IN THE HIGH COURT OF JUSTICE Case no. PT-2023-BRS-000077

BUSINESS AND PROPERTY COURTS IN BRISTOL

PROPERTY TRUSTS & PROBATE LIST (Ch D)

Neutral citation number: [2026] EWHC 2231 (Ch)

Bristol Civil Justice Centre
2 Redcliffe Street
Bristol BS1 6GR
Date: 25 August 2026

Before District Judge Wales

Between

BERNADETTE ROGERS

Claimant

-and-

ANDREW WILLS

Defendant

Ben Haseldine (instructed by Kleyman & Co Solicitors Limited) for the Claimant
Oliver Ingham (instructed by Lawcomm Solicitors) for the Defendant

Hearing dates: 2 & 3 June 2026

This judgment was handed down on 25 August 2026

District Judge Wales:

INTRODUCTION

1. This is my judgment following the quantum only trial on 2 & 3 June 2026 at Bristol Civil Justice Centre. The issue of liability had previously been determined by HHJ Matthews following a trial in February 2025, with judgment handed down on 6 June 2025. The neutral citation for the liability judgment is [2025] EWHC 1367 (Ch).

2. In these proceedings the Claimant brings a claim to recover £135,000 in both contract and unjust enrichment against her brother, who is the executor of the estate of their late mother Ursula Wills. Without any disrespect, I will refer to the deceased as Sheila, because that is how she was known within the family and how she was referred to in HHJ Matthews' judgment.

3. In short, the Claimant claims that she entered into an informal contract with Sheila for her care in her later years, or is otherwise entitled to restitution for the value of that care, and seeks judgment for the said sum, interest and costs.

4. The issues of liability were determined in favour of the Claimant by HHJ Matthews in the liability trial. The learned judge determined that the Claimant had indeed entered into an informal contract with Sheila for payment of a reasonable sum for her care, and in any event, the Claimant was entitled to a restitutionary remedy in respect of the value of that care. In the course of the liability judgment the learned judge made a number of findings of fact concerning the chronology of events and the central issues in dispute which are binding on the parties, and therefore provide the starting point of the dispute over quantum.

BACKGROUND

5. For the purposes of this judgment, I adopt HHJ Matthews' lengthy exposition of the background in his judgment, and I need not repeat it. It is nevertheless helpful to provide a short summary of the background with particular emphasis on matters which are relevant to the determination of the quantum of the claim:

    (1) Sheila was born on 26 August 1927 in Birkenhead. For many years, Sheila lived with her husband John Wills at 40 Beechland Park, Southrepps, a small village not far from Cromer on the East Anglian coast. John died in 2012. They had 9 children. By the time of Sheila's death, her surviving children were the Claimant, the Defendant, Richard Wills, Maryanne Dickinson, Shaun Wills and Jane Wills;

    (2) As found by HHJ Matthews, the Claimant was the principal carer of Sheila from September 2017 until Sheila's death on 19 April 2020. The total period amounts to 950 days, of which the Claimant claims that she was the principal carer for 900 days. Of the remaining 50 days, the Claimant's case is that care was provided by other family members, notably Maryanne Dickinson, and there was a period of 10 days of respite care at a residential care home in Bristol. There is a dispute between the parties concerning how many days other family members, particularly Maryanne Dickinson, were involved in Sheila's care;

(3) During that period, Sheila's home was with the Claimant and her husband, Dr Rogers at 20 Windsor Road, Bristol. Dr Rogers is a retired GP. Sheila was 90 years old in August 2017, and was 92 years old at her death. By all accounts she was frail and her health was failing. When she was registered with the local GP practice in Bristol in September 2017 it was recorded that she suffered from angina, high blood pressure, type II diabetes, deafness and had difficulty walking. It is also clear from the evidence that she had a history of being forgetful with episodes of confusion.

(4) Over the course of her time in Bristol she was diagnosed with vascular dementia, suffered a recurring prolapsed rectum, was diagnosed with cataracts and glaucoma, developed skin lesions and skin cancer (some of which were excised), chronic kidney disease, varicose veins, diverticulosis and diarrhoea, and severe frailty, together with other minor ailments such as chest infections, urinary tract infections, and accidental lacerations. All of this information comes from the GP records, as confirmed by findings in HHJ Matthews' judgment, and is beyond dispute;

(5) Sheila suffered a fall at Windsor Road on 2 April 2020. The medical records show that she suffered a head injury, fractured her ribs and her hip, suffered a pneumothorax and was cared for in A&E overnight. She was discharged home, but became very poorly. She was in pain, and vomiting. Covid was suspected, but pneumonia was more likely. She did not improve, and on 6 April 2020 it was decided that only palliative care would be provided. This was the early weeks of the Covid pandemic, with all the difficulties that presented in obtaining medical services at home. The Claimant and her husband worked in shifts caring for Sheila, with the Claimant sleeping on the floor of her mother's room. Sheila further deteriorated and died at Windsor Road on 19 April 2020. There was a coroner's inquest, which recorded the cause of death as 'accident', and the medical cause of death as: 1a bronchopneumonia; b multiple rib fractures; c fall; and II vascular dementia/frailty of old age.

6. In general terms, the Claimant claims payment at the rate of £150 per day for 900 days in the sum of £135,000. The Claimant claims that the cost of third party commercial care over the course of those 900 days, whether through a live-in carer, shifts of visiting carers, or in a nursing home, would be far in excess of that sum, and that the sum sought represents a discount which more than adequately accommodates for the difference between professional commercial care (with all that entails in terms of regulation, accountability and record-keeping), and the Claimant's more informal regime (which notably did not include time sheets, formal risk assessments, or other record keeping).

7. In general terms, the Defendant disputes the amount of care provided to Sheila by the Claimant, and proposes payment on the basis of National Joint Council for Local Government Services rates of pay, ranging from 2 hours per day in 2017 at £9.66 per hour to up to 3 hours per day in 2020 at £11.01 per hour, less a discount of 20% in respect of

income tax and National Insurance, in aggregate £17,195.88. A significant plank of the Defendant's case involves policing the burden of proof (which lies wholly on the Claimant), and the absence of records of the amount and quality of care provided to Sheila.

THE LAW

8. The quantum issue was pursued solely on the basis of the contract as found by HHJ Matthews. I will not therefore deal with the alternate restitutionary basis of the claim.

9. Mr Ingham for the Defendant provided the court with a summary of the established legal position in relation to awards for damages for care provided by family members in personal injury claims, including the leading authorities of *Housecroft v Burnett* [1986] 1 All ER 332 and *Evans v Pontypridd Roofing Limited* [2001] EWCA Civ 1657. Very briefly, those cases establish that where gratuitous care is provided by a family member the court is to assess a 'proper and reasonable figure', the ceiling for which is the commercial rate for such services. That commercial rate would typically be discounted to reflect the nature of the care and its relevance to the injury in question, plus a further discount of around 20% to reflect the non-incidence of income tax and national insurance. It is well established that compensation for gratuitous care is not an emolument from employment, it is not contractually based, and consequently HMRC does not usually regard it as taxable in the hands of the recipient (see for instance *Employment Status Manual – ESM 4016* and the comments of Senior Judge Lush in *The Public Guardian v CC* [2015] EWCOP 29 [29]). Another approach in personal injury cases would be to compensate the care giver in respect of their loss of income (again net of income tax and national insurance)

10. The jurisprudence establishes that there is no single formulation for the valuation of gratuitous care, and it essentially remains a 'jury issue' for the Judge to resolve. Each case must be considered on its own facts. Per May LJ in *Evans v Pontypridd Roofing Ltd* at para. 37:

    "In my judgment, there is no scientific basis for a strictly mathematical answer to this question. Nor is the exercise upon which the court is engaged amenable to such an answer. The assessment has to be a broad one, and what in the end is required is a single broad assessment to achieve a fair result in the particular case. I appreciate that a conventional discount would be convenient and might remove one variable from practical settlement negotiations. But I do not consider that one possible element of a single broad assessment should be required to be a conventional figure. On the contrary, it seems to me that first instance judges should have a latitude to achieve a fair result. For instance, if the gratuitous carer provides specialist care services, that might be reflected in the

commercial rates rather than a discount to scale them down…"

11. Whilst this discussion in the authorities is informative and helpful, it is not in my judgment directly applicable to the Claimant's claim. This is not a case of gratuitous care. This is a case in which HHJ Matthews has determined that there was a contract for services. The claim is not a claim for damages by Sheila against a tortfeasor, but a contractual claim against her estate by the provider of the services. The contractual claim is not limited by any tortious issues of causation. The Claimant's claim is not a claim for damages, but a claim for recovery of a debt, and this is clear from the wording of the prayer for relief in the Particulars of Claim. As the sums recovered by the Claimant are not gratuitous and are payable under a contract, they do not fall within *ESM 4016*. It appears likely that the Claimant will be liable to pay tax on them. Adopting the usual principles, the sums claimed are therefore gross of tax. The exact details of how those sums fall to be accounted to HMRC, and the tax payable (if any), are not for this court.

12. For those reasons there is in my judgment no basis to discount the assessment of damages on account of non-incidence of income tax and national insurance. There nevertheless remains considerable scope to consider how to best formulate a reasonable fee in the circumstances of this case, and what discounts might be appropriately applied, if any, by comparison to commercial care at market rates.

13. Mr Haseldine referred to a number of authorities to illustrate how the court should approach the assessment of a contractual obligation to pay a reasonable sum. The starting point is to consider the objective intention of the parties. For example, *Chitty on Contracts* at 33-077:

    "In a contract for work to be done, if no scale of remuneration is fixed, the law may imply a term to pay a reasonable sum (quantum meruit) … The focus is on determining the intention of the parties objectively ascertained… When determining what is reasonable remuneration for services provided it is appropriate to have regard to the actual negotiations or discussions between the parties…"

14. Mr Haseldine also correctly laboured the point that where there is a contract, it is relevant to have regard to the benefit to the defendant (in this case Sheila), but the focus is not on the benefit to the defendant in the same way in which it is in a restitution claim, but on the objectively ascertained intentions of the parties (per Lord Clarke in *Benedetti v Sawiris* [2014] AC 938 at [9]).

15. Mr Haseldine referred to some Commonwealth authorities as persuasive of commercial rates being the starting point where there is a contract, even between family members. Per the Supreme Court of Canada in *Deglman v Guaranty Trust Co of Canada* [1954] SCR 725 at 728:

"There remains the question of recovery for services rendered on the basis of a quantum meruit. On the findings of both courts below the services were not given gratuitously but on the footing of a contractual relation: they were to be paid for. The statute in such a case does not touch the principle of restitution against what would otherwise be an unjust enrichment of the defendant at the expense of the plaintiff…. The matter is elaborated exhaustively in the Restatement of the Law of Contract issued by the American Law Institute and Professor Williston's monumental work on Contracts … On the principles there laid down the respondent is entitled to recover for his services and outlays what the deceased would have had to pay for them on a purely business basis to any other person in the position of the respondent …"

16. Similar sentiments were expressed by Mr Andrew Sutcliffe KC sitting as a Judge of the High Court in *Mate v Mate* [2023] EWHC 238 (Ch) in relation to a restitution claim where the claimant had provided services similar to that of a land promoter to his siblings and the learned Judge concluded that:

"…it is appropriate for [the claimant] to be paid for her services on a quantum meruit basis in the same way that a land promoter's fee would be calculated, in other words on a commission basis by reference to an objective valuation of the service she …in fact performed. That is the price which a reasonable person in [her siblings] position would have to pay for those services …"

17. Consequently, in my judgment and depending on the facts of any given case, in a contractual claim the starting point for assessing a reasonable charge is likely to be a comparison of the probable cost of obtaining the same or a similar service in the market place, without discount for income tax and national insurance. Nevertheless, on the facts of this case, the Claimant does not claim to have provided a fully professional service; providing more homely care, unregulated, without oversight or supervision, without record keeping, or other trappings of a commercial service.

THE STARTING POINT

18. Before considering the evidence, the starting point must be the findings of HHJ Matthews in his judgment concerning liability. These findings are binding on the parties and this court. Consequently, I adopt the findings in that judgment. Of particular importance are the following findings:

    (1) In respect of the claim in contract, at para. 238 '*… in October 2017 the claimant and her mother entered into a contract for her to be cared for at the claimant's home for a reasonable price*'. This conclusion was repeated at para. 248: '*the*

claimant has established that Sheila agreed to pay her a reasonable price for the care that the claimant provided'.

(2) Underpinning the above global conclusion, it was found that:

(a) '*Sheila had the capacity*' to enter into a contract (para. 239).

(b) '*Sheila plainly intended to create a legal relationship with the claimant*' (para. 240).

(c) '*…all the elements of a contract for Sheila to be cared for were present. The claimant and Sheila were in agreement on what was to be done, and, although no specific price was fixed, it was plainly a contract for services at a reasonable price'* (para. 241).

(3) '*Before they left, Sheila insisted to the claimant that her return to Bristol would be on terms that she "wanted to pay her way", and the claimant would be "paid properly" for looking after her. The claimant agreed that she would be. There was no discussion as to the amount that would be paid. That was left over for the future. On the evidence, I am satisfied that that was the basis upon which they returned to Bristol*' (para. 38).

(4) '*Sheila was a lady who knew she had sufficient resources, who did not want charity, and wanted to be looked after properly, preferably in her own home, but, failing that, living with one of her children*' (para. 240).

(5) '*She insisted, not only to the claimant but also to the claimant's husband and children, that the claimant had to be paid "properly" for looking after her, notwithstanding that the claimant was her daughter*' (para. 240).

(6) '*If a third party had undertaken to look after her in its care home, or carers had been employed to come into her own home and look after her there, there would have been little or no question of a lack on intention to create legal relations. I see*

no sufficient reason not to take the same view if the arrangement was with the claimant rather than a third party' (para. 240).

(7) '*This was not a short-term family or social treat by one family member to another. It was an important long-term living arrangement, involving hard work and unsocial hours, and impacting considerably on the contractor's existing lifestyle, including preventing her from earning money in other ways*' (para. 240).

EVIDENCE AT THE QUANTUM HEARING

19. I heard sworn evidence from the Claimant, her husband Dr Rogers, the Defendant and Maryanne Dickinson. I was referred to the hearing bundle of 2,038 pages, and a supplementary bundle of 14 pages. A feature of the documentary evidence was the extensive record of messaging between the siblings over the period of Sheila's care.

20. It was plain to me from the witnesses' written and oral evidence that family relations had become very poor, as lamented by HHJ Matthews in his liability judgment. Notwithstanding HHJ Matthews' exhortations to find a mediated settlement to this quantum issue, the parties were unable to do so. I have borne in mind that as a result of complaints by some of the Claimant's siblings regarding the Claimant paying herself sums from the estate for Sheila's care, the Claimant was prosecuted and tried for theft at Bristol Crown Court in October 2022. The Claimant was acquitted by the jury. As a result of the liability judgment, a costs order has been made against the Defendant to pay the costs of the liability trial, including a payment on account of £75,685.50. I understand from the evidence that the Claimant issued a statutory demand against the Defendant in relation to that figure, but which statutory demand was set aside on the application of the Defendant.

21. Plainly none of the witnesses were disinterested in the outcome, and all (including Dr Rogers) had a direct or indirect financial interest in the outcome of the case. It was also evident to me that all the witnesses, each for their own reasons, regarded the issue as a matter of principle.

22. Subject to those general reservations, I found the Claimant and Dr Rogers to be helpful and reasonable witnesses. They had the lived experience of caring for Sheila at their home over a significant period, and their evidence on the subject was credible and sensible, and therefore demanded respect. When presented with contemporaneous documents which presented some difficulty for their case, they provided their explanations as best they could, and contrary to Mr Ingham's submissions I did not find their explanations implausible or self-serving. I will return to some of these points in detail later in my

judgment. Given the massive amount of contemporaneous messaging between the parties which was contained within the bundles, it was in my judgment significant that only a few messages could be considered unhelpful or required explanation, and over the course of the trial it became apparent that the Claimant's case adhered closely with the documentary record. Cross examination of Maryanne Dickinson demonstrated that Dr Rogers' work in assembling both his schedule of days in which Sheila was cared for by the Claimant, and then his work compiling a counter schedule to Maryanne Dickinson's schedule of other family members' days of care, was highly accurate.

23. Even allowing for the pressures of the trial, I did not find either the Defendant or Maryanne Dickinson to be either composed or reasonably objective in giving their evidence.

24. The Defendant's anger that the Claimant should seek payment for caring for their mother was palpable at several points during his evidence, including an emotional outburst in which he accused the Claimant of 'money-grabbing'. It was clear to me that he regarded the Claimant's claim to payment as morally repugnant, and this view informed much of his evidence. In my judgment the Defendant had very little first-hand evidence to give the court concerning the extent and quality of the Claimant's care of Sheila, and he admitted in cross examination that his knowledge was limited to what he was told at the time. His evidence and his position in relation to the claim was therefore significantly reliant upon what he chose to draw from the documentary record, and how he interpreted that information.

25. In that regard, in my judgment the Defendant placed disproportionate weight upon the Claimant's suggestion of a couple of hours per day home care for Sheila in WhatsApp correspondence in April 2018, and rather closed his eyes to the wealth of additional evidence (medical records, messaging and witness statements). His suggestion that 3 or 3.5 hours per day care during April 2020 in the final weeks of Sheila's life, at a time when she was under a palliative care regime at the end of her life, and the evidence showed that the Claimant was sleeping in her mother's room and working shifts with Dr Rogers, was unrealistic. In his oral evidence the Defendant sought to diminish the onset of Sheila's vulnerability and forgetfulness, and was contradicted on several such points in cross examination by reference to the contemporaneous messaging between the siblings. So, for instance, in my judgment in his oral evidence he attempted to downplay Sheila's dementia by drawing on the documentary record to establish the date of diagnosis, and to confine the impact of dementia on Sheila's care to the period after diagnosis, whereas axiomatically Sheila must have been developing and suffering symptoms of dementia before her diagnosis, and furthermore the messaging between the family from the outset contains numerous examples and references to her lack of memory and confusion, well before any medical diagnosis.

26. Maryanne Dickinson's cross examination started with the admission that she did not approve of HHJ Matthews' liability judgment, but had not read it. She then denied Sheila needed 'care' preferring to draw some distinction by answering that she needed 'looking after', notwithstanding her own use of the word 'care' in relation to her mother in messaging as early as August 2017. Unlike the Defendant, Maryanne Dickinson had personally cared for Sheila during the relevant period, both at her own home and also at the Claimant's home in Bristol, and she had engaged in detailed messaging with the Claimant throughout. Unlike the Defendant, she could therefore speak from a limited amount of first-hand knowledge. However, her oral evidence proceeded with a number of attempts by her to minimise Sheila's symptoms, frailty, vulnerability and the care provided by the Claimant, each contradicted in turn by the contemporaneous messaging between the siblings, including herself. A notable example was her written evidence that Sheila could remember her grandchildren, even after vascular dementia was diagnosed in mid-2018, whereas the historic messaging shows that Sheila could not name many of her grandchildren in August 2017, including Hattie, Maryanne Dickinson's daughter. Another notable example was her oral evidence that Sheila had 'a few' health issues, which does not stand scrutiny against the medical record. Cross examination of her schedule of days that she claimed to have cared for Sheila demonstrated her schedule to be inaccurate, full of overestimates, and on occasion simply wrong. During her evidence, Maryanne Dickinson repeatedly referred to the fact that she was intensively caring for her terminally ill husband for no reward, and drew parallels to the Claimant's claim. It was clear to me that she was bitter about the Claimant's claim. It struck me that this was a difficult time for her, and it certainly was not an ideal time for her to be giving evidence in a family dispute such as this, and she has my sympathy in that regard. However, none of this helped me accept her evidence as reasonably objective.

27. For the reasons given, where the evidence of the Claimant and/or Dr Rogers conflict with that of the Defendant and/or Maryanne Dickinson, and in the absence of any documentary record, I prefer the evidence of the Claimant and/or Dr Rogers.

FINDINGS

28. As set out above, I adopt the detailed findings made by HHJ Matthews at paragraphs 27 to 126 of his judgment, covering the relevant events from before 2016 to Sheila's death in 2020. At this point, those findings should be read into this judgment.

The period of care

29. In relation to the period of care, I am satisfied on the evidence that the Claimant has demonstrated that she cared for Sheila for a total of 900 days from 13 September 2017 to Sheila's death in April 2020. Cross examination of Maryanne Dickinson very clearly

established that her schedule was inaccurate, and that Dr Rogers' counter-schedule was supported by reference to contemporaneous messaging between the siblings. For instance, by her schedule Maryanne Dickinson claims to have stayed with the Claimant in Bristol from 19 February 2018 to 20 February 2018 (thereby claiming 2 days of care), whereas the messaging shows that she was in Lincoln over that period. Another example is by her schedule she claims to have cared for Sheila for 4 days between 6 July and 9 July 2018. Cross examination established that although this was planned to allow the Claimant and Dr Rogers to attend a retreat, plans changed because Sheila then was to accompany them, but in the event Sheila's health prevented her from travelling and the Claimant stayed at home with Sheila, and the messaging shows that Maryanne Dickinson was in Lincoln on 8 July 2018.

30. After circulation of my draft judgment, Mr Ingham correctly pointed out that the date of formation of the contract as found by HHJ Matthews was on or around 2 November 2017, and therefore post-dated the commencement of the 900-day period calculated by Dr Rogers by 50 days. The period of care covered by the contract is therefore 850 days.

The quantity and nature of the care

31. The Claimant worked as an auxiliary nurse in the 1970s, and trained to be qualified as a nurse, but left training to raise her family. After raising her family of four children, the Claimant worked in administration in a medical centre. Her husband, Dr Rogers, is a retired GP. They each have a lifetime of experience caring for others, and in Dr Rogers, a source of practical medical expertise and experience. In my judgment between them they were capable of providing a level of care equal to or exceeding that of a professional trained carer.

32. By all accounts, Sheila's loneliness, her episode of confusion in September 2017 and her developing forgetfulness, precipitated a situation in which, by common accord of the siblings, she could no longer live alone. She had to live with one of them, and in the events which happened the task fell to the Claimant. The manner in which this developed is fully set out in HHJ Matthews' judgment. To state the obvious, this is what led to her living with the Claimant in Bristol in September 2017.

33. In my judgment, part of that was Sheila's increasing forgetfulness and periods of confusion. Sheila was not diagnosed with vascular dementia until August/September 2018, but she had been suffering from symptoms of dementia before then, and her forgetfulness and episodes of confusion are acknowledged in the siblings' messaging from 2017. I accept the Claimant's evidence that Sheila required continuous supervision and vigilance, and that the Claimant and her husband could not both leave the house, as one of them had to be in the house with Sheila at all times. I accept the Claimant's evidence that two relatively early attempts to leave Sheila alone in the house for a short

time left her distressed and confused, and that even working in the garden would lead to Sheila becoming agitated. I accept that Sheila often required re-assurance or attention at night.

34. An important part of Sheila's care was therefore merely being present and vigilant, a feature of her care which was referred to as 'overwatch' in the course of the hearing. In my judgment, this overwatch was present night and day from the outset. The evidence showed that the only time that the Claimant and her husband were both able to leave Sheila in the house was for the period of 1.5 hours on Tuesday evenings, when a volunteer attended the house to sit with Sheila for this very purpose. Also, occasionally and during the earlier part of the period of care, the Claimant's cleaner (who was known to Sheila) would provide cover for an hour or so. In her oral evidence, Maryanne Dickinson sought to suggest that longer periods of regular respite were provided, but reference to the contemporaneous messaging clearly establishes that the regular weekly session provided by a local charity was 1.5 hours only.

35. In addition to overwatch, the Claimant cooked and cleaned, and kept house for Sheila. The Claimant provided 3 meals a day, and did Sheila's laundry. Sheila required a stable routine, and this meant that the Claimant and her husband had to marshal their lives around Sheila's routine. I recognise that the Claimant would also have cooked, kept house, and done the laundry for herself and her husband during this period, but Sheila represented an additional burden and imposed a steady routine on her hosts for every day of the week. I accept that Sheila assisted with everyday tasks from time to time, but as these tasks required supervision and oversight by the Claimant and her husband, they were less assistance for the Claimant and more therapy for Sheila.

36. Sheila's presence in the Claimant's home resulted in significant changes to the Claimant's and her husband's routine. First, it meant that the Claimant could no longer look after her grandchildren, which she had been doing for 2 days a week for payment. The evidence did not reveal the sums involved. This in turn meant that one of the Claimant's daughters had to give up work, and the other daughter took on the cost of professional childminding. The Claimant and her husband had to change their car, because the previous one was too small for Sheila. They made some minor adjustments to their home, including carpeting to guard against falls and sorting out sufficient heating in Sheila's room. In my judgment, the Claimant could not pursue the other activities that she might otherwise have enjoyed in her retirement.

37. Sheila was provided with the benefit of board and lodgings at the Claimant's home in Bristol, and with travel. There was an incremental but significant direct financial cost to caring for Sheila. The house, and in particularly Sheila's room, had to be heated more generously. Sheila used hot water and electricity, and had her share of the other utilities. Sheila had her share of groceries and other household items (the evidence was that she ate well when not incapacitated by her prolapse). The cost of driving Sheila to visit the

family in Lincoln and Norfolk, and to take her to family gatherings, and on a few short breaks, was not insignificant. The cost of driving Sheila around Bristol, to the GP, to the hospital, clinics, and activities, all added up.

38. In relation to face-to-face care, Sheila needed assistance with mobility, which became more pronounced over time, so that more help was required and each activity took ever longer. It is relevant that the Claimant obtained a blue badge for Sheila in June 2019 and arranged to have the council paint a disabled parking bay outside their house. The Claimant would walk with Sheila around a neighbouring park or to the nearby high street. The Claimant dealt with Sheila's dementia, which including anxiety, anger, and cognitive and behavioural dysregulation, which could become physical on occasion. The Claimant sought and arranged activities for Sheila, such as 'singing with the brain' and looking through old photo albums. Sheila was a devout catholic, and she was taken to celebrate mass every Sunday at a local church.

39. I accept the Claimant's evidence that she provided personal care to Sheila, including support with washing, toileting and continence. Sheila's increasingly impaired mobility made going to the toilet during the night difficult. Sheila was using continence pads before September 2017, and suffered recurrent rectal prolapses from 2018, and it is recorded in HHJ Matthews' judgment suffered faecal incontinence from December 2018.

40. When suffering from a rectal prolapse, Sheila could not sit or stand for any significant period, and was in constant discomfort and pain. GP correspondence refers to the Claimant being able to reduce the prolapse herself on occasion. However, on one occasion, the prolapse was out for 3 months. The treatment included morphine (in patches and orally), and a topical ointment, which, according to GP correspondence, the Claimant applied 4 to 5 times a day. The condition led to Sheila being unwilling to eat. The Claimant had to monitor Sheila's fluid and food intake.

41. On account of Sheila's dementia, the Claimant, with the assistance of Dr Rogers, managed Sheila's numerous medical conditions, including deafness, diabetes, angina, incontinence, cataracts, dementia, diverticulosis & diarrhoea, rectal prolapse, skin cancers, kidney disease, and glaucoma. The Claimant made and took Sheila to appointments, and managed the prescriptions and collected medication. The Claimant and Dr Rogers obtained and administered over the counter medications for the more minor ailments. It is clear from the documentation that the Claimant administered and supervised the taking of medication and administered necessary care, for instance in relation to the prolapse.

42. Against that background, the Claimant claims 900 days at £150 per day (equivalent to 24 hours at £6.25/hour), in total £135,000. The Defendant suggests the care should be valued on a sliding scale, starting at 2 hours per day and rising to 3 in 2020, at an hourly rate of

between £9.66 and £11.01.

43. In quantifying the care, the Defendant places significant reliance upon some of the contemporaneous documents:

    (1) The so-called 'notorious' message of April 2018, upon which the Defendant effectively builds his case. In this message the Claimant writes to her sister Jane Wills as follows:

    "…Could you have a very gentle chat with Mum while you are in Southrepps and see if you can get her to see that she has choices, but will need someone to come into the house every day for a couple of hours if she want to stay in her house, as it is loneliness especially, which made her have a funny turn in the first place. It might be worth every penny for a few months of 'Home Instead' just to get her confidence back. I am supposed to be meeting the manager at Mum's on Monday but will rearrange for when we are there next time…"

    It is submitted by the Defendant that this messaging indicates that in April 2018 the Claimant assessed that Sheila could return to live at Southrepps with only a couple/two hours of commercial care a day, and this should therefore provide a benchmark for the assessment of care. In cross examination the Claimant explained that she had referred to 'a couple of hours' in order to avoid scaring Sheila, and was hoping to engage Sheila in a discussion concerning a return to living at Southrepps, and it was neither a literal assessment of the amount of care reasonably required by Sheila nor a reflection of the amount of care actually provided by the Claimant.

    Having listened carefully to the Claimant's evidence, I accept her explanation in this regard. Weighing the totality of the evidence, it is hard to fathom how 3 meals a day, assistance with personal care, including (at that time) urinary incontinence and dementia care, managing health needs and medication, the provision of companionship, reassurance and activities, together with 24/7 overwatch, could have been provided by a commercial carer over only 2 hours a day. In my judgment, this was a hopelessly over-optimistic suggestion made by the Claimant, but made for understandable reasons, in short to open-up Sheila's mind to other options and the possibility of a return to Southrepps (which Sheila was very keen to achieve). In September 2017 she had sought a more realistic estimate from the same care provider for 6 hours a day, and by the time of this message in April 2018 had discovered through trial and error in Bristol that Sheila could not be left alone without distress. The suggested 'couple of hours a day' regime at Southrepps was not discussed any further, never happened (there was no return to Southrepps for Sheila), and in my judgment had it been attempted in all likelihood it would have failed in short order, and in an entirely predictable manner.

On the contrary, a much better indication of what the Claimant thought might be a realistic approximation of the amount of care is contained in an informal discussion document prepared by Dr Rogers in June 2018, outlining the benefits and disadvantages of various options for Sheila's care. One of the options was a return to Southrepps with 6 hours of care a day. Other evidence showed this to be at a likely cost of £5,000pcm. Elsewhere in the document Dr Rogers wrote down that a realistic sum for Sheila's care in Bristol would be £4,000pcm, to be reviewed after 6 months.

(2) The dementia wellbeing plan created by the dementia navigator who visited Sheila at home on 2 October 2018 following her formal diagnosis with vascular dementia. Mr Ingham points out that part of that report refers to Sheila liking to keep busy by helping out with household jobs, and that is inconsistent with the extensive amount of care being sought by the Claimant. On the other hand, it is evident from the report that Sheila had no insight into her dementia, and the Claimant's support of Sheila is recorded extensively within the report *'You are wonderfully supported by your daughter Bernadette and her husband but you want to do things for yourself… Bernadette encourages you to help out with jobs such as washing up, hanging clothes out to dry, setting the table etc'*, *'…you told me your doctor must have made a mistake as you don't feel like you have dementia…However, you are aware your memory is not as good as it used to be and like information to be shared with Bernadette so she can prompt and [remind you]'*, *'You are often forgetting to take your evening tablets'*, *'You acknowledge that Bernadette organises your medical appointments on your behalf and accompanies you to your appointments…You rely upon Bernadette to prompt you…you are a little hard of hearing and want people to speak clearly to you one at a time…'*, *'You and Bernadette often walk around St Andrews Park or up and down Gloucester Road'*, *'Bernadette will look for other local activities being held at the Greenway Centre'*, *'…you are a little unsteady on your feet but no falls reported. You don't use a stick, but you have a wheeled walker. You don't tend to go out alone anymore'*, *'. you eat well…'*, *'[type II diabetes] … is managed by a healthy diet…'*, *'…you have cataracts in both eyes which is causing problems with your sight. You are hoping to have them removed soon'*.

In my judgment, read as a whole, this report demonstrates that Sheila was wholly dependent upon the Claimant for her activities of daily living.

(3) The dementia navigator wrote to Sheila's GP following the assessment. The letter states *'Sheila has no insight into her dementia or care needs so would be at risk of self-neglect without additional support'*. In addition to the contents of the report the letter informs the GP *'Daughter subtly told me Sheila occasionally gets angry, agitated, frustrated and could be depressed? …Sheila's risk levels are currently medium. Daughter is feeling the strain, I have signposted her to carers' support…'*

This information makes it plain that the report itself is not an attempt to record all of Sheila's care needs, not least because Sheila had no insight into her own care needs. It also offers an insight into the effect of the burden on the Claimant.

(4) A pre-operative assessment dated 17 July 2019 concerning a proposed colorectal procedure contains a paragraph under the heading 'Social situation':

"She is currently living with daughter, and this is likely to be a permanent arrangement. She lives in a house with stairs and does not have a package of care. She washes and dresses independently, but her family help with meals. She mobilizes independently but often holds onto the arm of someone and does also have a three wheeled walker…"

Other parts of the report refer to her only being able to walk slowly and being extremely breathless at the top of a flight of stairs, that she is frail with a high risk of post-operative functional impairment, not having capacity to consent, unable to do higher level tasks, and that her daughter answered most questions for her in clinic. At the time of the examination the prolapse was not a problem but was said to intermittently recur, and when it did it caused significant pain which restricted her quality of life and activities, and earlier in the year was out for 3 months.

In my judgment, the contents of this report read as a whole do not amount to any substantial contradiction of the Claimant's case that she provided support with washing, dressing, toileting and continence or that the Claimant supported Sheila with all her activities of daily living. In my judgment the relevant passage of the report cannot be isolated and read quite so literally as Mr Ingham submits, as meaning Sheila was independent to a significant degree. In my judgment, the weight of evidence is that the Claimant provided Sheila with support across the whole range of activities of daily living, and Sheila was not independent in any respect and was at risk of self-neglect if unsupported. So, for instance, it is beyond dispute that the Claimant provided 3 meals a day for Sheila - so that the phrase in the report *'her family helps with meals'* is literally true, but fails to capture the reality which was that the *Claimant* provided her with *all* her meals.

(5) In a message on 6 August 2019, the Claimant messaged Maryanne Dickinson and stated that:

"Mum in a real state yesterday and today. Bum hanging down a mile - for the first time ever I had to run into her room in the night as she was shouting for me! 'There was a big black dog in the room who had come through the window' – she was terrified…"

It was put to the Claimant in cross examination that this message demonstrates that this was the first time that the Claimant needed to attend to her mother at night. The Claimant disagreed, claiming that this was the first time that she had to *run* into her room, and they had been other previous disturbed nights when Sheila was up at night, in the bathroom or elsewhere in the house, this was just the first time she had to *run* to her. Again, in my judgment I do not think that it is possible to read this passage as literally meaning it was the first time that the Claimant had been disturbed by Sheila at night, and Mr Ingham's submission requires the addition of a gloss on the words which is not justified. It is notable, as HHJ Matthews found, that Sheila was found on the bathroom floor in the early hours 1 December 2017 confused and hot, so 5 August 2019 plainly was not the first night disturbance.

44. It is not possible from the evidence to re-construct a day by day, week by week, month by month assessment of Sheila's care, nor is it necessary to do so. Per May LJ in *Evans v Pontypridd Roofing Limited* at [30]:

[30] Any determination of the services for which the court has to assess proper recompense will obviously depend on the circumstance of each case. There will be many cases in which the care services provided will be limited to a few hours each day. The services should not exceed those which are properly determined to be care services consequent upon the claimant's injuries, but they do not, in my view, have to be limited in every case to a stop-watch calculation of actual nursing or physical assistance. Nor … must they be limited in every case to care which is the subject of medical prescription. Persons, who need physical assistance for everything they do, do not literally receive that assistance during every minute of the day. But their condition may be so severe that the presence of a full-time carer really is necessary to provide whatever assistance is necessary at whatever time unpredictably it is required. It is obviously necessary for judges to ensure that awards on this basis are properly justified on the facts, and not to be misled into findings that a gratuitous carer is undertaking full time care simply because they are for other reasons there all or most of the time.

[31] In the present case, I am not persuaded that the judge made an over-assessment of the services provided by Mrs Evans to her husband as a result of his injuries. He concluded that there was no doubt that the claimant requires 24-hour care, and he said that the evidence was overwhelming. In my view, the evidence to which we have been directed justified the judge's conclusion and justified the conclusion that the services which Mrs Evans provides are those of a full-time carer. The fact that for some of the time she does things which she would have done if her husband had not been injured does not detract from this conclusion. It is neither necessary nor to be expected that a full-time carer should spend every hour the day and night engaged in providing physical service. In substance, on the judge's finding Mrs Evans does provide the services of a full-time carer and her proper recompense should be assessed on that basis…"

45. Against that background, in my judgment the nearest commercial comparator for the service provided by the Claimant, would be those of a live-in carer, present 24/7, available to provide assistance at any time, and providing extensive support with activities of daily living through waking hours, including personal assistance, medical and dementia care, cooking, cleaning, companionship and activities, together with health management and administration of medication, and overwatch during the night, including nightly toileting and occasional emergencies. This comparator does not include board, lodging and travel, which would have to be allowed for in addition.

46. The Claimant's unchallenged evidence was that in 2017 the cost of 24-hour care in Southrepps by Home Instead would be £7,500pcm, about £246 per day, with higher fees for significant medical support and dementia care, which from her memory took the figure to £257 per day. This would equate to about £218,450 over the 850-day period of the contract.

47. The Claimant's unchallenged evidence was that in September 2017, Home Instead proposed 6 hours daily care at £180 per day, or £5,000pcm, excluding overnight care. This would equate to about £153,000 over the 850-day period of the contract. In addition, one would have to allow for additional charges for overnight care, and an intensive end of life regime in the last weeks.

48. Other generic evidence produced by the Claimant from Live-In Care Hub suggested that fully managed 24/7 live-in care for someone with dementia who might otherwise be in a nursing home would be £1,080 per week (about £154 per day). This would equate to about £130,900 over the 850-day period of the contract, but with additional charges for nights when the live-in carer was disturbed or called upon. Again, one would have to allow for a more intensive regime when Sheila suffered from a prolapse, and for an end-of-life regime in the final weeks.

49. It is important to note that all these figures do not include general household expenses, utilities, food and other household items, activities outside the home, or travel.

50. The evidence relating to nursing homes suggested that a dementia nursing home near Lincoln would cost about £257 per day for standard care, but would have involved additional services for Sheila, for instance, travel, treatment of her prolapse, and end of life care. St Monica's in Bristol, a well-known local provider, would have charged about £5,200 pcm or £171 per day. There would likely be extras for travel and some activities and additional services.

51. Sheila stayed at Rosewood Residential Care Home in April 2019, for 10 days of respite care, at a cost of £900 per week (£128.57 per day). The Claimant's evidence points out that this was a not nursing home, and the stay was not a success (as found by HHJ Matthews) with Sheila refusing to leave her room. Regrettably, this arrangement did not

meet Sheila's needs. I do not therefore weigh this figure heavily in my considerations.

52. Mr Ingham on behalf of the Defendant submitted that the pay scales for National Joint Council for Local Government Services would be a better comparison, as they might more accurately reflect the wages of the actual caregiver and therefore strip out the overheads of management and regulation of a commercial provider of services. That is a valid point to weigh in the balance. On the other hand, it is not necessarily correct to suppose that the private sector is limited to these pay scales. Furthermore, I am wholly unconvinced that 2 or 3 hours per day is a realistic assessment of the care provided by the Claimant. Translating the National Joint Council figures into a model of live-in care is problematic, and was not attempted by the advocates. I will however attempt that exercise and consider the result in order to provide a sense check for my assessment.

53. For April 2017 to March 2018 the NJC basic hourly rate was £7.90 for 70 hours per week, £10.53 for 50 hours in the evenings, £11.49 for 24 hours on Saturday and £15.80 for 24 hours on a Sunday. In aggregate for 168 hours care over the course of a week this totals £1,743.10, and averages £10.37 an hour. That would be £211,548 for 850 days.

54. A better comparison using the NJC figures, would be to suppose 5 working days of 12 hours, comprising 10 x basic at £7.90 plus 2 x evening at £10.53, in total £500.30, plus 12 hours on Saturday £142.20, plus 12 hours on Sunday £189.60, making a running total of £832.10, but plus regular nighttime toileting and additional disturbed nights and call outs at premium rates (i.e. at least the Sunday rate of £15.80 per hour). In her evidence, the Claimant counted 26 occasions when the messaging referred to a broken night, but this figure does not capture those broken nights when no comment was made in the messaging. So, for instance, nighttime toileting might be unremarkable but would nevertheless be charged by a commercial provider. A very conservative estimate of broken night charges would, in my judgment, be 3 x £15.80 per week, an additional £47.40 per week. That would take the estimate to £879.50 per week or £5.24 per hour on average and £106,796.42 over 850 days. Again, this assessment would not be adequate to deal with the period of end-of-life care, and significantly does not cover board, lodgings and travel.

55. The sum sought averages out at £6.25 per hour (compared to the £5.24 hour estimated in the preceding paragraph), but importantly includes board and lodging and travel in addition to time costs. The sum sought compares highly favourably with the likely costs of care provided by Home Instead, and compares favourably with the figures from the Live-In Care Hub (both of which do not include board, lodgings and travel), and also compares favourably with the cost of a nursing home.

56. In my judgment, the Claimant's figures contain ample headroom by comparison to the commercial figures to allow for the additional overheads of, and services provided by, a

commercial enterprise.

57. The difference between my calculation of NJC rates at paragraph 53 averaging £5.24 per hour and the Claimant's aggregate average rate of £6.25 per hour, amounts to £24.72 per day but in my judgment this difference is easily accounted for by (1) board, lodgings and travel (2) the intensive period of end-of-life care (3) the conservatism of my estimate of broken night charges, and (4) the likely difference between local government and private sector wages.

58. Drawing everything together, I am satisfied that the sum claimed by the Claimant represents a reasonable contractual charge for the services she in fact provided. This was not a case of occasional assistance between family members, nor one of limited domestic support. As HHJ Matthews found, Sheila entered into a binding agreement under which the Claimant was to be paid properly for caring for her over an extended period. The care ultimately provided was comprehensive and demanding. It included constant supervision, extensive support with the activities of daily living, the management of multiple significant medical conditions, dementia care, personal care, the provision of board and lodgings, transportation, companionship, activities, and during periods of acute illness and at the end of her life, care of a particularly intensive and personal nature.

59. The commercial comparators considered in the evidence demonstrate that the cost of obtaining equivalent care and support from third-party providers would have been substantially greater than the amount claimed. I accept that the Claimant did not operate a regulated commercial care business and that her care was delivered informally in a family setting. However, the figure sought properly reflects both considerations. It is materially below the likely market cost of comparable commercial care, while fairly recognising the extent of services actually provided which Sheila agreed were to be paid for properly.

60. Standing back and making the broad evaluative assessment required in a case of this kind, I am satisfied that a daily charge of £150, amounting to £127,500 over the 850-day period of the contract, falls comfortably within the range of reasonable remuneration which the parties must have objectively be taken to have intended. Having regard to the evidence as a whole, the Claimant has satisfied the burden of proof and her claim succeeds.

61. For those reasons the Claimant's claim succeeds, and she shall have judgment in the sum of £127,500, plus interest. I will hear submissions from counsel on the details of the order.

62. That is the judgment of the court.

District Judge Wales
Bristol Civil Justice Centre
25 August 2026