This is a draft of the judgement which it is proposed will be handed down at 12 noon on Wednesday 26th April 2012. It is for the information of counsel and their solicitors only so that they may consider any necessary corrections and any appropriate applications in advance of the hearing. Its contents must not be disclosed to anyone else including the lay clients before 11 am on 26th April 2012.

IN THE HIGH COURT OF JUSTICE **CASE NO HQ08X00169**

QUEEN'S BENCH DIVISION

B E T W E E N

JAMES SEDGE
(by his mother and Litigation Friend
YOLANDA SKINNER)

Claimant

-and-

CHRISTOPHER PRIME

Defendant

JUDGMENT

Introduction

1. This is an application for an interim payment of £300,000 to enable the Claimant to move from the "Little Oyster" residential care home, Sheerness, Kent where he currently lives into his own accommodation with a 24 hour care regime. At first this is to be by way of a trial run in a bungalow which has already been rented for one year and adapted for him. If the trial is successful then permanent renting or purchase of a home are the options. If not, return to a residential home is likely.

Background

2. The Claimant is now 26 years old (DoB 3rd May 1985). On 2nd June 2006 he sustained serious brain injuries when, as he was crossing Sheerness High Street, he was struck by a motor car driven by the Defendant. He was admitted to the Medway Hospital but promptly transferred to King's' College Hospital, London where, after treatment, he was transferred back to Medway Hospital and in due course from there to the Royal Hospital for Disability in Putney from which he was discharged on 22nd October 2007 to the "Little Oyster" where he has lived ever since. He was readmitted to King's College Hospital for treatment for hydrocephalus in April 2008 and a cranioplasty in December 2008. His life expectancy is not agreed but may be into his seventies. His care at the "Little Oyster" has been funded by the local Primary Care Trust ("PCT").

3. His immediate injuries were a parietal fracture and acute subdural haematoma. The long term consequences have been that he cannot stand or walk, has no use of his right arm, is doubly incontinent and cannot speak. He is confined to a wheelchair. He can feed himself but with difficulty and without much control. He suffers from reasonably well controlled epilepsy. His sight appears preserved and his hearing intact. Happily, he is not aggressive and does not display behavioural problems. He needs 24 hour care.

4. His cognitive and intellectual functions are significantly limited but how limited is not yet entirely clear. From an early stage he has used a thumbs up or down to indicate yes or no but not reliably so. He has also enjoyed social interaction but with very limited communication. The general view at "Little Oyster" appears to have been that his understanding and abilities were very limited indeed.

5. The expert medical evidence is unanimous that he has been physically well cared for at "Little Oyster". He has his own en suite first floor room, which overlooks the Thames estuary, and a television set. He does not display problems, is not difficult to care for and is therefore popular with the staff. There is no evidence that he has demonstrated unhappiness or frustration at being there. But whilst the PCT funded his care they have provided no or only very limited therapy for him. Save for occasional trips out organised by the home and visits from his family, his life appears to have been largely a passive one.

6. Prior to the accident, when employed, he worked as a scaffolder. He fathered a child but soon split up with the mother and then assaulted her new partner for which he was sentenced to 3 months imprisonment. At times he drank to excess, got into fights and took drugs. His anti-social behaviour resulted in convictions. In short, his life style was a disturbed one. The Claimant's father left his mother when the Claimant was aged 3 and has had very limited contact with the Claimant. His mother, who has shown an interest in his continuing welfare, has had problems of her own. Dr Greenwood in his report of 4th July 2009 considered that both the Claimant's dependency on care and "his fractured social background" meant that he would be unable to return to being cared for in the family home.

7. In his report dated 4th July 2009 Dr Greenwood suggested the Claimant would profit from going home for days "to be in the family circle, vary his social interaction and widen his activities", from having a wheelchair adapted vehicle with which the family could take him on outings, and that intensive speech and language therapy ("SALT") would improve the reliability of his gestural communication. However, at that time funding was not available.

<u>The procedural history</u>

8. Proceedings were issued on 19th May 2009. The Defendant contested liability. Following a trial in January 2011 he was held liable to the Claimant but with a finding of 25% contributory negligence.

9. On 8th April 2011, following a contested hearing, Master Kay ordered an interim payment of £175,000 "to be applied for the Claimant's benefit and in accordance with the indications given by Richard Crabtree (*the Claimant's solicitor*) in his evidence in support of the application". I have not seen Mr Crabtree's evidence but I am told the

interim payment was made to enable a case manager and support worker to be appointed and various needs to be met.

10. Meanwhile in February 2011 application had been made to The Court of Protection under the provisions of the Mental Capacity Act 2005 for the appointment of a deputy for property and affairs (often described as a "financial deputy"). On 13th May 2011 Ms Molloy was appointed the Claimant's professional financial deputy.

11. Receipt of the interim payment made it possible to appoint a case manager, Ms Susanne Frowd, in April 2011. She in turn arranged the appointment of a brain injury support worker, Mr Tokarek to assist the Claimant, for SALT from Ms Emily Smith and physiotherapy. Mr Tokarek has worked with the Claimant since October and Ms Smith since November 2011. An electric wheelchair has also been purchased. Ms Frowd also spent about 6 months finding a bungalow, 52 Holtwood Avenue, Aylesford, Maidstone to accommodate the Claimant which was taken on an annual rent of £13,200 in December 2011. £15,829.63 has been spent extending/adapting the premises.

12. The present application was issued on 31st January 2012.

13. On 8th April 2011 Master Kay also gave directions which included exchange of expert evidence. He ordered the parties to serve any neuropsychiatric evidence they wished to rely on, the Defendant by 10th January 2012 and the Claimant by 13th March 2012. All save the neuropsychiatric expert evidence, has been exchanged. The Defendant has served neuropsychiatric evidence from Dr Jacobson. The Claimant has not served any such evidence. Mr Crabtree says that an expert neuropsychiatrist he instructed in October 2011 said in November 2011 that he was unable to act and Dr Fleminger whom he then instructed has said he will not be able to visit the Claimant until September 2012. He does not explain why it took him until October 2011 to instruct the expert. On 1st February 2012 at a CMC Master Kay ordered that application for an interim payment be issued by 3rd February and heard by a High Court or Deputy High Court Judge and that there be a further CMC on 24th May 2012 unless I give further directions at the present hearing.

<u>The Mental Capacity Act 2005</u>

14. The Claimant's affairs are now subject to the provisions of the Mental Capacity Act 2005 and therefore the supervision of the Court of Protection. Section 1(5) of the Act provides that acts done and decisions made under the Act for the Claimant must be done or made in his "best interests". Section 16 of the Act enables the Court of Protection to appoint deputies to make decisions in relation to the (a) personal welfare and (b) property and affairs of a person lacking capacity. Ms Molloy has been appointed the Claimant's financial deputy but no deputy has been appointed to make decisions on his behalf with regard to his personal welfare. Section 16(4) (a) provides that when considering whether to appoint a deputy "a decision by the court is to be preferred to the appointment of a deputy to make a decision". The Court of Protection has not considered it necessary to appoint a welfare deputy. Decisions regarding his welfare have necessarily to be left to those who care for and support him.

15. In these circumstances protection for the Claimant's personal welfare exists in the "best interests" requirement of Section 1(5). Requirements needing to be met for best

interest decisions are set out in Section 4 of the Act, the relevant parts of which provide:

> "**Best interests**
>
> "....
>
> (2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.
>
> .....
>
> (6) He must consider, so far as is reasonably ascertainable—
>
> (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
>
> (b) the beliefs and values that would be likely to influence his decision if he had capacity, and
>
> (c) the other factors that he would be likely to consider if he were able to do so.
>
> (7) He must take into account, if it is practicable and appropriate to consult them, the views of—
>
> (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
>
> (b) anyone engaged in caring for the person or interested in his welfare,
>
> (c) any donee of a lasting power of attorney granted by the person, and
>
> (d) any deputy appointed for the person by the court,
>
> as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).
>
> .....
>
> (11) "Relevant circumstances" are those—
>
> (a) of which the person making the determination is aware, and
>
> (b) which it would be reasonable to regard as relevant.

16. "Best interests" is not defined in the Act but Chapter 5 of The Mental Capacity Act Code of Practice seeks to give detailed guidance on what the Act means by "best practice". Section 4(7) states that those who should be consulted should, where appropriate, include anyone engaged in caring for the person or interested in his welfare and any deputy.

17. A decision that the Claimant should be cared for in his own accommodation rather than at "Little Oyster" is self evidently extremely important. Under the Act such a decision can only be made where it is considered to be in the Claimant's best interests. The Claimant's medical experts supported such a move but the decision is not for them. Nor is it for this court. It has to be made by those who are responsible for him subject to the supervision of the Court of Protection. To seek to resolve the issue the Claimant's case manager arranged a meeting which was held on 5th April 2012. It was chaired by a member of the local PCT and attended by those who were caring for the Claimant and the financial deputy, Ms Molloy. Mr Crabtree's statement dated 11th April 2012 exhibits documents supplied to the meeting, which include a physiotherapy report, a support package proposal prepared by Ms Frowd and statements from family members, Ms Molloy and Mr Tokarek. It is not clear to me whether the meeting was supplied with SALT reports and Case Management documents which follow Mr Crabtree's statement in the bundle put before me. The Minutes list 16 people who attended who included an Independent Mental Capacity Advocate for the Claimant. Apart from the "Little Oyster" home manager and registered manager, who considered that as present providers they should abstain from expressing their views, all present considered it would be in the Claimant's best interests to move to the bungalow.

18. The Claimant's solicitors had informed the Defendant's solicitors that a bungalow had been secured and needed to be adapted. The Defendant's solicitors, seeking to protect their client's interests, maintained the stance that it would be in the Claimant's best interests to remain cared for at the home rather than move to a rented bungalow with an independent care package and refused to fund any such move. They suggested that this issue should be resolved by a meeting of the medical experts. The Claimant's solicitors rejected this suggestion on the basis that the experts were far apart on their views and said the "best interests" meeting was due to take place. When the Defendant's solicitors sought permission to attend the meeting the Claimant's solicitors responded by letter dated 2nd April 2012 stating it was inappropriate, that "The issue of best interests in the civil proceedings and a "best interest meeting" under the Mental Capacity Act are two separate and distinct matters", and that neither the Claimant's nor the Defendant's expert medical reports were being provided to the meeting. They suggested it would be unlawful for them to take any part in the meeting. In the event neither the Claimant's nor the Defendant's solicitors took part in the meeting although it is right to point out that Ms Molloy is the Head of the Court of Protection Department at the Claimant's solicitors..

The Claimant's present medical condition

19. It appears to me that the appointment of Ms Elliot and Mr Tokarek have led to an improvement in the Claimant's ability to communicate. Prior to their involvement the view which appears to have been expressed at the home was that the Claimant use of the thumbs up and down signs was unreliable, that he did not distinguish between those who visited him and that he would be unable to control an electric wheelchair. Mr Tokarek's notes and witness statement indicate that with a more structured approach the Claimant has been demonstrating greater consistency of understanding and an ability, previously unrecognised or not understood, to express his wishes. He appears to be recognising people consistently, warming to his family and those he recognises, employing the thumbs up and down more consistently, and making decisions for himself which previously others made for him. Thus he has been able to point to identified objects, when shopping has been able to indicate that the next step was to go to the till, and on simple addition has been able to select the correct total out of 3 choices. Significantly, it appears to me, he has learned to control his electric wheelchair, and decide which buttons to press when in the "Little Oyster" lift. His underlying potential abilities may not have changed but now they are being recognised and utilised.

The expert medical evidence

20. The medical evidence is divided over whether or not the Claimant should remain at "Little Oyster" or move into his own accommodation. The Claimant's experts positively support such a move ; the Defendant's experts are, some at least on balance, against it. I quote from their reports.

The Claimant's expert evidence

20.1 D*r Greenwood – neurologist – 2nd January 2012*

" …. I first saw Mr Sedge on 4.7.09…since then there have been clear changes in his physical, perceptual and cognitive status, so that he is now able to communicate in simple ways, to respond to social interaction, and, by all accounts, to enjoy his family. It appears therefore that appropriate intervention will improve his subjective quality of life, and difficult to avoid the conclusion that a move to his own home, with 24-hour nursing support, would enhance and maintain his mood and life quality long term. Thus, when I first saw Mr Sedge, it was by no means clear to me that he would benefit from a move to his own home, but in the context of the improvements he has since made, there seems little doubt that this move is appropriate and in his interests, as it will be possible to provide him with a more reliable individualised and predictable programme, which is likely to be associated with gains, particularly in his ability to communicate and to interact and participate in social activities.

In these circumstances, multidisciplinary therapy input is likely to generate gains, initially on a one to one basis and subsequently via programmes carried out by Mr Sedge's carers with intermittent therapy review. Occasional neurological review of his anticonvulsant medication remains appropriate and ongoing case management, coordination of his therapy and care input, and his overall management, remains mandatory, particularly to ensure continuity of care input and a move to suitable accommodation, initially rented and subsequently permanent. Meanwhile any increase in support worker input is likely to contribute to Mr Sedge's weekly programme."

20.2 *Professor Barnes – neurologist -13th April 2011*

" …overall, in my opinion it is entirely reasonable for Mr Sedge to move into his own accommodation. There is certainly no medical reason why he should not do so. Obviously it is impossible for Mr Sedge to make his own views known. It is very relevant to note that his mother wishes him to live in his own home with his own care package and this is certainly something that needs to be taken into account by the Court. The advantage of moving to his own home is that Mr Sedge would be able to have his own personalised care package with his own trained carers rather than relying on a number of different staff looking after him in the nursing home. The training of staff with his own care package could be more guaranteed than the personalised training given to the staff in the nursing home. I accept that Mr Sedge appears to enjoy sitting in the nursing home lounge with other residents looking out over the sea… but nevertheless his view could be similar from his own home. There may some advantage in being with other residents if he appears to enjoy their company or at least seeing activity around him. However, otherwise I see no particular advantage in remaining in the nursing home and I certainly can see no significant disadvantage in moving to his own home. Thus, on balance I support a move to his own accommodation if this can be arranged in due course."

20.3 *Dr Brooks -neuropsychologist - 20.12.11*

"6.1.3 …I rather expected that the examination might be brief, because Mr Sedge would have difficulty in maintaining his attention, and in responding to the demands of even rudimentary cognitive assessment. I am very pleased to say that I was completely wrong here. Mr Sedge tolerated 20 minutes of intense interaction, after which I had him take a 10 minute break, and he then tolerated a further 40 minutes of intense interaction.

……

6.1.5…He occasionally and appropriately laughed in response to social interaction. He presented as a bright and sunny persona, smiling frequently, and appropriately. He obviously very much enjoyed social interaction…

……

6.1.7 (and 6.5.3)…thumbs up sign. Whilst this was clearly associated with "yes" and, to a degree, with positive effect, it was by no means consistent and I do not think that there is as yet a consistent communication channel…(I hope that with work from the speech and language therapist, it may become consistent).
6.5.1…I had no doubt that he understands simple auditory information.
…….
6.7.1…I was very interested to try this (*noughts and crosses*) and found he was very quick, very focused, and very accurate. Furthermore, when, without warning, his opponent changed the starting sequence (from a nought to a cross), he immediately and automatically switched to the correct symbol.
…….
7.2 Clearly Mr Sedge is very seriously cognitively impaired, but there is a residue of retained cognitive ability……I would not rule out the possibility of further improvement, particularly so as a speech and language therapist is working with Mr Sedge and those around him to try to achieve some consistent communication strategies.
…….
7.4 2(b) While I was not asked specifically to comment on accommodation, I think that it is worth saying something about this. Mr Sedge is, I understand, due to move into his own rented accommodation with a regime of support, essentially on a trial basis. I think that this is highly appropriate, given that there is a case manager, who will be able to recruit, manage, and quality assure a care team. It will be crucial that there is a clear case management plan with associated goals. I think that it is in Mr Sedge's best interests to move into his own accommodation, which would allow both a homely, non-institutional atmosphere, and the opportunity for consistent care/support and therapy, driven and quality-assured by a case manager".

Dr Brooks said he would like to re-examine the Claimant once any new regime has been established.

The Defendant's expert evidence

20.4 *Prof Beaumont – neuropsychologist – 25.10.11*

"1.3…While he has some retained cognitive abilities, these are extremely limited and represent a very severe cognitive handicap….Mr Sedge's current problems can be very substantially attributed to the consequences of the material accident. Mr Sedge merits a trial of further therapeutic intervention and the question of his best interest in terms of his future placement seems to be quite finely balanced. However, my own view is that it would be in his best interest for Mr Sedge to remain at Little Oyster, but to receive additional therapeutic input on a private basis while continuing there and also the provision of an additional companion or buddy.
……
4.13…My own view, although it is not strongly held, is that it would be in Mr Sedge's best interests for him to remain at Little Oyster but for additional therapies to be provided for him in the home together with a number of hours of a buddy over and above the attention which can be provided by the present home staff."

Prof Beaumont – 09.02.12

"The fact that the matter is debatable is clearly illustrated by the variety of opinions from the various experts.
……

Particularly if Mr Sedge were provided with a buddy, to extend his access to the opportunities within and around the home, then this would, in my view, make Little Oyster the clear choice of preference.

……

Whilst there might be some limited advantages of moving Mr Swedge into the community, I consider that his cognitive limitations are so great, and the risks to health and safety so significant, that, on balance his best interests are served by remaining in residential care of the type offered by Little Oyster and I do not support the move into the community with a package of care."

Prof Beaumont – 07.03.12

"The SALT report of Ms Smith does suggest a very slightly higher level of language function than was suggested in my own assessment, although the difference is of little functional significance…I do support her proposals for the procedures…to attempt to rehabilitate Mr Sedge's language functions…an attempt is justified….

I have also reviewed the support worker records of Mr Tokarek…It does appear that this is an appropriate and helpful intervention for Mr Sedge and I would support its continuation…..

The critical question is whether any of these documents would lead me to amend my opinion concerning Mr Sedge's future placement. They do not. My opinion remains….that on the balance Mr Sedge's best interests are served by remaining in residential care of the type offered by Little Oyster."

20.6 Prof Collin – neurorehabilitation – 11.11.11

"The current scenario of James residing at Little Oyster Residential Home and having weekly visits to his mother's home appears to me to be a very good compromise. I would suggest that there would have to be very strong arguments supporting a move to a new home in the community for it to be attempted. I do not see any benefit for James. It is quite rare to find a residential home devoted to the care of young people but for those people with extremely severe disability, as experienced by James, this Home seems to provide a good option for long-term safe care. I can find no persuasive arguments against his continued stay at the residential home and have reiterated those in favour of him staying."

Prof Collin – 31.03.12

"I can empathise easily with those who think it will be in James' interests to be "in his own home again" but the positives and negatives of his placement have to be considered in the light of the capabilities of the individual person sand the likely harm or benefit of each proposal. At the end of the day his well-being is of the greatest importance…There is evidence of what has been achieved in the last four years in Little Oyster. His well-being has been maintained and ther have been some small changes.

His care has recently been supplemented by the provision of a support worker with more activities and one to one attention. This is working well. Why can it not continue in the current environment ?

.....

Moving out into the community will pose potential risks for James as outlined above. There are probably some benefits for family with greater or easier access for them in the community. James will remain dependent on a care team for all of his needs wherever he is. I have already commented on the recurring difficulties of maintaining a reliable and trustworthy team in the community and the need to avoid the risks of inexperienced carers.

I have also commented on the isolation that is often the lot of disabled people living in the community long term.
In my opinion James' needs will be most safely met by continuing with the placement at Little Oyster enhanced by support worker input, with outings with the support worker perhaps including the family at times, as well as further visits to family members to provide him with ongoing continued variety in his life but with a guaranteed safe background of care."

20.7 Dr Jacobson – neuropsychiatrist – 11.11.11

"329. Taking all the evidence into account, I consider that Mr Sedge's best interests are served by a long term placement in residential care. Even if he lives in the community with a 24 hour care package, apart from his mother, she is likely to attempt to destabilise the care regime by imposing her own perception of desirable activities on Mr Sedge. It is my impression such efforts have been and will be better controlled in residential care at Little Oyster than would probably be the case in the community.
330. It is difficult to argue that the Claimant's quality of life would be better in his own home in the community than in a residential setting, because of his limited capacity to appreciate either.
331. It is my view that if the Claimant remains in residential care, he may need additional support worker input to take him out on community visits, or for instance to "walk" him by the sea. Little Oyster Residential Home overlooks the sea. It is, however, unclear that the Claimant would appreciate a change of surrounds, as opposed to social stimulation.
332. The increased privacy afforded to the Claimant by having his own home must be balanced against the replication aspects of an institution "(lockable doors, presence of carers, carers rooms, frequent supervision, presence of a large team), similar to the provision of an institution."

Dr Jacobson – 08.03.12

"59. Dr Greenwood has perhaps best articulated the Claimant's argument for a move into the community….
60. Dr Greenwood's view begs the question as to whether the Claimant will differentiate between two environments and can reliably express a choice…
61. It is probably correct that a more individualized Care package can be arranged in the community than in a residential setting…this difference could be reduced with the introduction of top-up care…
……..
64. I remain concerned about the move into the community and refer to my report, in which I listed the advantages and disadvantages of a long term placement in the community and in residential care. I would particularly like to highlight, as has Prof Barnes, the risks of social isolation in the community, the risk of disruption from visitors who may bring him alcohol or take him to a pub (which may be less controlled by a community care regime, which tries to respect his perceived wishes or those of his family); and the possible risk of disruption by the Claimant's mother.
65. **Conclusion:** It is my opinion that it is in Mr Sedge's best interest to remain in Little Oyster but receive additional therapeutic input and extra input from a buddy."

20.8 Dr Foster – neurologist – 20.11.11:

"Mr Sedge will remain completely dependent on others for every aspect of his care apart from feeding himself. He is well-settled up at Little Oyster Residential Home. It is near to his family's home, he appears well looked after and in my opinion, it is in his interests

> to remain there. Mr Sedge has extremely severe cognitive impairment and limited awareness of his environment. Although he can probably recognise individuals, his level of responsiveness is low. It is unlikely that he will be able to recognise that he was in a particular building (i.e. a residential home vs a house somewhere else). He appears to benefit with contact from other individuals, but does not differentiate his responses depending on who is with him. On the balance of probabilities, he would not derive any benefit from being housed independently in the community, and would not be able to comprehend that his environment was any different from that in the Little Oyster home. The advantages of placement within the Little Oyster home includes continuity of care and statutory oversight of the quality of care he receives. He may also benefit from the range of activities provided through the nursing home, such as the outings once a week and other communal activities.
>
> If Mr Sedge was housed independently in the community, then his care regime would potentially be vulnerable to lack of continuity of carers, and there would be no statutory oversight of the care he receives, and he would not, on the balance of probabilities, derive any particular benefit from being housed independently. The Little Oyster home is near to his family who have adequate access to him while he resides there and a move into the community would not in my view, enhance his quality of life, but would carry additional risks."

Dr Foster has not commented on any recent improvements.

The parties' cases

21. Mr Christopher Melton QC for the Claimant submits that the Claimant has improved dramatically since the first interim payment has made support and therapy available and that he ought to be allowed at least a trial of living in the community. He submits his solicitors have sensibly not asked for the capital costs of purchasing suitable accommodation but have managed instead to find a suitable rented property and that the arguments about uneven playing fields hold no water since by withholding funding so far, the Defendant has slanted the playing field by making a trial of community living impossible. He submits that now that it has been decided that the Claimant's best interests lie in community living, this is the most likely long-term course and will be reflected in the eventual award. He suggests a reasonable proportion of the likely capital award should suffice to secure a short term placement but if not, there is a real and pressing need for sufficient funds to enable that to happen which would justify an *Eeles 2* approach (see below). Without such a trial he submits the trial judge will have the almost impossible task of calculating what damages should be awarded for future care, estimating for what period(s) the Claimant will be in the community (if at all) and when he will be in residential accommodation (if at all).

22. Mr Rohan Pershad QC for the Defendant strongly resists the application. He rightly submits that it is not in issue that "Little Oyster" has so far provided satisfactory care for the Claimant. He suggests continued residential care is in the Claimant's best interests and that a move into rented accommodation followed by "permanent accommodation" would be counter-productive and even damaging for the Claimant, for reasons set out in his expert's reports. He submits that allowing the proposed trial would be unfair to the Defendant as it would alter the level playing field. He complains that the Claimant's advisers' rejection of a joint meeting of experts to decide what course was appropriate, was a deliberate attempt to deprive the Defendant and the Court of the experts' views.

23. He criticises the recommendation of the "best interests" meeting on a number of grounds. He says that the option put before the meeting, as recorded in the Minutes namely "Is it in Mr James Sedge's best interests to move to supported living in a bungalow in Maidstone with a bespoke package of care coordinated by Anglia Case management or remain at Little Oyster residential home ?" ignores a third option namely continued care at "Little Oyster" supplemented by hired-in care and therapies as advanced by his experts. He suggests that the meeting was "engineered" to pre-date the hearing of this application, notes that no clinician attended, and that some of those who attended will be active in the Claimant's community rehabilitation package and therefore have a financial interest in the Claimant being accommodated in the community as opposed to the home. He submits the outcome of the "best interests" meeting is irrelevant to the decision the Court has to make stating it does not offer even guidance to the Court.

24. He further submits that, contrary to the Claimant's assertion that the case will not be ready for trial for some 18 months, it should be capable of being heard in the 2012 Michaelmas term and suggests that if the Claimant's argument that a trial of care in the community goes ahead then it will be more than 18 months before the case will be ready to be heard, and if thereafter the Claimant is to be accommodated in his own (as opposed to a rented) home, he suggests that the trial may well be a good few years away. He queries the possible loss of PCT funding on the practicability of the Claimant's proposals, given that the finding of 25% contributory negligence may well produce a shortfall in monies available to fund the Claimant's needs.

The issues

25. Against this background the parties are agreed that the two main issues I have to decide are :

(i) whether making of the award sought would render the eventual 'playing field' uneven?

(ii) whether the £300,000 sought represents a reasonable proportion of the likely amount of the final judgment, taking into account;

(a) the 25% discount for contributory negligence ;

(b) the previous interim payment of £175,000 ;

(c) the need to avoid fettering the trial judge's ability to allocate a significant proportion of the overall award to a PPO, should such be considered appropriate.;

Mr Melton identified a further issue namely :

(iii) whether the sum of £300,000 should be paid even though it may represent more than a reasonable proportion of the eventual award on the basis that the monies are needed in order to meet the Claimant's reasonable needs, ie the *Eeles 2* argument (see below).

The principles to be applied

26. It is not my function to decide whether or not residential accommodation in a care home or independent living in the community with a 24 hour care package is appropriate for the Claimant. That is and must remain an issue for the trial judge applying the test whether what is proposed is necessary to meet the Claimant's reasonable needs not what is in his best interests : *Sowden v Lodge and Drury v Crookdale* [2004] EWCA Civ 1370. My function is to decide whether or not the

Claimant is entitled to the interim payment he seeks or a lesser payment. As a general rule it is not necessary for a court to decide what the Claimant will do with the money ; he is entitled to "a reasonable proportion of the likely amount of the final judgment" : see CPR 25.7 and *Stringman v Mc Ardle* [1994] 1 WLR 1653. An exception exists, however, where the making of an award may unfairly prejudice one or other party by removing what has been called "the level playing field" : *Campbell v Mylchreest* CA 23rd January 1998. In addition, the court has to take into account contributory negligence.

27. The function of damages in personal injuries actions is to restore, so far as is reasonably practicable, what has been lost. Where care is necessary and residential care in a home or care in the community are the options and where a claimant pre-accident lived in the community then the starting point is care in the community : see O'Connor LJ in *Rialis v Mitchell* 6th July 1984 (unreported). Where the cost of care at home (in the community) is substantially greater than care in a residential home then the burden of proving that it is reasonable to care for him at home (in the community) rests with the Claimant : see para 18(e) of O'Connor LJ's judgment in *Rialis*, cited at para 16 in *Ahsan v University Hospitals Leicester NHS Trust* [2006] EWHC 2624 (QB). The fact that there has been a finding of contributory negligence should play no part in deciding whether residential or community care is appropriate: per Pill LJ in *Sowden* at para 79.

28. This is a case where the trial judge may well have to consider whether heads of damage should be the subject of periodical payments orders. That in turn will likely depend on what future arrangements will reasonably be required for the Claimant's care, whether the trial judge decides residential care in a home or 24 hour care in the community is appropriate and the extent to which care/therapies is/are to be funded privately and/or by the PCT or Social Services. In *Peters v East Midlands Strategic Health Authority* [2009] EWCA Civ 145 Dyson LJ at paras 53 - 56 giving the judgment of the court stated :

> "...We can see no reason in policy or principle which requires us to hold that a claimant who wishes to opt for self-funding and damages in preference to reliance on the statutory obligations of a public authority should not be entitled to do so as a matter of right. The claimant has suffered loss which has been caused by the wrongdoing of the defendants. She is entitled to have that loss made good, so far as this is possible, by the provision of accommodation and care. There is no dispute as to what that should be and the Council currently arranges for its provision at The Spinnies. The only issue is whether the defendant wrongdoers or the Council and the PCT should pay for it in the future.
> .....
> 56 In our judgment, therefore, provided that there was no real risk of double recovery, the judge was right to hold that there was no reason in principle why the claimant should give up her right to damages to meet her wish to pay for her care needs herself rather than to become dependent on the State....."

29. Thus the Claimant may choose privately funded rather than state funded care. In the present case because of the finding of 25% contributory negligence there will likely be a shortfall in monies available for his care. Whether the PCT or local authority will meet that shortfall, and if so to what extent, is not at all clear at present.

30. In serious brain damage cases where awards are made for privately funded future care, such costs and case management costs are regularly made the subject of periodic

payment orders ("PPOs"). Other heads of damage are often the subject of lump sum awards. The lump sum enables a claimant to have sufficient financial flexibility to fund other needs.

31. In *Cobham v Eeles* [2010] 1 WLR 409, the Court of Appeal set out the approach that courts should adopt when considering making interim payments in "heavy" personal injuries actions where damages are likely to include one or more periodical payments orders. At paras 42 - 45 Smith LJ said :

> "**42** Before leaving this case, we wish to summarise the approach which a judge should take when considering whether to make an interim payment in a case where the trial judge may wish to make a PPO. We also wish to clarify the roles of the judge and the Court of Protection…….
>
> "**43** The judge's first task is to assess the likely amount of the final judgment, leaving out of account the heads of future loss which the trial judge might wish to deal with by PPO. Strictly speaking, the assessment should comprise only special damages to date and damages for pain, suffering and loss of amenity, with interest on both. However, we consider that the practice of awarding accommodation costs (including future running costs) as a lump sum is sufficiently well established that it will usually be appropriate to include accommodation costs in the expected capital award. The assessment should be carried out on a conservative basis. Save in the circumstances discussed below, the interim payment will be a reasonable proportion of that assessment. A reasonable proportion may well be a high proportion, provided that the assessment has been conservative. The objective is not to keep the claimant out of his money but to avoid any risk of overpayment.
>
> **44** For this part of the process, the judge need have no regard as to what the claimant intends to do with the money. If he is of full age and capacity, he may spend it as he will; if not, expenditure will be controlled by the Court of Protection.
>
> **45** We turn to the circumstances in which the judge will be entitled to include in his assessment of the likely amount of the final judgment additional elements of future loss. That can be done when the judge can confidently predict that the trial judge will wish to award a larger capital sum than that covered by general and special damages, interest and accommodation costs alone. We endorse the approach of Stanley Burnton J in the *Braithwaite* case [2008] LS Law Medical 261. Before taking such a course, the judge must be satisfied by evidence that there is a real need for the interim payment requested. For example, where the request is for money to buy a house, he must be satisfied that there is a real need for accommodation now (as opposed to after the trial) and that the amount of money requested is reasonable. He does not need to decide whether the particular house proposed is suitable; that is a matter for the Court of Protection. But the judge must not make an interim payment order without first deciding whether expenditure of approximately the amount he proposes to award is reasonably necessary. If the judge is satisfied of that, to a high degree of confidence, then he will be justified in predicting that the trial judge would take that course and he will be justified in assessing the likely amount of the final award at such a level as will permit the making of the necessary interim award.

This two stage approach is often described as "Eeles 1" (paras 43-4) and "Eeles 2" (para 45).

32. In *Braithwaite v Homerton University Hospitals Foundation Trust* [2008] EWHC 353 QB Stanley Burnton J. awarded an interim payment of £850,000 for accommodation, although that exceeded sums that might be awarded for PSLA, Interest and Past Loss.

He did so because he considered he could confidently predict that the trial judge would make a capital payment significantly in excess of £850,000 and because unless he did so, the claimant's needs could not confidently be met.

33. *Eeles 2* enables a claimant's immediate needs to be met there and then. To enable this may mean, as Stanley Burnton J observed in *Braithwaite*, in a claimant having to use damages awarded under other heads of damage to fund those needs. But care must be taken to ensure that too much is not taken from other heads of damage to fund immediate needs lest those other needs cannot be met.

34. It is important that the needs of an injured claimant are met timeously. But it is also important to ensure, particularly where applications are made for substantial interim payments, that such payments do not tie the hands of the trial judge. It is important to exercise caution where a claimant's future is uncertain.

The level playing field argument

35. Mr Pershad submits that if the proposed trial of care in the community goes ahead then this will cause unfair prejudice to the Defendant because, he says, the strong chance is that by the time the case gets to trial, which he submits will likely be more than 18 months from now, a community care regime will be so established that a judge will find it impossible to change the then status quo.

36. Mr Melton submits the Defendant has slanted the playing field by refusing provide funding for even a trial of care in the community as a result of which, to date, no attempt at community living has been possible.

37. Mr Melton has relied heavily on observations made Balcombe LJ in *Campbell* (see above) and by Smith LJ in *Dolman v Rowe* [2005] EWCA Civ 715.

38. In *Campbell* Blofeld J had awarded an interim payment of £100,000 to set up a care regime for a seriously injured claimant at his parents' home instead of a residential home where he was cared for at public expense. In upholding the award Balcombe LJ observed :

> " There is also, it seems to me, substance in Mr Mackay's submissions that the judge who hears this argument is going to be helped by knowing how the plaintiff does fare at home, and there is a perfectly valid ground for asking how the judge can make a decision without at least some indication as to that. The playing field is not all slanted one way."

39. In *Dolman* Smith LJ at para 18 said :

> "On the issue of prejudice, Mr Norris has submitted that by awarding so large a sum the judge has prejudged the main issue at trial, namely whether the claimant's proposals for independent living are reasonable. The Defendant is saying they are not. It is said that it would be impossible to persuade the judge that they are not reasonable once they have been put in place. I cannot accept that submission. A trial of living at home should remove the speculation which might otherwise make this a difficult issue for the trial judge to decide. If the trial of living at home is a success, then I can see that the Defendant's position will be difficult because the claimant's wish will be seen to have been reasonable. If the trial is not a success and has to be abandoned, for the reasons which the defendant anticipates, then the argument will be over and the defendant will have made his point. The claimant will then have to return to residential care at public expense and the claim will be quantified accordingly. True there will be some costs thrown away ; not all the expenditure will be recouped, but that factor cannot make this an unreasonable course to follow."

40. I bear in mind the criticisms Mr Pershad has made of the decision that such a move

would be in the Claimant's best interests. I do not regard myself as in any way bound by that decision. At the same time I do not regard it as irrelevant. The fact that those experienced in caring for others and/or arranging such care unanimously concluded that it would be in the Claimant's best interests for him to be cared for in the community suggests that a considerable body of experienced opinion did not reject community care as a potential realistic option for the Claimant. But the decision offers limited support for the Claimant's case since the test the court has to apply is different.

41. Mr Pershad has also relied on the decisions of Teare J in *Jessica Brown v Emery* [2010] EWHC 388 (QB) and Sharpe J in *Mabiriizi v HBC Insurance Limited* [2011] EWHC 1280 (QB), both refusing interim payments to enable the purchase of accommodation for seriously injured claimants.

42. In *Jessica Brown* the claimant, who was injured in October 2007, had been diagnosed as being in a persistent vegetative state although there was evidence that her condition had slightly improved to that of a" low arousal state". Since April 2009 she had been cared for at public expense in the Brain Rehabilitation Unit ("BIRU") at Frenchay Hospital, Bristol. Her parents sought an interim payment of £800,000 to purchase accommodation so that she could visit them and ultimately reside with them on discharge from the BIRU. Teare J summarised his view as follows:

> "15 However, there is and I am told will be at trial a dispute as to whether it is in Jessica's best interests for her to remain in publicly funded accommodation or for her to be cared for at home by her parents, with appropriate support, in suitable accommodation purchased and converted for that purpose. It follows that were I to accede to the present application and the funds were used for the purpose for which they have been requested I would effectively determine that question without the benefit of such evidence as will be adduced by both parties on that question at trial. Although the question would still strictly be one for the trial judge to determine there would be an "unlevel playing field", to use the metaphor adopted in Campbell v Mylchreest [1999] PIQR 17 . That case indicates that an "unlevel playing field" is not an absolute bar to making the requested order but only a factor which I must take into account. It can only be ignored if the Defendant's argument is "plainly wrong".
> 16. I am unable to say the Defendant's argument is plainly wrong..."

43. In *Mabiriizi* the 21 year old claimant was described as being in a condition of "low awareness" or "minimally conscious" following serious head injuries in a road traffic accident. He had been discharged into the care of Mrs Magambo in a 3 storey rented house which he shared with her and his two younger brothers. He required 24 hour care which was funded by his local PCT. The Claimant initially sought an interim payment of £1.78 million but reduced this to £670,000 to be added to a voluntary payment of £30,000 already made.

44. Sharpe J accepted that the trial judge was likely to find that the claimant's present home was unsuitable for his needs. But she concluded as follows :

> "30. I am unable to say the Defendant's argument that the best interests of the Claimant reasonably require him to be cared for in residential accommodation rather than at home, is plainly wrong, and certainly not with the requisite degree of confidence. The desire of Mrs Magambo that the Claimant should continue living with her at home, rather than in a residential placement, even though he is now an adult is completely understandable. But it seems to me the trial judge will be in the best position to form a view as to what the Claimant's best interests reasonably require, and possibly after the further testing to which Professor McLellan refers. It may be then the Claimant's condition will be found

> to have improved sufficiently to undermine the Defendant's argument that (in summary) where he is makes no difference to him. But I cannot be sure of that at this stage. The "unlevel playing field" in my view is therefore a factor to be weighed in the balance against taking accommodation costs into account at this stage.
> 31. Bearing all these matters in mind, I do not think it appropriate to include accommodation costs in the capital sum for the purposes of the assessment of the likely amount of the final judgment."

45. Both Teare J and Sharpe J had to decide whether accommodation costs should be taken into account in deciding the appropriate sum for any interim payment. The claimant's medical condition in each case was similar to that of the Claimant save that it appears to me that the present Claimant has a higher level of consciousness and understanding than either Ms Brown or Mr Mabiriizi. The submissions made on behalf of each party are similar to those made before me. But there is a significant difference namely that in both *Brown* and *Mabiriizi* the Claimant was seeking funds to purchase accommodation for all time rather than for renting and care for a trial period. I accept of course that part of the trial will necessarily involve employing care likely to cost more than the cost of care at "Little Oyster". *Peters* offers the Claimant the security for 75% of the reasonable cost of his future care from the Defendant, should he so wish but it is not clear to what extent, if any, the PCT will fund all of or the balance of the cost of such care.

46. Decisions in cases like the present are fact sensitive. I consider the observations of Balcombe LJ in *Campbell* and Smith LJ in *Dolman* are very much in point in the present case, save for two points mentioned in passing by Smith LJ in *Dolman*. First, since the decision in *Peters* it does not follow that if the present Claimant returned to residential care it would necessarily be at public expense. Second, it may well be that the reasonable costs of the trial of community care will be recoverable in the action. The latter will be for the trial judge to decide.

47. In the present case insofar as there is a risk that the alleged level playing field will be altered by making an interim payment, I am satisfied that it would not be plainly wrong to make an award of a reasonable proportion of the final award. Those responsible for the Claimant's care and welfare have a statutory obligation to keep his best interests at heart. Should the proposed trial fail residential care will be resumed. I conclude therefore that allowing monies to be spent on such a trial will not alter the level playing field to such an extent that the Defendant will be unfairly prejudiced. By contrast, not to allow such a trial might well unfairly prejudice the Claimant.

<u>The amount of the payment</u>

48. CPR 25.7 limits interim payments to "a reasonable proportion of the likely amount of the final judgment". The Claimant has already received £175,000 of which I am told some £85,000 remains. For the Claimant it is said that £300,000 is required to fund the accommodation and set up a care regime. In fact the year's rent of the bungalow, the cost of the adaptations and case management costs of £27,852 for the period April 2011 to end February 2012 have already been paid for out of the £175,000 The Claimant has obtained a report from the care expert, Mrs Sargent, who has advised that the Claimant requires 24 hour care with 2 carers on duty during the day and 2 sleep-in carers at night and a case manager which she costs at a total of £265,973.58 pa.

49. I have not been provided with any care report obtained on behalf of the Defendant but

note that Professor Collin in her report dated 31st March 2012 commented briefly on Mrs Sargent's report suggesting that whilst the Claimant needs two carers for all his transfers once he is up in his wheelchair in his current location he can be in others' company without a carer being required. No detailed challenge to Mrs Sargent's anticipated costs has been advanced before me.

50. In *Eeles* the court adopted two distinct approaches to assessment of the appropriate amount of an interim payment. *Eeles 1* took into account Pain Suffering and Loss of Amenity ("PSLA"), Special Damage, Interest on both and perhaps Accommodation and the Court stated the assessment should be conservative. *Eeles 2* permitted consideration of other heads of damage where there was a real need for the interim payment.

51. CPR 25 provides that the award must not be more than a reasonable proportion of "the likely amount of the final judgment". Both counsel have put before me their assessments of the relevant heads of damage to be considered ie PSLA, Interest and Special Damage. I set them out in the table below. Mr Melton QC has put before me a Provisional Schedule apparently signed by Mr Crabtree but bearing no statement of truth, prepared for the purposes of this application. In it Special Damage has been calculated to 19th April 2012, the date of this application. Past gratuitous care has been valued and future care costed by reference to Mrs Sargent's report. Loss of income has been claimed on the basis of a witness statement from Mr Herron. Attached to the Schedule is a spreadsheet of monies expended since 26th April 2011. Further, in his witness statement dated 30th March 2012 Mr Crabtree has set out a calculation of special damage down to October 2013 when final judgment is anticipated. I have rounded the Claimant's figures to the nearest pound.

52. Mr Pershad QC relied on figures in his skeleton argument based on final judgment being given in the Michaelmas Term 2012.

53. I am firmly of the view that a trial of community care is appropriate and reasonable. Such care would necessarily take perhaps 3 months or so to establish which would take us to July/August 2012. By December 2012 when the first year of the lease expires the Claimant's advisers should have a good idea of whether or not community care is in the Claimant's best interests and therefore be in a position to decide the way forward and advance the action. On this basis it seems to me that October 2013 is not an unrealistic assessment of likely trial date. Without the need for such a trial I would have considered Mr Pershad's estimate of the Michaelmas term 2012 to be entirely reasonable. But that would have necessitated replacing Dr Fleminger as the Claimant's proposed neuropsychiatric expert.

54. The table contains a column containing my assessment of the appropriate figures. In this column I have calculated Special Damage to 1st October 2013. I have borne in mind that for the *Eeles 1* assessment the figures should be conservative. My reasoning for my figures is as follows. I deal with Interest on Special Damage separately.

<u>PSLA and Interest thereon</u>

The JSB Guidelines offer a bracket of £185,000 - £265,000. The Claimant clearly falls within this bracket but his injuries do not place him at the top of the bracket as Mr Melton contends.

<u>Loss of Earnings</u>

The Schedule assumes the Claimant would have worked full time from July 2006

onwards and achieved promotion to chargehand in January 2007 with a net income of £30,011 increasing to £30,628.00 in 2011. Mr Pershad suggests a net £15,000 pa x 50% taking into account the Claimant's irregular working history. I propose to assume £15,000 pa net which produces approximately £108,750.

Past gratuitous care

Based on Mrs Sargent's figures the Schedule claims £32,388 but this figure is not discounted for the gratuitous element. Mr Pershad also suggests the hours and rates may be excessive. For present purposes I accept Mr Pershad's figure.

Past employed care/case management

The Schedule claims care costs of £4,319.00 and case management costs of £27,853, a total of £32,172.00. Mr Crabtree, calculating this loss to October 2013 produces £450,038. This figure, based on Mrs Sargent's assessed future costs depends very much on whether the trial succeeds. I consider caution necessary under this head. I allow £30,000 for costs to date and £175,000 for costs for the immediate future.

Equipment /vehicle / Miscellaneous / Travel

The Schedule claims £11,361.00 for equipment already purchased and detailed on the spreadsheet, £22,821.00 for family travel and expenses and £8,354.00 for rental cost for vehicles, detailed on the spreadsheet. Mr Crabtree's figure of £121,335 assumes that various items will have been purchased by October 2013. I allow £70,000.

Therapies

I allow £5,500.00.

IT

The claim is supported be expenditure recorded in the spreadsheet.

Household accommodation

2 years' rent is claimed with no credit being given for costs the Claimant would likely have occurred. On the other hand there will likely be increased costs because of the trial. I allow £15,000

Past Deputyship

Given that such costs are often taxed down I allow the Defendant's figure.

Interest on Special Damage

This is likely to be small because so much of the Special Damage is recently incurred expenditure or loss and the rate is now .5% pa.

Head of Loss	Claimant's figures per Mr Crabtree's statement	Defendant's figure	My assessment
PSLA	£265,000	£180,000	£215,000
Interest thereon (5.84%)	£ 39,089	£ 14,000	£ 17,630
Loss of Earnings	£217,445	£50,000	£108,750
Interest thereon	£ 20,928	£0	No separate award

Gratuitous care	£32,387.52	£20,000	£20,000
Professional care /case management	£450,038	£100,000	£205,000
Interest thereon	£ 45,315	£0	No separate award
Equipment / vehicle /misc/travel	£121,335	£50,000	£70,000
Interest thereon	£ 11,678	£0	No separate award
Therapies	£6,593.78	£5,000	£5,500
Interest thereon	£ 635.00	£0	No separate award
IT	£ 739.00	£0	£739
Interest thereon	£ 71.00	£0	No separate award
Past household / accommodation	£ 51,583	£10,000	£15,000
Interest thereon	£ 4,965	£0	No separate award
Past Deputyship	£ 22,137	£20,000	£20,000
Interest thereon	£ 2,131	£0	No separate award
Interest	See above		£5,000
TOTAL PSLA +PAST LOSS	£1,292,070	£449,000	£677,619
X 75%	£ 969,053	£336,750	£508,214
Less £175,000	£ 794,053	£174,998	£333,214

55. An award of £300,000 together with £175,000 already paid would far exceed a reasonable proportion of my assessment of £508,214, a reasonable proportion of which in my judgment would be no more than £150,000.

56. *Eeles 2* permits me, if appropriate, to consider additional elements of future loss beyond those taken into account in under Eeles 1 where I can confidently predict that the trial judge would wish to award a larger capital sum higher than my estimated figure. But here I do not have a free hand. I have to be satisfied, in the words of Smith LJ that there is a real need now (as opposed to after the trial), that the amount of money requested is reasonable, and be satisfied to a high degree of confidence that expenditure of approximately the amount I propose to award is reasonably necessary. Mr Crabtree's Provisional Schedule values the claim at a total of £10,148,695 and £7,955,621.18 after 25% contributory negligence.

57. I am satisfied that it is reasonable that a trial of community care should take place. On the evidence I see no point in deferring that trial. Indeed the sooner it takes place the sooner the trial judge will be able to decide what form of future care meets the Claimant's reasonable needs.

58. I am also not satisfied that the £300,000 requested is a sum reasonably required now for such a trial. I am concerned that I should not needlessly award a sum which should encourage that trial to run for longer than is necessary. As stated above I consider that by December 2012 the Claimant's advisers should be in a position to know whether or not community care is in the Claimant's best interests.

59. I propose to order an interim payment of £150,000. This together with the balance of about £85,000 should be more than adequate to fund the Claimant's needs to say December 2012 by which time the way forward ought to be apparent. If that way forward is clearly care in the community funded privately either wholly or in part, then, if necessary, consideration can be given to application for a further interim payment.

60. I would like to stress that I have reached my decision on the facts of this case, in particular on the improvements the Claimant has recently demonstrated, and that what is proposed is not the purchase of accommodation but rental for a trial care regime. Claimant's solicitors should not regard my decision as in any way encouraging trial runs of community care at insurers' expense. Each case will depend on its own facts.

JOHN LEIGHTON WILLIAMS QC

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

JOHN LEIGHTON WILLIAMS QC

Note for counsel (not part of the judgment)

If you can agree a draft order then there is no need to attend. If you email me the order I will initial it. Any applications will need to be made at the hand down.
I am willing to give further Directions if that will help but you may prefer to return to the Master. If you can agree Directions and email them to me I will happily consider them and, once again, you need not attend.