Cobham judgment really spells out, but I think it just falls into that narrow category and, on that basis, I am minded to grant the application."

Because the interim payment was made pre- ***Eeles*** the claimant was in a difficult position. The house had been purchased but she could not move in. This was a major factor in Judge Bullimores decision. The judge could not seriously countenance the idea of the property sitting there not being used. Mr Cosmos acted on behalf of the claimant in this case

Cobham Hire Services v Benjamin Eeles [2009] EWCA Civ 204 **HQ03X03749**

Parents who said they needed to live in a nine-bedroom manor house, with a bungalow in the grounds to look after their disabled son, lost their claim for an interim payment of £1.2 million at the Court of Appeal. Benjamin Eeles, aged 11 at trial, was seriously injured in a car crash when he was nine months old. He lived with his parents and their new baby in a five-bedroom house in Essex, extended to provide a therapy room and suitable bedroom and bathroom with the aid of previous interim payments of £450,000. The accommodation experts had provided widely differing opinions on the need to move before the claimants' age of maturity.

But, in 2008, a substantial dwelling, Brightlingsea Hall, came onto the market. It had formerly been a hotel - it has nine bedrooms and a separate bungalow in the grounds.

Giving Judgement Lady Justice Smith said "They regarded this as a unique opportunity to buy a suitable home. They felt that they must move quickly. The asking price was £840,000 and the estimated cost of refurbishment was £200,000. With the costs of purchase, the parents estimated that they needed £1.2 million."
The claimant included a *Roberts v Johnstone* calculation of accommodation costs on the assumption that the purchase and refurbishment of Brightlingsea Hall was a reasonable expenditure. That cost far exceeded the defendant's estimate under that head. The Judges did not necessarily accept that a judge considering an interim payment must always work on the defendant's figures and confirmed that sometimes there are good

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reasons why those figures should be rejected as too low. But in this case, there was a wide margin of contention between the parties and importantly the claimant's figures were not supported by evidence, so they based their decision generally on the defendant's estimates.
Lady Justice Smith said that although the power to order an interim payment was discretionary, it was not unfettered, and courts had no power to make an order for more than "a reasonable proportion of the likely amount of the final judgment".

Lady Justice Smith said she was not prepared to assume that the trial judge would hold that the purchase of Brightingsea Hall was reasonably necessary to meet the claimant's needs and in the Judgement she stated; "Although the mother is acting in what she perceives to be Ben's best interests, an objective assessment leads us to the view that the claimant has not clearly demonstrated a present need to buy Brightlingsea Hall or indeed any other substantial property.
He is well housed at present and has a therapy room provided by past interim payments."

Lady Justice Smith estimated the likely amount of the capital award in this case as £590,000, which, bearing in mind previous interim payments of £450,000, gave very little room for a further payment. She allowed the appeal by Cobham Hire Services and refused the application for a further interim payment of £1.2 million. Lord Justices Dyson and Thomas agreed.
Mr Cosmos was instructed by the defendant in this case.

Attard v Hoskings and St Luke's Hospital Malta, QBD Eady J - June 30th, 2008
A 12-year-old boy from Malta has won £4.25 million compensation after a UK hospital failed to diagnose an inherited disorder when he was a baby.
The condition went undetected for a further 12 months and, as a result, Luke Attard suffered brain damage.
At a High Court hearing, Dr Gwilym Hosking was accused of failing to carry a routine blood test on Luke which would have identified a rare form of a genetic disorder phenylketonuria (PKU).
Specialist staff at Great Ormond Street Hospital eventually diagnosed the condition PKU which is a metabolic disorder which manifests itself in an enzyme defect rendering the sufferer unable to produce the essential amino acid tyrosine. Dr Hosking died in October 2006. Luke's parents reached a settlement on the basis that Dr Hosking was 90 per cent liable. Luke now lives with his family in East Sussex. Two of his three brothers also have PKU. Mr Cosmos was instructed by the Defendant in this case.

M.J. (A Minor) v Dr Hayward (1) The Royal Berkshire NHS Foundation Trust (2) 2008
In October 2008, the Claimant, a 12-year-old boy, received £1,800,000 for the injuries sustained during his birth in November 1995. In addition, the Claimant will receive index-linked annual payments for the rest of his life in relation to his care requirements.
The Claimant alleged that the First Defendant and that the midwife employed by the Second Defendant were negligent in failing to act upon the Claimant's Mother's raised blood pressure.

The Claimant suffers from spastic diplegic cerebral palsy, (primarily affecting his legs), moderate to severe learning difficulties and epilepsy. The Claimant is able to walk only with the assistance of a Kaye walker or crutches. He is unable to dress himself and is doubly incontinent. He is able to speak but is unable to carry on a conversation. The Claimant will be unable to live independently, will be unable to work and will not be able to handle his own financial affairs. The claimant's life expectancy was estimated to be reduced by 15 years as a result of his injuries and he obviously had very significant accommodation needs.

Court proceedings were issued and witness statements and expert evidence obtained. Negligence was admitted by both Defendants however they contended that the Claimant would still have had problems with school failure (including learning difficulties), poor attention span, behavioural difficulties and motor incoordination as a result of being born prematurely, and not as a result of their negligence. This argument was not accepted by the Claimant.

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A settlement meeting took place in July 2008 and following negotiations the Defendant agreed to pay the Claimant damages in the form of a lump sum of £1.8 million and, in addition, index linked annual payments for the rest of the Claimant's life to meet the cost of the Claimant's ongoing care requirements. This is estimated to equate to £4.4 million total settlement over the Claimant's expected lifetime. This settlement was approved by the Court on 16th October 2008.
Mr Cosmos was instructed by the claimant in this case.

Harding v Wealands (HL/ CA/ QBD) (2004-6) [2006] UKHL 32; [2006] 3 WLR 83 (HL); [2005] 1 WLR 1539 (CA) Harding v Wealands (settlement 20 February 2007)

This case fought to trial on quantum but settled on the second day in court for £5.5 m. The Claimant was a television editor who had worked with Edgar Wright of Shaun of the Dead and Hot Fuzz (who was a witness in the case). The Claimant had previously fought his case up to the House of Lords in relation to jurisdictional issues. The quantum case at Trial involved difficult and technical issues in relation to the assessment of reasonable damages for a C5/C6 tetraplegic.
Mr Cosmos was instructed by the defendant in this case.

Adelaide Sandra Roughton v Drs M G Bizon, S J Anderson and S S Graveson QBD 0101611 - 2004

The quantum case involved a number of difficult issues in relation to the assessment of damages for a severe brain injury as a result of Medical negligence in failure to diagnose a stroke. The case went to trial largely contesting amongst other quantum issues whether reasonable housing provision for the claimants' significant care and living needs had been made in securing Local Authority housing with later substantial adaptations for the claimants' disabilities that had been funded by the defendants. The claimant contested that a further move to a new much larger property was necessary with very extensive additional costs. The trial settled on the 2nd day in court after both parties care and accommodation Experts evidence was heard. The claimants' legal team subsequently accepted that adequate and suitable provision had been made both in terms of care and housing provision. Mr Cosmos was instructed by the defendants in this case.

TL Smith v Waltham Forest Health Authority QBD 1993 –S-No. 3184 – 1996

The case related to quantum for personal injury and involved an argument regarding provision of appropriate housing for an independent wheelchair user. The Court considered whether a wheelchair accessible Housing Association apartment located in London E17 which was under construction at the time and offered to the Claimant, reasonably met their needs. Mr Cosmos reported upon the design and tenancy aspects of the property. The Judge found that the accommodation was suitable, secure, met the Claimant's needs for all practical purposes and had much to commend it, he decided that as a matter of law the Claimant could not be compelled to accept it. Mr Cosmos was instructed by the defendants in this case.

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