IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. G 19 OF 2015

BETWEEN:

JOY HOPE ANN VERNON

Plaintiff

AND

EILEEN JENNIFER GREEN

Defendant

Appearances:	Mr. Clyde Allen of Chambers for the Plaintiff Mr. Paul Keeble & Ms. Sulekha Tummala of Hampson and Company for the Defendant
Before:	Hon. Justice Richard Williams
Heard:	18 May 2017
Draft Judgment circulated:	22 May 2017
Date of Judgment:	25 May 2017

JUDGMENT

Introduction

1. This case concerns the Defendant's application dated 23 February 2017 to strike out the Plaintiff's Writ of Summons and Statement of Claim filed on 6 February 2015 and for judgment to be entered for the Defendant. In the alternative to dismissal, an unless order in relation to outstanding disclosure is sought with a date for compliance specified pursuant to GCR O.45, r.6(2). The Summons is supported by an affidavit of Sulekha Tummala sworn on 11 May 2017. Most

regrettably, the Summons and Listing Form contain a highly inaccurate two hour time estimate as illustrated by each Counsel's submissions being around two hours in length. It is important that parties give realistic time estimates and if they fail to do so they may find that, in future, the Court will either adjourn the hearing and re-fix with an accurate time estimate or limit submissions, whether completed or not, to a length commensurate with a time estimate

2. The application in the Summons is made pursuant to GCR O.24, r.20(1) for purported failure to comply with orders for discovery made on 8 December 2015, 23 November 2016 and 19 January 2017 with particular regard to paragraphs 2, 3, 4, 6 and 11 of the Order made on 23 November 2016, as repeated in paragraphs 1 and 4 of the Order of 19 January 2017.

3. The application in the Summons is also made pursuant to GCR O.18, r.19(1)(d) and/or the inherent jurisdiction of the Grand Court to control its own processes as there has been an abuse of process due to the manner in which it is alleged the Plaintiff has "*engaged in a concerted and deliberate course*" of (i) inordinate and inexcusable delay in the prosecution of the case; (ii) intentional and contumelious disobedience of peremptory orders of the Court; (iii) purposefully and deliberately withholding disclosure ordered by the Court; and/or (iv) wilfully and intentionally misleading the Court by falsely and untruthfully maintaining to the Court that she had no official training of how to drive an ambulance.

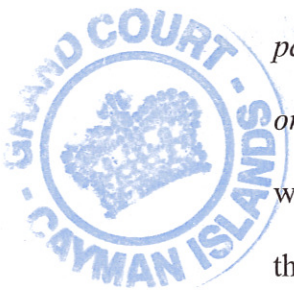
4. The application in the Summons is also made pursuant to GCR O.25, r.1(4) and the inherent jurisdiction of the Grand Court for want of prosecution, and/or inordinate and inexcusable delay in the prosecution of the action.

5. In the Summons specific disclosure was sought in relation to medical records held by Dr. Marcouza pertaining to the Plaintiff which the doctor had said were for a period of over 20 years. An order was also sought for specific disclosure of the Plaintiff's income records from her employment with CIHSA for a two year period prior to the accident along with details of sick pay received post-accident. Possibly due to the lack of court time arising out the unrealistic time estimate, negligible submissions were received in relation to these two applications.[1]

Orders of 23 November 2016 and 19 January 2017

6. Although mindful of the reasons why previous discovery orders were required and the untimely response to some of them by the Plaintiff, I now intend to primarily concentrate on the November 2016 and January 2017 orders. These orders are relevant to the issue of what ordered disclosure is still outstanding. Paragraph 1 of the Order of 19 January 2017 provided that *"the items at*

[1] Following circulation of the draft judgment pursuant to GCR O.1, r.12 and Practice Direction No. 1/2004, Mr. Keeble provided the following comments - *"I sought to make clear at the opening of our application that the Defendant was seeking to have the action dismissed, such that only if the action survived the dismissal application would we be required to trouble the Court with the balance of our application, i.e. the specific disclosure sought at paragraphs 4 and 5 of the Defendant's Summons. At the close of the hearing I specifically referred to these paragraphs of the Defendant's Summons and indicated that I proposed they be adjourned pending the ruling of the Court on the dismissal application and the Plaintiff's further disclosure. My apologies for not setting out the position in my written submissions, and if I was not more clear in my oral submissions."*



paragraphs 1-6 of the Order of 23 November 2016 shall be served by the Plaintiff on the Defendant's attorneys on or before 27 January 2017." The order was worded in that way because my notes from the hearing on 19 January 2017 record that "*Mr Allen indicates that the items in relation to paragraph 1 to 6 of the order dated 23 November 2016 have either been requested or received and can be made available to Mr Keeble.*" I am therefore of the view that what I must do today is to determine whether those items have been served in compliance with the order.

7. **Paragraph 1 of the Order 23 November 2016** - This required the Plaintiff to request and produce a letter or certificate from Truman Bodden Law School setting out the dates of her enrolment, the likely date of completion of the course and details about the course that she is undertaking. On 27 January at 16.21 hours a letter dated 12 October 2016 from the Director of Legal Studies at the Law School was sent by Mr. Allen as the attachment to an email to Mr. Keeble. The Director provided all of the required information in his letter. The fact that he mentioned that the Plaintiff was studying the LLB (Hons) degree course was sufficient information to meet the requirement to provide "*details about the course she is undertaking.*"

8. Mr. Keeble contends that there has not been strict compliance with paragraph 1 of the order of 19 January 2017 as the letter was transmitted to him at 16.21 hours on 27 January 2017 and because it was sent to him by email. Mr. Keeble also

complained that the documents were transmitted in a disorganised fashion and without an explanatory document or letter identifying the relevance of the documents and to which order for disclosure they were related to. I accept that GCR O.65, r.7 provides that service after 4pm is deemed to be on the following day. I also note paragraph 25 in my judgment in ***Helfrecht v Chapman and ors*** Cause No 59 of 2013 where I set out and commented in the following way upon the forceful observations of Munby J., the then President of the Family Division in England and Wales, in ***Re W (A Child), Re H (children)*** [2013] EWCA Civ 1177 at paragraphs 52 & 53 (Munby J. stated):

> *"The court is entitled to expect – and from now on family courts will demand – strict compliance with all such orders. Non-compliance with an order should be expected to have and will usually have a consequence."*

Here I break from the President's statement and introduce the word 'Civil Courts' instead of 'Family Courts'. The President continued:

> *"Let me spell it out. An order that something is to be done by 4 PM on Friday, is an order to do that thing by 4 PM on Friday, not by 4:21 PM on Friday let alone by 3:01 PM the following Monday for some time later the following week…"*

Despite the above, I do not view the service by Mr. Allen as amounting to a breach sufficient to warrant a dismissal and in any event it may have been sensible for the parties to have asked me to place in the January 2017 Order a time on 27 January 2017 by which the document should be served, something I am

frequently asked to do in directions. Although GCR O.65, r.5 does not list transmission by email as a means of effecting ordinary service, I note that the Court does have discretion under (d) to direct other means of service. In a case where a significant number of documents have been received by the Plaintiff in electronic form I see merit in the service on the Defendant being in the same manner. It is an economical and expeditious way of providing the documents in the circumstances of this case and, if asked, I would likely have ordered that the service of the documents mentioned in the November 2016 and January 2017 orders could be effected in this way.

9. **Paragraph 2 of the Order 23 November 2016** - This required the Plaintiff to produce pension statements detailing her pension payments from the outset/start of these payments to date. On 27 January at 16.21 hours a letter dated 9 January 2015 from the Managing Director of the Public Service Pensions and a letter dated 25 November 2014 from the Acting Director of Plan Administration at the Pensions Board were sent by Mr. Allen as an attachment to an email to Mr. Keeble. I note that the 9 January letter at tab 17 in the bundle provided by Mr. Allen to the Court is dated 2015, the copy shown to the Court by Mr. Keeble appeared to have had the 2015 amended in handwriting to 2017. It is not clear to me how that amendment came about and whether the author of the document authorised the change of the date in that copy. The November 2014 letter appears not to be one requested for the purpose of these proceedings but to inform the

Plaintiff of her pension rights as they stood in November 2014. The 9 January 2015 letter simply sets out what the current monthly pension is, which $2,733.05 is. I cannot deduce whether this letter is incorrectly dated or whether it was received as a response to the letter sent by the Plaintiff as an attachment to an email on 29 November 2016 to the Pension Board which she followed up on with further emails on 6 January 2017. Unfortunately the Plaintiff's emails, which are at tab 15 of the bundle provided by Mr. Keeble, do not appear to have been transmitted to him with an attached letter to enable one to determine whether the pension statements were actually requested.

10. I am not satisfied that there has been full compliance with paragraph 2 of the November 2016 Order and paragraph 1 of the January 2017 Order as the pension statements have still not been served. I direct:

    (i) the Plaintiff to write to the Pension Board to obtain her pension statements which should detail her pension payments from the start of the payments to date. A copy of this order containing my directions in relation to the pension disclosure is to be provided to the Board with the Plaintiff's letter.

    (ii) that the Plaintiff is to provide a copy of that letter (if the letter is sent by email, a copy of that email and a copy of the attached letter) to the Defendant's attorneys by 4:00 PM on 2 June 2017.

    (iii) that copies of the pension statements are to be served by the Plaintiff on the Defendant's attorneys within 48 hours of their receipt by the Plaintiff or her attorney.

(iv) that if the statements have not been received from the Pension Board by the Plaintiff, then the Plaintiff is to write a further letter to the Pension Board, by 4:00 PM on 16 June 2017, to "chase up" her request for the statements and to seek an indication in writing from the Pension Board as to why they have not provided the statements and when they will be providing the statements.

(v) that, if the letter in (iv) has to be written, the Plaintiff is to provide a copy of the letter to the Defendant's attorneys by 4:00 PM on 19 June 2017.

The letters and statements mentioned above may be served on the Defendant's attorney by email.

11. **Paragraph 3 of the Order of 23 November 2016** - This required the Plaintiff's attorney to write to the Cayman Islands Health Service Authority ("HSA") requesting copies of her medical records submitted to the medical board and also seeking confirmation from the Chief Executive Officer of the steps taken by her following the Plaintiff's attorney's previous request. When considering paragraph 3, paragraph 4 and paragraph 5 of the order it is important to have in mind why the Court in November required the letters to be written within seven days rather than specifying a date for the production of the relevant documentation. This was because the date when the documents would be produced was not under the Plaintiff's control, but what the Court was entitled to expect her to do was to promptly request the documentation and to chase up the same if it was not

provided to her. The order was designed to enable the Plaintiff to show that she was doing all that she reasonable could be expected to in order to obtain the documents. It is not clear when the documents were requested, but I am not overly concerned about that at this juncture as the medical records have been provided as an attachment to an email sent at 16.21 hours on 27 January 2017 by Mr. Allen to Mr. Keeble.

12. It does not appear that a direct written request to the CEO of the HSA was sent by Mr. Allen to seek confirmation from her about the steps taken by her following the Plaintiff's attorney's previous request for the medical information. Mr. Allen indicates that this is because the CEO had indicated that she was conflicted due to her being the Defendant's sister, so he sent a copy of the order which contained details of the disclosure which was required to another officer employed at the HSA. The primary purpose for the direction was to enable Mr. Allen to address the Court when it comes to consider what costs orders it should make in relation to the reserved costs orders made in this case. If Mr. Allen had obtained that information it may have supported a submission that he had been using his best endeavours to obtain this information in pursuance of earlier orders. I now take the view that it is a matter for him whether he wishes to obtain that information; if he fails to do that then it may weaken his position when the Court later comes to consider what costs orders should be made.

13. **Paragraph 4 of the Order of 23 November 2016** - This required the Plaintiff to write directly to the Jackson Memorial Hospital, the Design Neuroscience Centre, Florida Spine Institute, University Hospital Fort Lauderdale, and Dr Blanco of Trincay to request from them her complete medical treatment records of treatment following the date of the accident, whether related to the accident or otherwise. The Jackson Memorial Hospital records were transmitted by email to Mr. Keeble by Mr. Allen at 15.53 hours on 27 January 2013. The records from the Design Neuroscience Centre were transmitted by email to Mr. Keeble by Mr. Allen at 16.25 hours on 27 January 2017. The records from the Florida Spine Institute were transmitted by email to Mr. Keeble by Mr. Allen at 16.21 hours on 27 January 2017. The records from Dr Blanco were transmitted by email to Mr. Keeble by Mr. Allen at 16.25 hours on 27 January 2017. In light of the terms of paragraph 1 of the order of 19 January 2017, having regard to the above disclosure being made by email on 27 January 2017, I see little merit in my now embarking on an analysis of when precisely requests were made.

14. The documentation from the University Hospital Fort Lauderdale ("the hospital"), which the Court by its order of 19 January 2017 directed to be served by 27 September 2017, is still to be provided to the Defendant by the Plaintiff. Mr. Allen indicates that the documentation has been requested but the Hospital never responded. I direct:

(i) the Plaintiff is to serve a copy of all letters sent to the hospital requesting the medical and treatment records from 23 November 2016 to date and any letters in reply received from the hospital on the Defendant's attorneys by 4:00 PM on 2 June 2017.

(ii) the Plaintiff to again write to the hospital seeking the information set out in paragraph 4 of the order of 23 November 2016 by 4:00 PM on 2 June 2016. The Plaintiff is to provide a copy of that letter to the Defendant's attorneys by 4:00 PM on 5 June 2017.

(iii) that copies of the medical records are to be served on the Defendant's attorneys within 48 hours of their receipt by the Plaintiff or her attorney (whoever receives them first).

(iv) that if the medical records are not received from the hospital by the Plaintiff, then the Plaintiff is to write a further letter to the hospital by 4:00 PM on 16 June 2017 to further "chase up" her request for the statements and to seek an indication in writing from the hospital as to why they have not provided the records and when they will be providing them.

(v) that, if that letter in (iv) has to be written, the Plaintiff is to provide a copy of the letter to the Defendant's attorneys by 4:00 PM on 19 June 2017.

The letters and records mentioned above may be served on the Defendant's attorneys by email. If any of the letters above are sent by email to the hospital, a copy of that email and a copy of any attached letter is to be provided to the Defendant's attorney.

15. **Paragraph 5 of the Order of 23 November 2016** – This requires the Plaintiff to write and request the Medical Records Officer at the HSA to provide the Plaintiff's complete medical and treatment records of treatment following the date of accident, whether related to the accident or otherwise. Ten years of records from the HSA were served on Mr. Keeble by email by Mr. Allen at 15.59 hours on 27 January 2017. In light of the terms of paragraph 1 of the order of 19 January 2017, having regard to the above disclosure made by email on 27 January 2017, I see little merit in my now analysing when precisely requests were made to the HSA.

16. **Paragraph 6 of the Order of 23 November 2016** – This required the Plaintiff to obtain a letter from Dr. Marzouca providing details of her income from February 2010 onwards. At 16.12 hours on 27 January 2017 Mr. Allen served by email on Mr. Keeble two letters from Dr. Marzouca, one dated 22 November 2016 and the one dated 23 November 2016. The first letter indicated that the Plaintiff had not worked at the clinic between 2012 and 2013, but that she had worked there for five days in 2014 and for six days in 2016 for which she received no payment. I direct:

    (i) the Plaintiff's attorney to again write to Dr. Marzouca to seek confirmation that she did not work with him or details of any employment she had with him between 2010 and 2012 and to obtain a breakdown of all income earned by her during if she was employed during that period by 4:00 PM on 2 June 2017.

(ii) that the Plaintiff is to provide a copy of that letter to the Defendant's attorneys by 4:00 PM on 5 June 2017.

(iii) that copies of the letter in reply are to be served on the Defendant's attorneys within 48 hours of its receipt by the Plaintiff or her attorney (whoever receives them first).

(iv) that if a reply is not received from Dr. Marzouca by the Plaintiff, then the Plaintiff is to write a further letter to Dr. Marzouca by 4:00 PM on 16 June 2017 to further "chase up" her request for the information and to seek an indication in writing from Dr. Marzouca as to why he has not provided the information and when he will be providing the information.

(v) that, if that letter in (v) has to be written, the Plaintiff is to provide a copy of the letter to the Defendant's attorneys by 4:00 PM on 19 June 2017.

The letters and replies mentioned above may be served on the Defendant's attorneys by email. If any of the letters are sent by email to Dr. Marzouca, a copy of that email and a copy of the attached letter is to be provided to the Defendant's attorney.

17. Despite the failure of the Plaintiff to file affidavit evidence with supporting documentation, especially to verify the dates and contents of written requests sent to the various entities, I am satisfied that in the main there has been compliance with paragraph 1 of the order made on 19 January 2017. Although further disclosure is still required for there to be full compliance, even having regard to

the Plaintiff's unsatisfactory responses to parts of the disclosure orders made since 8 December 2105, the remaining non-compliance is not to the degree that the Court could make a finding of intentional and contumelious disobedience of its orders. In light of this finding, although well aware of the principles contained therein, I see little merit in herein conducting an analysis of the case law relating to dismissal.

18. The above orders that I make in this judgment are designed to ensure that the Plaintiff uses her best endeavours to obtain the outstanding disclosure and, if an issue arises about compliance, to enable the Court to deduce whether she has done so. I expect the Plaintiff's attorney to immediately upon receipt of the sealed copy of this judgment provide a copy to of the same to the Plaintiff. I expect the Plaintiff to carefully consider the content in the judgment, because she is as responsible as her attorney is for ensuring that each and every direction is strictly complied with. I have deliberately made the directions very specific concerning timings and mechanism so as to avoid any doubt about what is required.

19. If it is later alleged that the Plaintiff has failed to fully comply with the above directions and an application is brought in relation to that, then the Plaintiff must file and serve an affidavit at least 7 days prior to the hearing of the application in which she sets out the reasons why she contends that there has been full compliance along with the order with documentary evidence to back up such an

assertion. It is not appropriate to have the Plaintiff's case again conducted in the manner in which it has conducted today and at previous disclosure hearings with 'evidence' being produced in an ad hoc fashion for the first time in Court, including correspondence kept on her cell phone. The Plaintiff will at such a hearing be required to provide a proper explanation in sworn evidential form and it would be most unwise of her to fail to take heed of this clear indication given by me.

20. I am not satisfied that the disclosure in relation to the training manual which was transmitted to the Defendant by Mr. Allen by email at 16.12 hours on 27 January 2017 can, at this stage, lead to a finding that the Plaintiff has wilfully and intentionally misled the Court about the issue of her training. Despite the passage of time since the order of 8 December 2015 in which Mr. Allen agreed to provide particulars and detail of the Plaintiff's training in the operation of ambulance vehicles by or on 5 February 2016, although the delay not being to her credit, I am not able at this stage to determine whether the Plaintiff has purposefully and deliberately withheld disclosure ordered by the Court as it relates to the training manual or any other disclosure. At a trial the level and nature of her training may be explored. If the Court at trial, after hearing oral evidence, finds that the Plaintiff has misled the Court on this issue, then that may well go to her credibility.

21. **Paragraph 11 of the Order of 23 November 2016** - This required the Plaintiff to file and serve a Schedule of Loss and Damages in the appropriate form as ordered under paragraph 11 of the Order dated 8 December 2015 by or on 9 January 2017. The deadline for service was extended on 19 January 2017 to 27 January 2017. A schedule of loss and damages was served by the Plaintiff on Mr. Keeble at 16.12 hours on 27 January 2017. Mr. Keeble asserts that the schedule is "*completely unhelpful…..grossly inadequate in almost every respect.*" Mr. Keeble remarks "*that it has been thrown together in an entirely cavalier fashion and in contemptuous disregard of the Plaintiff's obligations to the Court.*" Although I am unable to adopt the full emotive sentiments of Mr. Keeble, it is clear that the Schedule is not in an easy to read format and it requires some revising. There is no obligation, as there is in England and Wales, for the Schedule of Loss to be verified by a statement of truth. I share Mr. Keeble's observation that there would be merit in such verification being required, but I do not agree with him that the absence of the same makes the Plaintiff's Schedule defective.

22. The parties have not been able to show me any Practice Direction, case precedent or Grand Court Rule relating to the filing of and the content that should be in a Schedule of Loss of Damages in personal injury cases in the Cayman Islands. However, whether it be an earlier filed or final hearing version of the Schedule, it is very important document, especially where the financial losses may be higher than the non-pecuniary losses.

23. In England and Wales the Civil Procedure Rules merely state that a claimant must attach to his Particulars of Claim a schedule of details of any past and future expenses and losses. It does not provide for the format of such a schedule or its contents. There are many admirable examples of specimen schedules to assist parties as to the format of and content that should be set out in Schedules. They often contain distinct sections with the figures clearly set out in columns. Adopting the more modern and detailed practice that has developed as to content, in a large claim case such as the one before me, a Schedule of Loss should usually be set out into four parts, (i) narrative; (ii) pain, suffering and loss of amenity; (iii) special damage; and (iv) future loss. So having regard to the content of each part:

(i) An introduction - This will include the Plaintiff's name, date of birth, date of accident and age at the time of accident, marital status, trial date (if one has been given), and where relevant education, future career prospects, life expectancy, retirement age and interests.

(ii) Pain, Suffering and Loss of Amenity - This can include any disability or handicap the Plaintiff may have in the working market, employment problems caused by the accident, marriage breakdown etc. When ascribing a value for pain and suffering reference is often made in a schedule to the Judicial Studies Board Guidelines for the Assessment of General Damages in Personal Injury Cases.

(iii) Details of special damage - This will provide the Plaintiff's losses and expenses to date. Although one cannot provide a definitive list of all the headings of past loss and expense that are recoverable they include loss of earnings, medical expenses, equipment, increased household charges, gardening and maintenance costs, damaged items, increased costs in relation to holidays and leisure activities,

medical expenses, care costs, accommodation, costs of not being able to care for others.

(iv) Details of future loss - This includes loss of earnings, future care, loss of pension, requirement for assistance, medical treatment and accommodation. The first four headings are usually calculated by reference to a multiplicand and by reference to a multiplier. Regrettably, the Plaintiff has failed to carry out that exercise in his Schedule, and Mr. Allen seems to be submitting that this is something that need not be done under any heads of future loss (medical or not) in this Schedule but left to a later draft as the Plaintiff may seek to adduce additional medical evidence about possible medical treatment that may be required.

(v) In Personal Injury Schedules Calculating Damages 3rd Edition the authors provide helpful guidance about the presentation of the Schedule stating at B20 on page 101:

"The layout of the schedule should be designed to:

- *Provide focus for the claim.*
- *Be 'user-friendly'.*
- *Have a logical progression.*
- *Supply a short summary.*
- *Invite use by the defendant(s).*
- *Invite use by the judge at trial.*
- *Be flexible enough to incorporate amendments, additions, deletions and accommodate new information for change circumstances."*

(vi) We do not have a pre-CPR Practice Direction similar to English Practice Direction [1984] 3 All ER 165 which contains the sensible observation at paragraph 1 that "*time is too often wasted at the trial of personal injury actions because the parties do not try to agree the*

items of special damage, or to find out to what extent they disagree and why...". At paragraph 2 of the Practice Direction stated:

> *"In any personal injury action in which the damages claimed consist of or include a claim for (a) loss of earnings, (b) loss of future earning capacity, (c) medical or other expenses relating to or including the cost of care, attention, accommodation or appliances, (d) loss of pension rights, particulars, where appropriate in the form of a schedule, shall be prepared by the parties making such claim and not later than seven days after the case appears in the warned list in London shall be served on all other parties against whom such a claim is made."*

The Practice Direction then goes on to say that if there is a fixed hearing date then the Schedule should be served not less than 28 days before that date. The Practice Direction requires the other party(s) to indicate in writing whether and to what extent each item claimed is agreed and, if not agreed, the reasons why it is not agreed with, along with counterproposals. The Practice Direction indicates that non-compliance with requirements may well be relevant to the issues of costs

24. In England and Wales there is the Personal Injury Pre-action Protocol. Pursuant to paragraph 3.14, the claimant must send as soon as practicable a *"Schedule of special damages with supporting documents, in particular whether the defendant has admitted liability."* A Schedule of Loss must be verified by a statement of truth. Paragraph 4.2 of the Practice Direction to CPR, Part 16 provides: *"the claimant must attach to this particular claim a schedule details of any past and future expenses and losses which he claims."* I accept Mr. Allen's contention that the purpose of the approach in England and Wales is helpful to the determination

about which track the case will be allocated to, but I am of the view that it also there to enable the judge and the parties to identify the heads of claim, to see how they been quantified and some of the reasoning for them. The English approach encourages a Plaintiff to obtain all of the relevant quantum information at an earlier stage which promotes and enables more timely and informed settlement negotiations. The time may well have come for the Personal Injury Bar in the Cayman Islands to suggest reform to the approach taken to personal injury cases to build upon the rather dated automatic directions in personal injury actions found at GCR O.25, r.8. Failing that, with one eye on the Overriding Objective, there may be great merit in a Practice Direction and/or Protocol which requires a more significant hands-on case management approach by the Courts resulting in a need for earlier informed consideration by the parties about the strengths and weaknesses of a personal injury action.

25. Although Mr. Allen may wish to consider whether the provided schedule is user friendly and whether he should resubmit it in a less narrative format in certain parts, thereby assisting the Court (and the Defendant) in better gaining an informed understanding of the nature and quantum of the damages his client seeks, at this stage I am simply going to direct that the Plaintiff submit a revised

26. Schedule to include the required multiplicand and multiplier calculations.[2] The Plaintiff may add a proviso in the Schedule to the effect that she reserves the right to serve an updated Schedule of loss and damages, not restricted by the heads of loss and damage in the current schedule. The ordered revised schedule is to be served on Mr. Keeble by 4:00 PM on 19 June 2017.

27. On 8 December 2015 comprehensive directions were given to a five day trial to be fixed to come before any judge. Paragraph 11 of that order provided that the Plaintiff was to serve her Schedule of Loss and Damages on the Defendant over a year ago, namely on 4 March 2016. During the current hearing Mr. Allen frequently made reference to the automatic directions at GCR O.25, r.8. It appears that the parties and the Court had in mind the automatic directions in personal injury actions when the 8 December 2015 order was made. I remind the parties that sub-paragraph (e) provides that "*the action shall be tried by Judge alone and shall be set down within 6 months.*" Over 17 months have passed since 8 December 2015. This case has been stalled by disclosure issues and resultant

---

[2] Following circulation of the draft judgment pursuant to GCR O.1, r.12 and Practice Direction No. 1/2004, Mr. Allen provided the following comments – "*.... the Witness Statement dated 2 June 2016 provided by my client which included some of the information required for the Schedule of Loss based on the available information at that time. For the purpose of any assessment of damages, when considering the Ogden tables it will require the person to set out the extent of any disability, employment status and, subject to my client's LLB examination results this summer, whether they are tertiary educated or equivalent. That information is at paragraphs 7 and 8 of the Witness Statement.*
However, as stated in court and the Witness Statement a formal Schedule of Loss will be provided prior to trial in this matter."

applications and I trust that the parties agree that this action must now move forward to trial in timely manner

28. I reserve the costs of this hearing for the same reasons given by me on 8 December 2015.

29. I direct Mr. Keeble to draft an order reflecting the directions made in this Judgment. A copy of the draft order should be sent by Mr. Keeble to Mr. Allen to provide an opportunity for comment. If Mr. Allen does not provide Mr. Keeble with any written comments on the draft order within 48 hours of service upon him of the draft order, then Mr. Keeble may submit the draft order to the Court for the Court's to review and approve.

.....

The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT

Footnote

For the avoidance of doubt - Following circulation of the draft judgment, pursuant to GCR O.1, r.12 and Practice Direction No. 1/2004, Mr. Keeble and Mr. Allen provided comments upon the same. Please note that the comments made by Mr. Allen in footnote 2 above do not change the directions given to the Plaintiff at paragraph 24 above in relation to filing of an amended Schedule of Issues. A Schedule of Issues is still required in the form directed herein (on the basis that the Plaintiff intends to succeed in obtaining her LLB) and, as mentioned in paragraph 24 herein, a final Schedule may be filed closer to the trial which could reflect the changed/updated position, especially if the Plaintiff fails to obtain her LLB.