Case No: QB-2021-002354

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand,
London,
WC2A 2LL

Date: 18 January 2023
Start Time: **15:24** Finish Time: **16:23**

Before:

DEPUTY MASTER BARD

- -

Between:

TRACEY BOUCH

Claimant

- and -

CUMBRIA COUNTY COUNCIL

Defendant

- -

- -

MR MARCUS GRANT for the **Claimant**
MR CHARLES WOODHOUSE, KC for the **Defendant**

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APPROVED JUDGMENT

(Via MS Teams)

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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DEPUTY MASTER BARD:

1. This is an application by the Defendant under CPR14.1A(3)(b) and/or CPR14.1B(3)(b) for permission to withdraw an admission of liability for the Claimant's injuries sustained on 22 June 2018. There had been a Claim Notification letter through the low value injuries portal on 17 July 2018 limiting the Claim to £25,000 and, following investigation, the Defendant admitted liability in writing on 24 August 2018. The Claim Form was issued on 17 June 2021 and Particulars of Claim were served on 12 October 2021 accompanied, or followed shortly after, by a 30-page Schedule of Loss claiming over £650,000 including General Damages, as well as some medical reports which have not found their way into the hearing bundle. In its Defence of 28 January 2022 the Defendant sought to resile from the admission of liability. This application was issued on 14 March 2022, and both sides have filed copious evidence. It was adjourned at the initially listed hearing on 22 November 2022 as a result of a video of a Zoom call having recently come to the parties' attention.

2. Since then there has been some fresh material including a transcript of the Zoom call, some further witness evidence and some privileged communications which the Defendant has now disclosed at the prompting of the Claimant in the light of its having earlier relied upon some selected privileged material.

3. I have received helpful skeleton arguments and oral submissions from Mr Woodhouse, KC on behalf of the Applicant/Defendant and from Mr Grant on behalf of the Respondent/Claimant.

4. A number of points and issues have been raised and I should make clear that, in the interests of brevity, I may not deal expressly with every individual point or refer to every case cited to me, but I have borne them in mind in coming to my decision.

5. This hearing has been conducted remotely and I mention for the purposes of the recording that there may be some occasions when I need a few moments to find a reference, so that this may feature a few short gaps.

6. The brief background of the claim is that the Claimant worked as a senior office and premises manager and PA to the headteacher, Mrs Murray, at Norman Street Primary School in Carlisle, which is part of the Defendant and so for which the Defendant is liable. She was injured on 22 June 2018 when she and two others sought to intervene in a school playground altercation involving an assault of another child by a nine year old boy, whom I shall call X, who was on the evidence before me a troubled boy from a troubled background. There is said to be a video of the incident, but I have not seen it. X is said to have had a propensity towards misbehaviour and violence, and Mrs Murray had already in April 2018 arranged a training session for staff with Ms Joanne Caffrey, of Total Train, an organisation which provides safer handling training, including to schools, in how to deal with problems arising out of his serious misbehaviour. I hope that is not an inaccurate paraphrase.

7. Following that training session there was a Zoom call of about an hour's duration on 11 May 2018, which involved Mrs Murray and the Claimant as well as Ms

Caffrey and her associate, Ms Angela Brown. (It was the Defendant's production of the video recording of this Zoom call which occasioned the adjournment mentioned above.) This meeting was followed on 21 May 2018 by a formal risk assessment in respect of X which was signed off by Mrs Murray as headteacher and by the Claimant as manager.

8. Following the incident the Defendant promptly arranged for the taking of witness statements about it, as well as obtaining an expert witness report dated 4 July 2018 from Ms Caffrey, which was principally directed towards the question of whether it was safe to allow X to return to school rather than to the issues in this case.

9. Ms Caffrey has considerable experience, including 23½ years in the police, in which she acquired her expertise in safe handling and in training others about it. In this report Ms Caffrey gave an indication about what she required. In concluding that it was not safe for the child to return to the school she said:

> "This evidence is that the child had now escalated the behaviour which has resulted in significant injury to staff, i.e. a fractured arm, and emotional distress. This evidence is that the known or perceived risk from the child has now escalated and as such under the Health and Safety at Work Act the risk needs to be suitably and sufficiently assessed and either eliminated or managed down to its lowest level. The training provided to staff is basic introductory training for safer handling of children who present with minor or unexpected risk behaviour. The physical intervention tactics applied by the staff as witnessed on the video footage were compliant with the safer handling training which staff had received prior to this incident. The appropriate duty of care for providing water, reassurance and first aid medical attention were also compliant with safer handling tactics. Staff are not trained or assessed as competent to deal with higher risk challenging behaviour which, therefore, puts them at risk of injury, X at risk of injury and other children at risk of injury. Without enhanced tailored training this would be a failure in the duty of care to staff and X. To return the child X to the school without such assessment and suitable and sufficient control measures implemented would be a failure under the Health and Safety at Work Act for a duty of care towards staff, the child X, and others, children and visitors, who may be on site and affected by the incident. Staff having no suitable assessment of risk and identified control measures with suitable professional training to deal with X have a high likelihood of dealing with him incorrectly and thereby placing X, staff and other children at risk of harm".

In reading this I have substituted X for the child's actual initials.

10. As I say, this followed the training day in April 2018 at which Ms Caffrey had witnessed some of X's behaviour. The evidence before me is that this had provided basic training, but not the enhanced training which would have allowed staff to deal with an active assault by X on another pupil.

11. The Zoom call was directed towards how to deal with the problems posed by X and mentioned the need for enhanced training. Ms Caffrey's evidence is that she had been in contact with Mrs Murray more than once to discuss and offer the

provision of enhanced training, but that this had not met with a positive response. She says in her first witness statement:

> "Unfortunately, the headteacher did not take up any of my offers of additional support or training despite the concerns about X that I had communicated to her. I believe this was primarily due to budgeting but I also think that, despite my warnings, there was a failure to recognise just how severe a risk X posed to the staff at the school. To put this into context, this is the only school I have ever offered free calls or reduced rate assistance or offered my own time for free and it was purely out of concern for the safety of the staff at the school because of X's behaviour and also the safety of X himself. I specialise in cases where behaviour has not been managed and either the staff or service users are injured and this particular situation caused me anxiety that an accident was going to occur which would be outside of the staff's ability to manage down, leaving staff and the child vulnerable to injury."

A little later she says:

> "To reiterate, the incident which occurred on 22 June 2018 was, in my opinion, entirely foreseeable. I foresaw an escalation of the behaviour of X when I attended the school in April 2018 and I advised the school and the headteacher of my significant concerns as to the vulnerability of the staff. I advised that the staff are not adequately trained to deal with X. I tried to communicate the high risk that X posed and offered service at a significantly reduced price, and in some cases for free, to try to provide staff at the school with the training and support that they would require in order to manage X. The incident occurred because the school were not equipped to deal with a child with such severe behavioural issues as X. Had the school and the headteacher taken on board the significant concerns that I raised about their vulnerability and inadequate training for X and had the school provided the training that I recommended to them an offered to them as cheaply as possible after April 2018 but prior to the incident occurring the outcome would likely have been different."

12. I note that the Defendant challenges this evidence and points out that the transcript of the Zoom call, which is extensive, contains comparatively little dealing with this matter and points out that, although there are suggestions to this effect, these do not necessarily reflect the level of importance and urgency that the later witness statement of Ms Caffrey from which I have just quoted would indicate. I also note that, even after the incident, Mrs Murray e-mailed Miss Caffrey on 8 July 2018 saying:

> "Just putting evidence together just in case governors ask what would be the cost for all staff, including lunchtime staff, so around 40, to complete the enhanced safer training you referred to in the report and what would be the time commitment as my argument would be it is not viable."

Having said that, it is fair to say that by this time X had been excluded from the school so the problem was no longer a clear and present danger, as it were.

13. The issue which will be at the heart of the dispute if the Defendant succeeds in this application is whether the Defendant acted in breach of its duty of care to staff, including the Claimant, by failing to follow advice said to have been given by Ms Caffrey to provide enhanced training to staff on how to deal with violent episodes such as the instant one. The risk assessment did not mention any need for enhanced training. As I say, Ms Caffrey in her first witness statement states that she had advised and offered this, but that Mrs Murray chose not to proceed with it. In the meanwhile, Mrs Murray, it seems, has died. I am told that she has not provided formal evidence to the Defendant about these issues, beyond the initial witness statement dated 25 June 2018 which concerned only the incident itself.

14. The Claimant's immediate injuries were a fracture to the right wrist and a ligamental strain to the left shoulder with internal bruising to the right side of her stomach. She went off work, I think immediately, but certainly from sometime in August 2019. She had a dozen sessions of cognitive behaviour therapy between July 2018 and April 2019, the feedback from which dated 25 September 2019 states that she had responded well but that she might have CRPS (complex regional pain syndrome) with continuing pain. She is said to have subsequently developed both CRPS and PTSD. The reports from the occupational health concern, which is called Choose, are marked "Confidential" to the Deputy Head and to the Claimant herself and there is no direct evidence that it was forwarded to the Defendant or to Zurich, although there is one indication that somebody at the Defendant or Zurich had received information about it.

15. The claim through the portal led to some investigations by the Defendant's insurers, Zurich. The Defendant's solicitor, Mr O'Neill, points out that the time for investigation was limited by the time frame of the portal, that the Claim Notification Form was received in school holiday time and that the matter was allocated to Zurich's small claims team. They concluded that Ms Caffrey's report of 4 July, as Mr O'Neill puts it, could be interpreted as identifying a failure on the part of the school to have carried out a new risk assessment or to have failed to obtain tailored training for relevant staff. Mr O'Neill maintains that in all these circumstances the making of the admission was a mistake, so far as it dealt with liability, and also that the potential value of the claim was a factor, it being in the portal.

16. The correspondence of summer 2018 between Miss Judy Hutchinson of the Defendant's Corporate Health and Safety Team, and Mr Michael Chambers of Zurich has now been disclosed. In an e-mail sent on 25 July 2018 Mr Chambers observed:

> "I accept that the risk assessment was in place and four members of staff had received training. However, I am concerned by the following. The evidence and the incident shows that the training was clearly not enough to deal with the incident in question and on that basis all staff are to be trained to an enhanced level. If this was to proceed to court I think it would be difficult to persuade a judge that we have taken all reasonable steps to ensure that the staff are safe in such circumstances."

This view was accepted and, although concerns were expressed that the Claimant might be exaggerating her condition, there was no written suggestion that the apparent low quantum of the Claim played a part in the decision of the Defendant and its insurers to admit liability. On the contrary – there was talk of investigating the Claimant's medical records and of referring the matter to the insurer's fraud team. The suggestion was that the matter should be settled on the best terms available, which perhaps is something of an implicit indication that the comparatively low value of the Claim was a relevant feature at the time.

17. Although there was continued monitoring of the Claimant's condition by the school, the matter did not proceed with any rapidity. The Claimant was in the event dismissed on the grounds of alleged gross misconduct on 20 January 2020 and brought a claim for unfair dismissal, which I am told has yet to be determined.

18. On 10 March 2021, after a prolonged silence about substantive issues, the Claimant's solicitors wrote a formal Claim Letter indicating the Claimant's diagnosis with CPRS and PTSD and confirming that the value of the claim was substantially more than allowed for within the portal. On 25 March 2021 Miss Shearer, one of the Defendant's in-house solicitors, e-mailed Mr Chambers of Zurich (this was disclosed recently) saying:

> "I have received the below and the attached for my colleague who is dealing with the employment tribunal case for [the Claimant}.
>
> Really odd query which I wanted to run past you as I wasn't part of the claim when the CNF was submitted. I know that the CNF says that the injures were '*fracture to the right wrist, ligament damage to the left shoulder, internal bruising right side of the stomach*" and that we have no medical evidence to support this never mind anything to the contrary. I am right in thinking that we admitted liability and there was no causation argument based solely on this injuries and that we may withdrawn our admission if anything changed? … With this in mind, my thoughts are to go back to Adrian and just say as far as the PI case is concerned, the injuries are accepted are as per the CNF and CRPS plays no part in the PI claim."

On 12 April 2021 Miss Shearer reported further to Miss Peacock of Zurich about this claim, also recently disclosed, explaining that:

> "The grounds of the claim relates to the PI injuries which appear to be exaggerated when compared with those injuries outlined on the CNF. Should [the Claimant] make assertions that her injuries for the PI matter now include CRPS, it has been discussed that the liability admission will be withdrawn as liability was only admitted based upon the low value of this matter based upon the information in the CNF."

19. The first indication to the Claimant of any intention to withdraw the admission was in the Defence itself. The Defendant maintains that this was not necessary until it had received actual medical evidence to support a more substantial claim or, I suppose, at the very least some proper information from the Claimant's solicitors indicating the nature of the medical position.

20. It is common ground that in deciding this matter I am to have regard to paragraph 7.2 of the Practice Direction to Part 14 of the CPR which provides as follows:

> "In deciding whether to give permission for an admission to be withdrawn the court will have regard to all the circumstances of the case, including
>
> (a) the grounds upon which the applicant seeks to withdraw the admission, including whether new evidence has come to light which was not available at the time the admission was made;
>
> (b) the conduct of the parties, including any conduct which led the party making the admission to do so;
>
> (c) the prejudice that may be caused to any person if the admission is withdrawn;
>
> (d) the prejudice that may be caused to any person if the application is refused;
>
> (e) the stage in the proceedings at which the application to withdraw is made, in particular in relation to the date or period fixed for trial;
>
> (f) the prospect of success, if the admission is withdrawn, of the claim or part of the claim in relation to which the admission was made; and
>
> (g) the interests of the administration of justice."

21. I am also reminded by Mr Woodhouse that Part 1.1 of the CPR sets out the overriding objective of enabling the court to deal with cases justly and at proportionate cost with Part 1.1.2 providing that:

> "Dealing with a case justly and at proportionate cost includes, so far as practicable:
>
> (a) ensuring that the parties are on an equal footing and can participate fully in proceedings and that parties and witnesses can give their best evidence;
>
> (b) saving expense;
>
> (c) dealing with a case in ways which are proportionate (i) to the amount of money involved, (ii) to the importance of the case; (iii) to the complexity of the issues, and (iv) to the financial position of each party;
>
> (d) ensuring that it is dealt with expeditiously and fairly;
>
> (e) allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases; and
>
> (f) enforcing compliance with rules, Practice Directions and orders."

22. Mr Woodhouse also points out that the pre-action protocol for personal injury claims makes clear (see paragraph C200112 of the White Book) that:

> "If at any stage the claimant values the claim at more than the upper limit of the fast track the claimant should notify the defendant as soon as possible. However, the cards on the table approach by this protocol is equally appropriate to higher value claims. The spirit, if not the letter, of the protocol should still be followed for claims which could potentially be allocated multi-track."

This provision applies to potentially fast track and portal claims and, it seems to me, is of relevance.

23. It is also clear that I should take guidance from the observations of Ward LJ, in *Woodland v Stopford* [2011] EWCA (Civ) 266 at paragraph 26:

> "It is quite clear to me that CPR14.1A(3) confers a wide discretion on the court to allow the withdrawal of a pre-action admission and paragraph 7.2 of Part 14 to the Practice Direction lists the specific factors the court must take into account in addition to the need to have regard to all the circumstances of the case. These factors are not listed in any hierarchical sense, nor is it to be implied in the Practice Direction that any one factor has greater weight than another. A judge dealing with a case like this must have regard to each and every one of them, give each and every one of them due weight, take account of all the circumstances of the case and balancing the weight given to those matters, strike the balance with a view to achieving the overriding objective.
>
> "Cases will vary infinitely and the weight to be given to the relevant factors will inevitably vary from case to case. Sometimes a lack of new evidence and a lack of explanation may be the important considerations, in others prejudice to one side or the other will provide a clear answer and in all the interests of justice will sway the balance.
>
> "It would be wrong for this court to circumscribe the manner of the exercise of its discretion or to give any more guidance than is framed, namely carry out the task set up by the Practice Direction, weigh each of the identified factors as well as all the other circumstances of the case and strike a balance with due regard to the overriding objective."

24. It is perhaps convenient for me to consider and discuss each of the 14PD72 factors and, indeed, any others, before carrying out the weighting and balancing exercise which will draw me to a conclusion:

> *(a) The grounds upon which the Applicant seeks to withdraw the admission, including whether new evidence has come to light which was not available at the time the admission was made.*

It appears to me that there are two factors upon which the Defendant relies, being (i) the substantial increase in the value of the Claim, occasioned principally by the previously unsignalled CPRS and PTSD components. I say unsignalled: as at the time of the Claim Notification Form they had not yet emerged, and (ii) the revised view of the prospects of running a successful defence on liability.

25. It was initially understood by the Claimant that the injuries that she sustained in the accident were comparatively minor. It was apparently hoped that a full resolution of symptoms would normally be anticipated within six to nine months of injury, or so I am told, Mr Dunkow says at page 14 of his medical report. This no doubt informed her decision upon advice to proceed via the portal. It appears that the Defendant marked a reserve of some £11,200 or so for the Claim. There is no doubt that the Claim is now at a very much higher level.

26. The Defendant maintains that, until there was medical evidence to support an increase in the value of the Claim, it was entitled to expect the Claim to proceed as previously; and that the Claimant and her solicitors had chosen not to assert any increase in value or likely departure from the portal until the Claim Letter of March 2021. The Defendant also points out that in some reported cases, in particular *Wood v Days Healthcare*, this factor was a dominant one in the Defendant being allowed to withdraw previous admissions of liability.

27. The Claimant, on the other hand, contends that there were a number of indications that the Defendant was aware of the CRPS and PTSD issues. She also points out that, although the Defendant had previously argued that the school's knowledge of her condition, which had to be monitored because they needed to know when she might be fit to return to work, was not the same as the Defendant's knowledge, the newly disclosed privileged material shows that the Defendant's insurers and legal department were, indeed, keeping an eye on developments both in the Claimant's fitness to work and in relation to the Employment Tribunal claim in which some of those very issues arose.

28. Plainly, at the time the admission itself was made these factors could not have come to light. However, the Claimant argues that it was wrong of the Defendant not to notify the Claimant of an intention, or even a likely intention, to withdraw the admission as soon as it became aware of these matters, whereas it has chosen to leave any notification of the withdrawal for some three years and four months - which Mr Grant tells me is longer than any of the five comparable reported cases of application to withdraw an admission to which the parties have referred.

29. I do take this factor into account. Plainly, important new matters have come to the knowledge of the Defendant, and, indeed, of the Claimant, since the time of the admission. When they did so, and how this affects the matters I have to consider, fall into the territory of prejudice.

30. The other matter, the Defendant's revised view of the prospects of success, perhaps falls to be considered in relation to categories F (prospects of success) and C/D (prejudice). It is worth mentioning that the Defendant's revised view of the merits does not emerge from any material which was not available for consideration by the Defendant and its advisers and insurers at the time of the admission. The Defendant chose not to investigate further, including consideration of the Zoom call video, which apparently it did not really consider until around November 2022. However, the Defendant now does rely on what are said to be inconsistencies in various parts of the material emanating from the Claimant and from Ms Caffrey as casting doubt on the reliability and potentially the integrity of their evidence. These can be said to be new matters.

(b) The conduct of the parties, including any conduct which led the party making the admission to do so.

There was no particular relevant conduct leading the Defendant to make its admission. The Defendant criticised the Claimant and her solicitors for subsequently failing to keep its insurers and legal department informed about the progress of her medical condition. This is a real point, as there was no good reason for the Claimant's solicitors not to have done so. Indeed, on 4 December 2020 the Defendant's solicitors asked the Claimant's solicitors for an update on her medical condition, to be told by way of response that the Claimant continued to suffer from CRPS and a report would be provided once obtained. As from January 2020 the Claimant's solicitors had - but did not disclose - medical evidence including matters such as CRPS and PTSD, and Mr O'Neill points out that such matters would ordinarily be disclosed. Mr Woodhouse submits that this was a clear departure from the standard imposed by the protocol and that there was no good reason for the Claimant's solicitors to have kept the Defendant in the dark.

31. Although the Claimant's solicitor, Miss Salt, indicates that tactically it is preferable not to provide medical evidence piecemeal, this is not reflected in the protocol and, as it should have been very clear to the Claimant's solicitors at a fairly early stage that this Claim was likely to be for significantly more than the portal's upper limit of £25,000, I do consider that the protocol required them to notify the Defendant's solicitors as set out in its text. I do consider that this was a conduct issue that I should take into account. Had the Defendant been kept properly informed all these matters would have come to light, and the claim no doubt re-evaluated by the Defendant at a very much earlier stage which, on any view, would have been at least a year and possibly more.

32. It is true that the Defendant had some sources of information through the Claimant's continuing contact with the school which was monitoring her condition and which was maintaining some contact with the Defendant's legal department about relevant developments. Right from the start the Defendant was expressing concern about the possibility of the Claimant seeking to increase her Claim. They drew attention to the fact that she had apparently had a fairly substantial and successful claim against the NHS. Miss Hutchinson reported to Mr Chambers in August 2020 that the headteacher's view was that the Claimant was seeking to be off work until January 2019 and that the Claimant was unlikely to return to work and that "the Claimant is now looking for another job and hopes to increase the settlement in order to tide her over until she finds something else". As mentioned, the insurer's fraud team was to be put on the case.

33. Mr O'Neill explains at paragraph 27 of his witness statement that "Occupational health reports were produced and submitted to Norman Street Primary School as part of the process of managing the Claimant's absence from work and prior to her dismissal for gross misconduct". An occupational health feedback form dated 29 May 2019 records that the Claimant "…stated she could possibly now have complex regional pain syndrome". In addition, on 11 April 2019 the MED3 Statement of Fitness for Work document records for the first time that the Claimant "…is not fit for work due to CPRS, PTSD, shoulder and wrist injury from assault at work". However, that information was passed directly to Norman Street Primary School. That information was treated as medical information

confidential to the Claimant and it was not shared outside the school. As such, the information was not shared with the team within the Defendant dealing with civil/insurance claims and/or with Zurich Municipal.

34. I am not sure that this turns out to be entirely correct in the light of recently disclosed material. Plainly, the Defendant was suspicious; by way of illustration a recently disclosed e-mail internal to the Defendant dated 1 January 2019 notes that:

> "She has also told the school that her injury means she can't drive but she has been seen driving to the gym and using the gym (although using the gym could be part of her rehabilitation). The head now thinks that the Claimant is considering pursuing a claim for constructive dismissal."

This suggests that the headteacher was prepared to discuss the Claimant's medical condition with the Defendant and, in the light of the limited and late disclosure, it is not obvious to me that the Defendant was not kept informed about some relevant developments, at least up to the Claimant's dismissal in January 2020. Indeed, as at 25 January 2019 the headteacher received a sick note which mentioned PTSD, and this was discussed in an e-mail of 8 February 2019 from Miss Hutchinson to Mr Chambers. In addition, it is clear that during the tribunal proceedings the Defendant noted in December 2020 that "the employment claim contains disability assertions which may be linked to the PI matter".

35. On 1 October 2020 Zurich confirmed to the Claimant's solicitors that: "We have admitted liability for that claim, i.e. the incident of 22 June 2018." Apparently, on 25 February 2021 Zurich asked for the Claimant's stage 2 pack which suggests that they still considered this claim as remaining within the portal. They do not, however, appear to have mentioned possible withdrawal of the admission until shortly before 12 April 2021 after receipt of the detailed Claim Letter, when Miss Shearer, the in-house solicitor for the Defendant, reported to Miss Peacock that: "Should the Claimant make assertions that her injuries for the PI matter now include CRPS, it has been discussed that the liability admission will be withdrawn as liability was only admitted based on the low value of this matter based upon the information in the CNF." The date and content of these discussions are not in evidence.

36. It is suggested that Zurich's small claims team might not have known what PTSD and CRPS were. This may be beside the point. It was not for the Defendant to second-guess the evolution of the Claimant's damages claim when they had reason to suppose that it remained in the portal until they were told otherwise, and the Claimant's solicitors had over a long period done nothing to suggest that this would not be the case. I, therefore, consider that, although bits of information were coming in, the Defendant was entitled to proceed until notified otherwise on the assumption that the claim would remain in the portal and, therefore, there is nothing about the Defendant's conduct which I consider is material in striking the balance that I have to consider.

> *(c) The prejudice that may be caused to any person if the admission is withdrawn.*

Any claimant who has the benefit of an admission of liability will inevitably be prejudiced when that admission is withdrawn. Mr Grant points out that here the prejudice is compounded by a number of additional factors: the fact that the admission was very early meant that the Claimant did not need to be and was not put to the expense of compiling witness and other evidence on the issue of liability; the very long time that has passed when the Defendant could have indicated a withdrawal much earlier means that it would be very difficult for the Claimant to compile that evidence now as evidence, for example, from other parents about the known violent tendencies of X about which they are said to have complained may be problematic as memories would have degraded; the fact that Mrs Murray has died and so will no longer be available as a witness will make it more difficult for the Claimant to establish her case about Ms Caffrey's recommendations to Mrs Murray given that at present the Defendant challenges Ms Caffrey's evidence; finally, it is said that, in terms of medical treatment, the Claimant is reaching or has reached the end of what is going to be available for her under the NHS and that with what is said to be a severe and debilitating condition she cannot get funding for future private treatment which would otherwise have been available in the context of a subsisting admission of liability and consequential judgment.

37. Mr Woodhouse for the Defendant does not accept any of the first three points as he contends that there is plenty of documentary and video evidence about X for the measures taken and considered in relation to him, that the features particular to X were so unusual that witnesses will have a reasonably good recollection of them, and that the absence of Mrs Murray is more likely to prejudice the Defendant than the Claimant because, although she will not be available to be cross-examined, equally she will not have any primary evidence which may support the Defendant's case.

38. It is a commonplace that lengthy delay will affect memory, and I consider that the prejudice suffered by the Claimant given an application to withdraw some three years and four months after the admission, which was about two months after the injury was caused, is significantly greater than in cases where either the admission is late so that liability evidence has been prepared, or its withdrawal is early so that memories are still comparatively fresh. Part of that delay, however, may be attributed to the fact that the Claimant and her legal team were not keeping the Defendant informed about the progress of the Claimant's medical condition and prognosis, although I am told that, in particular during 2020, the Claimant's focus was on the tribunal claim rather than this. That is not, it seems to me, a proper matter to take into consideration. That is not something which ought to delay proper progress of a claim, particularly for someone who is not working and may be thought to have a certain amount of time on her hands.

39. The final point about the Claimant's condition and need for funded treatment is one about which she had told me. It does not appear in the evidence. I do take it into account, however, as an additional feature of prejudice which the Claimant would suffer if the application succeeds.

(d) The prejudice that may be caused to any person if the application is refused.

Clearly, in such circumstances the Defendant would be unable to contest liability on its merits. This would not preclude the Defendant from challenging the diagnoses of PTSD and CRPS which appear to be the cause of the dramatic rise in the value of the Claim, and also contesting the extent to which they were caused by the incident in question. However, on any view this is a significant potential prejudice. The effect of its significance is also affected by factor (f) which is C's prospects of success on the issue of liability.

> *(e) The stage in the proceedings at which the application to withdraw is made, in particular in relation to the date or period fixed for trial.*

40. It is of course correct that the litigation proper is in its infancy. No timetable would be disrupted by the withdrawal of the admission, which is often in other cases a significant factor weighing against permitting the withdrawal of an admission. Mr Grant of course points out that the incident itself was over five years ago, but that is more directly connected with prejudice. This, it seems to me, is not a significant factor.

> *(f) The prospects of success if the admission was withdrawn of the claim or part of the claim in relation to which the admission was made.*

41. This is not altogether straightforward. The Claimant's case is that she had not had sufficient training to allow her to deal properly with this incident and that she should have had such training as it had been particularly recommended to the Defendant by Ms Caffrey. I suppose that it would have to follow that her case must be that (a) such training should and would have been administered before 22 June 2018 and (b) if she had had such training then she would not have been injured in intervening with X as she would have known what to do to avoid injury. The Defendant points out that that the Claimant had had some training, although none of it appears to have been at the sort of level which would have assisted on this occasion.

42. The evidence of Ms Caffrey referred to above, if accepted, is clear about what was being and had been proposed. Indeed, in the Zoom meeting of 11 May 2018 she had said:

> "Because the basic training that I gave you the other week doesn't cover kids fighting on the floor, two kids hammering at each other so an aspect could be that we cover those techniques with you and at the same time cover some issues about searching and them two topics could both be done in either a twilight session or half a day with you which you could then brief other staff to learn about what you want them to do, because ideally you don't just want… it's a risk that you've got to consider now about the searching. It ain't gonna go away. And also, and how staff are going to manage him, so if he's in class and picks up a knife or has a knife about a person that no one knows about what are the staff going to do because, as Joanne was saying earlier, unless you're entirely trained in removing a knife from a person if you don't touch them you get out of the room until they put the knife down and surrender it."

This last may have been said by Angela Brown but nevertheless it was said.

43. Having said all that, I think Mr Woodhouse is not necessarily wrong in saying that Ms Caffrey was offering a range of potential steps, and that it was for the headteacher and the Defendant to decide which ones it was reasonable to adopt. The Claimant points out that there had been a couple of other recent serious incidents involving X, although I suspect that a court will not be slow to accept the available evidence about these even if it does involve some long-term recollection.

44. Mr Woodhouse reminds me that I must not conduct a mini trial and that the substantive evidence on these matters at present is supplied only from the Claimant's side. Mr Woodhouse points to what he says are some inconsistencies in the evidence of the Claimant and of Ms Caffrey which cast doubt on their reliability and potentially, he suggests, on their integrity. Whilst I do not explore those inconsistencies in detail here, I am disposed to accept Mr Woodhouse's submission that the Defendant is not being unreasonable in expressing some concerns about the key evidence of the Claimant and Ms Caffrey, and that it would be wrong to characterise the Defendant's prospective defence as fanciful.

45. In those circumstances, I do not see this as a case where, if the Defendant is given permission to withdraw its admission, its defence would be hopeless or so weak as to be unworthy of regard.

(g) The interests of the administration of justice.

46. The Defendant submits that if any admissions of liability are to be encouraged then the circumstances in which they can be withdrawn should be treated as broad. He also reminds me that public money is involved in this Claim. Mr Grant, on the other hand, points out that, if withdrawing admissions becomes too easy, then this will have a detrimental impact on practice in personal injury claims, as claimants' solicitors will not be able to rely on them. It is also true that cases that have been allowed to become stale are to be deprecated and, whilst part of this does arise from the Claimant's relative inactivity in pursuing the Claim over a prolonged period (August 2018 to March 2021), I do not overlook the Defendant's failure to consider the impact of its admission over the same prolonged period as more and more information about the Claimant's condition was coming to light.

47. I have been taken to authority on this. William Davis J, said in *RAC v Wright* [2019] EWHC 913 (QB), at para 17:

> "If clear and unequivocal admissions which have led to a substantial investigation of quantum and to interim payments being made apparently without question can be withdrawn many months later, there will be real damage to the administration of justice. It undermines the basis on which parties to this type of litigation conduct themselves."

That is right but is not altogether the position here, there having been no question of interim payments having been made and, so far as one can tell, no substantial investigation of quantum beyond what would ordinarily be expected in a personal injury claim in which liability was in dispute.

48. I am also taken to the observations in the case of *Cavell v Transport for London* [2015] EWHC 2283 (QB), at para 16:

> "It cannot be in those interests [the interests of the administration of justice] to permit the withdrawal of an admission made after mature reflection of a claim by highly competent professional advisers when there is not a scintilla of evidence to suggest that the admission was not properly made."

Again, that is not the case here. I consider the level of the Defendant's investigation to have been commensurate with a portal claim rather than a very substantial one. One instance of this is the absence of investigation into precisely what level of training had been provided and had been offered. They might have derived some assistance, for example, from the Zoom call; they did not investigate that.

49. Both sides warned me about the consequences of my setting the bar from resiling from an admission respectively too high or too low, but it is not for me to set a bar. I have to apply the rules and the guidance from authority to the facts of this case. I do not consider that the interests of the administration of justice play a significant factor in considering the balance to be struck.

50. I have been referred to *Wood v Days Healthcare UL Limited* [2017]EWCA Civ 2097, in which a dramatic rise in the value of the claim was treated as a highly significant feature. Davis LJ said in his judgment:

> "38. The first point - by reference to paragraph 7.2A of the Practice Direction - is that it seems to be indisputable that highly material new evidence *had* come to light. This was in the form of further evidence as to the extent of the injury allegedly caused and, in consequence, quantum. What had been presented in 2010 as currently a fast track claim involving less than £25,000 had subsequently become in 2012 a claim in excess of £300,000.
>
> 39. The judge had said that there was 'no new evidence about the circumstances of the accident'. That perhaps is in one sense true if one puts emphasis on the latter words. But as to the new evidence and claims concerning injury, causation and quantum the judge in paragraph 60 of her judgment effectively dismissed that as a 'risk inherent in any personal injuries claim': thereby, in effect, not acknowledging it as relevant new evidence at all. But such matters involve questions of fact and degree: if one is facing a claim reasonably considered to be worth less than £25,000 (it in fact seems Garwyns at the time for internal purposes had put a total reserve, including costs, of £16,250) an increase of a few thousand pounds may perhaps be an acceptable and foreseeable 'inherent risk'. But a tenfold increase, to over £300,000, is surely another thing altogether."

He concluded at paragraph 50:

> "In my opinion, therefore, the very well presented submissions of Mr Ferris are well founded. My own view is that the entire change in character and amount of the claimant's case in 2012, to adopt the language of her own solicitors, should, given all the circumstances, have justified the grant of

> permission to withdraw the pre-action admission. That conclusion is then reinforced when one has due regard to the existence of the summary Judgment against the Second Defendant. In such circumstances this court is entitled to interfere and should do so."

51. In conclusion, it does appear to me that the most important feature of this application is the enormous rise in the value of the Claim, here more than twentyfold rather than the tenfold in *Wood*. I accept that for the portal and fast-track claims, a limited amount of investigation and legal expenditure would be appropriate and, indeed, proportionate in accordance with the terms of the overriding objective and accordingly the potential defences may not be treated with the degree of significance and scrutiny than would be the case in more substantial claims. Here there was some consideration of potential defences as disclosed in the documentation, but no one investigated in detail exactly what had or had not been recommended in advance of the incident or in what terms and the material that was obtained was comparatively sparse.

52. Although the other matters do play a weight in my decision, as I have indicated, this is the most important feature. But I do bear in mind that there has been some conduct of the Claimant to which I have already referred in terms of keeping the Defendant in the dark and, in my judgment, those factors outweigh the significance of the prejudice to be suffered by the Claimant rather than that to be suffered by the Defendant.

53. I shall, therefore, grant permission to the Defendant to withdraw its admission. I recognise that this will be a great disappointment for the Claimant and I have considerable sympathy for her as it will pose some difficulties for her, although given the substantial material before the court, I do not think that those difficulties in presenting her case properly will be insurmountable. However, as I have indicated, the fact that the Claimant's solicitors did not keep the Defendant's representatives informed in breach of the PI protocol is also a minor factor in my decision. All this could and should have been considered at least a year earlier. However, I suspect that, had that been the case, the principal feature is still one that would have drawn the court to allow the admission of liability to be withdrawn.

(This Judgment has been approved by Deputy Master Bard.)