

IN THE *[insert name of Court]*

CLAIM NO. *[insert number]*

BETWEEN:

*[Insert Claimant's name]*

Claimant

-and-

*[Insert Defendant's name]*

Defendant

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**CONSENT ORDER**

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**BEFORE** *[insert name of Judge]* sitting at *[insert name of Court]* on *[insert date]*

**UPON** hearing Leading Counsel for the Claimant and Leading Counsel for the Defendant

**AND UPON** reading the advice of Leading Counsel for the Claimant dated *[insert date]* and the report of *[insert name and organisation of financial adviser]*, an independent financial adviser, dated *[insert date]*

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

- (a) periodical payments are the more appropriate form of damages for that part of the award which represents the basic future cost of the Claimant's care and case management services[...**or as the case may be**], and
- (b) the continuity of periodical payments under the terms of this Order is reasonably secure pursuant to section 2(3) and section 2(4)(b) of the Damages Act 1996.

The Court approved the following terms of settlement and made them an order of the Court.

**BY CONSENT IT IS ORDERED** that:

**Lump sum damages**

1. The Defendant will pay a lump sum of £**[insert amount]** to the Claimant, to be satisfied as follows:
  - 1.1 By the interim payments in the total sum of £**[insert amount]** already paid by the Defendant;
  - 1.2 By the payment of the sum of £**[insert amount]** payable to the Compensation Recovery Unit in respect of the liability of the Defendant under the Social Security (Recovery of Benefits) Act 1997;
  - 1.3 By payment of the balance in the sum of £**[insert amount]** into the Court Funds Office by 4pm on **[insert date]** to be carried over immediately to the Claimant's Court of Protection account to be dealt with as the Court of Protection thinks fit **[...or as the case may be]**.

**Periodical payments**

2. In addition to payment of the sums specified in the preceding paragraph, **...XXX... Limited** and its successors in title ("the Defence Insurer") on behalf of the Defendant will pay periodical payments to the Claimant as set out in the Schedule hereto.
3. The periodical payments shall be funded in accordance with section 2(4)(b) of the Damages Act 1996.
4. ***[If first instalment payable on future date and agreed to pay additional sum to cover period up to then...]*** The Defendant will pay to the Claimant the further sum of £**[insert amount]**, which is the pro-rata equivalent of the annual amount of the periodical payments referred to in paragraph 1.1 of Part 2 and paragraph 1.1 of Part 3 of the Schedule to this Order for the period from the date when terms were first agreed between the parties (namely **[insert date]**) to the date when the first quarterly instalment is due (namely **[insert date]**), such sum to be paid into the Court Funds Office by 4pm on **[insert date]** to be carried over immediately to the Claimant's Court of Protection account to be dealt with as the Court of Protection thinks fit **[...or as the case may be]**.

**Costs and other matters**

5. The Defendant will pay the Claimant's costs of his claim to be the subject of detailed assessment on the standard basis in default of agreement.
6. All further proceedings in this action be stayed except for the purpose of implementing the terms of this Order and the Schedule hereto, for which purpose the Claimant, the Defendant and the Defence Insurer shall have permission to apply to the Court and if necessary to add the Defence Insurer as a party to enforce the terms of this order and its schedule.
7. Permission to the Claimant, the Defendant and the Defence Insurer to restore.

**DATED this      day of                      2009**

**[insert Claimant's name] v [insert Defendant's name]**

**THE SCHEDULE TO THE ORDER DATED [insert date]**

**Part 1 of the Schedule to the Order: General provisions**

Each instalment of an annual periodical payment payable under parts 2 and 3 of this schedule shall be subject to the terms set out in paragraphs 1 to **[insert number of final paragraph]** of this part.

1. Subject to paragraphs 4 and 5 below **[also refer to paragraph 1 of part 2 or part 3 if the payments under those paragraphs are to cease at a specified age]**, the payment of instalments will continue during the lifetime of the Claimant.
2. No minimum number of instalments shall be paid.
3. The payment of instalments will cease on the death of the Claimant.
4. The final instalment paid under part 2 of this schedule will be pro-rated for so much of the final quarter that the Claimant had survived and any balance owing to the Defence Insurer will be repayable to it out of the Claimant's estate.
5. The final instalment paid under part 3 of this schedule will be pro-rated for so much of the final quarter that the Claimant had survived and any balance owing to the Defence Insurer will be repayable to it out of the Claimant's estate, subject only to deduction by the Claimant's estate of such sums as the Claimant's estate may be liable for in respect of the termination of the employment of any persons employed to care for the Claimant.
6. The Claimant shall obtain and provide to the Defence Insurer by **[insert day/month 2 weeks before annual recalculation date]** each year, commencing **[insert day/month/year of first annual recalculation]**, a certificate from **[his/her]** GP dated not before **[insert day/month 6 weeks before annual recalculation date]** of the same year confirming that the

Claimant is still alive, in default of which the obligation of the Defence Insurer to make instalment payments to the Claimant shall be suspended until a certificate (dated not more than one month before the date of its submission) is provided to the Defence Insurer.

7. Those acting on behalf of the Claimant shall immediately notify the Defence Insurer upon **[his/her]** death.
8. In the event that any instalment is paid by the Defence Insurer under either part 2 or part 3 of this schedule after the Claimant's death, the Defence Insurer shall be entitled to immediate repayment of that instalment out of the Claimant's estate, together with interest at the then applicable special investment account rate from the date 28 days after payment of that instalment.
9. The instalments shall be paid to the Court of Protection (or its successor) for the benefit of the Claimant under reference **[insert reference]** or in such other manner as the Court of Protection or its successor may require.

**[Or, if payment is to be made to the Claimant or his/her deputy...]** The instalments shall be paid as follows:

- 9.1 The instalments shall be paid by the Defence Insurer by bank transfer into the Claimant's last known bank account, as defined in subparagraph 9.2 below.
- 9.2 The Claimant's last known bank account shall be:
  - (a) In the first instance, the account in the name of **[insert name of Claimant or his/her deputy]** at **[insert name and address of bank]**, sort code **[insert number]**, account number **[insert number]** and
  - (b) Thereafter, such alternative bank account as is notified (together with full details as above) by the Claimant to the Defence Insurer in writing not less than 14 days before the due date of any payment.
- 9.3 Payment by the Defence Insurer of any due instalment into the Claimant's last known bank account shall operate as a full discharge of the Defence Insurer's obligation to pay that instalment to the Claimant.

10. On each occasion that the amount of the annual periodical payments under parts 2 and 3 of this schedule is recalculated, the Defence Insurer shall provide to the Claimant a written explanation of how the amount has been recalculated.
  
11. In the event that the data necessary for the annual recalculation of any or all of the annual periodical payments under parts 2 and/or 3 of this schedule have not been published by the Office for National Statistics ['the ONS'] by **[insert day/month 1 month before annual recalculation date]** in any year, then:
  - 11.1 Pending such publication, the Defence Insurer shall pay to the Claimant the instalments in respect of those annual periodical payments:
    - (a) At the rate(s) paid in the previous year, or
    - (b) In the event of a step change as defined in paragraph 2 of parts 2 and 3 of this schedule, at the rate(s) applicable to the increased/decreased annual amount under the relevant subparagraph of paragraph 1 of parts 2 and 3 of this schedule; and
  - 11.2 Following such publication, the Defence Insurer shall as soon as reasonably possible perform the relevant recalculation(s) and shall:
    - (a) Within 28 days of the date of publication pay to the Claimant a sum equal to the difference between any instalments paid to the Claimant at the prevailing rate pursuant to paragraph 11.1 above and the monies that would have been paid to the Claimant if those instalments had been paid at the recalculated rate; and also
    - (b) Thereafter pay future instalments of those annual periodical payments for the year in question at the recalculated rate.
  
12. In the event that any instalment is not paid on the due date, the Defence Insurer shall pay interest at the then applicable Judgments Act rate on any outstanding instalment or on the outstanding part of any instalment (as the case may be) until full payment is made save that where paragraph 11 applies interest shall only be payable on the sum referred to in paragraph

11.2(a) from 28 days after the date of publication of the necessary data by the ONS.

13. Notices required by this schedule shall be given (and any other correspondence between the Claimant and the Defence Insurer concerning the operation of this Order shall be sent) by first class post sent to the last known address of the addressee, as defined in sub-paragraphs 13.1 and 13.2 below:

13.1 The Claimant's last known address, which may be the address of **[his/her]** authorised representative, shall be:

(a) In the first instance, **[insert his/her name and address or that of his/her deputy or other authorised representative]**;

And

(b) Thereafter, such alternative address as is notified by the Claimant to the Defence Insurer in writing.

13.2 The Defence Insurer's last known address, which may be the address of its authorised representative, shall be:

(a) In the first instance, ..... **[address to be inserted]** .....;  
and

(b) Thereafter, such alternative address as is notified by the Defence Insurer to the Claimant in writing.

1. The following present value annual periodical payments as recalculated in accordance with paragraph 5 below shall be paid in respect of the Claimant's future **[identify nature of loss]**:
  - 1.1 The annual amount of £**[insert amount]** from **[insert start date e.g. 15/01/2009]** until **[insert end date e.g. 14/01/2047]**.
  - 1.2 The annual amount of £**[insert amount]** from **[insert start date e.g. 15/01/2047 and any end date]**.
2. The expiry of one period and the commencement of another period under paragraph 1 above constitutes a "step change" under this schedule and each period constitutes a "step".
3. Each annual periodical payment specified in paragraph 1 shall be paid by equal quarterly instalments in advance on **[insert payment dates e.g. 15 January, 15 April, 15 July and 15 October]** in each year save that when a date for payment is not a working day, the due date for payment shall be the next working day. The first instalment shall be payable on **[insert date e.g. 15/01/2009]**.
4. The index to be applied is the United Kingdom General Index of Retail Prices for all items published by the ONS (January 1987 = 100) or any equivalent or comparable measure which in the parties' reasonable opinion replaces such index from time to time. In the event of a dispute between the parties as to the appropriate alternative measure and/or the formula to be applied in the event of a rebasing of RPI the same shall be determined by the court.
5. Each annual periodical payment referred to in paragraph 1 above shall be recalculated before payment of the instalment due on **[insert day/month/year of first annual recalculation e.g. 15/01/2010]** and annually thereafter before payment of the instalment due on **[insert day/month of annual recalculation e.g. 15 January]** each year, in accordance with the following formula:

$$PP = C \times \underline{NF}$$

A

Where:

'PP' = the recalculated annual periodical payment to be paid in the year commencing on the next **[insert day/month of annual recalculation e.g. 15 January]**, the first PP being the annual periodical payment to be paid in the year commencing on **[insert day/month/year of first annual recalculation e.g. 15/01/10]**.

'C' = the relevant annual periodical payment set out in paragraph 1 above.

'NF' = the index applicable to the previous **[insert the month 3 months before the month of the annual recalculation e.g. October]**, the first NF being the index applicable to **[insert month/year e.g. October 2009]**.

'A' = the index applicable to **[insert the month/year 1 year 3 months before the first annual recalculation e.g. October 2008]**.

**Part 3 of the Schedule to the Order: The ASHE 6115-Linked Periodical  
Payments**

1. The following present value annual periodical payments as recalculated in accordance with paragraphs 5 to 12 below shall be paid in respect of the Claimant's future **[identify nature of loss e.g. care and case management costs]**:
  - 1.1 The annual amount of £**[insert amount]** from **[insert start date e.g. 15/01/2009]** until **[insert end date e.g. 14/01/2047]**.
  - 1.2 The annual amount of £**[insert amount]** from **[insert start date e.g. 15/01/2047 and any end date]**.
2. The expiry of one period and the commencement of another period under paragraph 1 above constitutes a "step change" and each period constitutes a "step" under this schedule.
3. Each annual periodical payment specified in paragraph 1 shall be paid by equal quarterly instalments in advance on **[insert payment dates e.g. 15 January, 15 April, 15 July and 15 October]** in each year save that when a date for payment is not a working day, the due date for payment shall be the next working day. The first instalment shall be payable on **[insert date e.g. 15/01/2009]**.
4. The relevant earnings data are the gross hourly pay for "all" employees given by the present Standard Occupational Classification ['SOC'] for care assistants and home carers ['6115'] at the **[insert percentile e.g. 75<sup>th</sup> percentile]** (currently to be found in table 14.5a at the tab for "all" Employees) in the Annual Survey of Hours and Earnings in the United Kingdom ['ASHE'] published by the ONS.

**The first annual recalculation of the annual periodical payments under each step**

5. Unless paragraphs 7 to 12 below apply, each annual periodical payment referred to in paragraph 1 above shall be recalculated before payment of the

instalment due on ***[insert day/month/year of first annual recalculation e.g. 15/01/2010]*** in accordance with the following formula:

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

Where:

'PP' = the recalculated annual periodical payment to be paid in the year commencing on the next ***[insert day/month of annual recalculation e.g. 15 January]***, the PP on this first occasion being the annual periodical payment to be paid in the year commencing on ***[insert day/month/year of first annual recalculation e.g. 15/01/10]***

'C' = the relevant annual periodical payment set out in paragraph 1 above.

'NP' = the "first release" hourly gross wage rate published by the ONS for the relevant percentile of ASHE SOC 6115 for "all" employees for the year prior to the year in which the calculation is being carried out ***[...if recalculation being carried out in January to September OR if being carried out in December "for the year in which the calculation is being carried out"]***, the NP on this first occasion being the figure applicable to the year ***[insert year e.g. 2009]*** published in or around October ***[insert year e.g. 2009]***.

'A' = the "revised" hourly gross wage rate for the relevant percentile of ASHE SOC 6115 for "all" employees applicable to the year ***[insert year e.g. 2008]*** and published by the ONS in or around October ***[insert year e.g. 2009]***. In the event of a correction by the ONS it will be the replacement "revised" figure issued by the ONS.

#### **Subsequent annual recalculations of the annual periodical payments under each step**

6. In subsequent years, unless paragraphs 7 to 12 below apply, each annual periodical payment referred to in paragraph 1 above shall be recalculated before payment of the instalment due on the next ***[insert day/month of***

**annual recalculation e.g. 15 January]** in accordance with the following formula:

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

Where in addition to the definitions previously set out:

'NF' = the "revised" hourly gross wage rate published by the ONS for the relevant percentile of ASHE SOC 6115 for "all" employees for the year two years prior to the year in which the calculation is being carried out [...***if recalculation being carried out in January to September OR if being carried out in December "for the year prior to the year in which the calculation is being carried out"***], the first NF being the figure applicable to the year [***insert year e.g. 2009***] published in or around October [***insert year e.g. 2010***].

'OP' = the "first release" hourly gross wage rate published by the ONS for the relevant percentile of ASHE SOC 6115 for "all" employees for the year two years prior to the year in which the calculation is being carried out [...***if recalculation being carried out in January to September OR if being carried out in December "for the year prior to the year in which the calculation is being carried out"***], the first OP being the figure applicable to the year [***insert year e.g. 2009***] published in or around October [***insert year e.g. 2009***].

**Annual recalculations of the annual periodical payments under each step in the event of reclassification of the SOC or a change in methodology**

7. Reclassification for the purposes of paragraphs 8 to 11 below occurs when the ONS publishes for the same year "revised" hourly gross wage rates for both:
  - 7.1 the previously applied SOC (for which the "revised" wage rate is defined as "AF" in paragraph 8 below) and

- 7.2 for a new SOC (for which the “revised” wage rate is defined as “AR” in paragraph 9 below) that includes those currently defined as “home carers” in ASHE SOC 6115.

In that event the new SOC shall be applied.

8. Following reclassification:

- 8.1 The annual amount of the periodical payments referred to in paragraph 1 above shall be known as ‘CR’ and shall be calculated in accordance with the following formula:

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

Where in addition to the definitions previously set out:

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

- 8.2 The relevant percentile of the new SOC shall be identified by locating the percentile which corresponds to the revised hourly gross wage rate in the new SOC, when first published, which is closest to AF.

9. On the first occasion that each annual periodical payment is recalculated following reclassification, each shall be recalculated in accordance with the following formula:

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

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

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

Where in addition to the definitions previously set out:

'PPR' = the recalculated annual periodical payment to be paid in the year commencing on the next **[insert day/month of annual recalculation e.g. 15 January]** following reclassification.

'NPR' = the "first release" hourly gross wage rate published for the relevant percentile of the new SOC for the year prior to the year in which the calculation is being carried out **[...if recalculation being carried out in January to September OR if being carried out in December "for the year in which the calculation is being carried out"]** published in or around the previous October.

'OPF' = the final "first release" hourly gross wage rate published for the relevant percentile of the previously applied SOC for "all" employees.

'AR' = the "revised" hourly gross wage rate in the new SOC, when first published, which is closest to AF.

10. In subsequent years until further reclassification, the recalculation of each annual periodical payment shall be in accordance with the following formula:

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

Where in addition to the definitions previously set out:

'NFR' = the "revised" hourly gross wage rate published for the relevant percentile of the new SOC for the year two years prior to the year in which the calculation is being carried out **[...if recalculation being carried out in January to September OR if being carried out in December "for the year prior to the year in which the calculation is being carried out"]**.

*'OPR'* = the "*first release*" hourly gross wage rate published for the relevant percentile of the new SOC for the year two years prior to the year in which the calculation is being carried out [*...if recalculation being carried out in January to September OR if being carried out in December "for the year prior to the year in which the calculation is being carried out"*].

11. Further reclassifications shall be dealt with in the same way by the application of paragraphs 7 to 10 above.
12. For the purposes of this part a change of methodology occurs when the ONS publishes two sets of data for the applied SOC. In that event, the same process as set out in paragraphs 8 to 11 above shall be undertaken. However, in these circumstances references to:

*"reclassification"* shall be treated as being a reference to "*a change of methodology*",

*"the new SOC"* shall be treated as being a reference to "*the existing SOC using the new methodology*", and

*"the previously applied SOC"* shall be treated as being a reference to "*the existing SOC using the old methodology*".

### **Disputes**

13. In the event of a dispute between the parties arising out of the application of this Part, there be permission to apply.