



Neutral Citation Number: [2008] EWHC 1962 (QB)

Case No: 6MA90460

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MANCHESTER DISTRICT REGISTRY**

Date: 11/08/2008

**Before :**

**MRS JUSTICE SWIFT DBE**

**Between :**

**Benjamin Collett**

**Claimant**

**v**

**Gary Smith**

**First**  
**Defendant**

**and**

**Middlesbrough Football and Athletics Company  
(1986) Ltd**

**Second**  
**Defendant**

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**Mr Richard Hartley QC & Mr Jonathan Boyle** (instructed by **Beachcroft LLP**) for the  
**claimant**  
**Mr Andrew Prynne QC & Mr Oliver Campbell** (instructed by **Hextalls LLP**) for the  
**defendants**

Hearing dates: 30 June – 4 July 2008

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**Approved Judgment**

I direct that pursuant to CPR PD 39A 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.

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**The Hon Mrs Justice Swift DBE :**

**The claim**

1. This is an assessment of damages. On 1 May 2003, the claimant, who was then 18 years old, was playing for Manchester United Football Club (“Manchester United” or “the Club”) Reserves team in a match against the second defendant’s Reserves team. In the course of the game, he was tackled by the first defendant. The tackle was high and “over the ball” and, as a consequence, the claimant suffered a fracture of the tibia and fibula of his right leg.
2. The claimant claims damages for personal injury, loss and damage caused by the negligence of the first defendant, for which the second defendant was vicariously liable. In particular, he claims damages for the loss of earnings which he has sustained as a result of being deprived of the chance of pursuing a successful career as a professional footballer and, thereafter, as a football manager or coach.
3. Liability was initially in dispute and an order was made that there should be a preliminary trial of the issue. Shortly before the trial, however, the defendants admitted negligence and, on 7 February 2007, judgment was entered for the claimant by consent against both defendants, with damages to be assessed.

**The issues**

4. Damages for pain, suffering, loss of amenity and loss of congenial employment have been agreed in the total sum of **£35,000**. Interest on that sum is agreed at **£1,515**. Damages for the gratuitous care given to the claimant by his parents during his period of immobility after the injury have been agreed at **£2,469**, with interest of **£740**. There is also agreement as to the actual earnings received by the claimant as at the date of trial, which I shall refer to in due course. Otherwise, damages for past and future loss of earnings and for loss of pension are in dispute.
5. The factual issues to be determined in relation to the claim for loss of earnings are:
  - i) Whether, but for the defendants’ negligence, the claimant would have succeeded in making a career in professional football and, if so:
    - a) at what level(s) of the professional game;
    - b) at what level(s) of remuneration;
    - c) over what period;
  - ii) What level(s) of remuneration the claimant is likely to receive from employment in the future;
  - iii) Whether, but for the defendants’ negligence, the claimant would have had a chance of pursuing a career in football management or coaching and, if so, whether he should be compensated for the loss of that chance.
6. There is a claim for pension loss. The parties do not ask me to make any findings in respect of that matter at this stage. They are hopeful that, when they have my findings

in relation to past and future loss of earnings, they will be able to agree the pension loss. If that is not possible, the matter will have to be referred to me for determination.

## **The claimant's history**

### **Before his injury**

#### *To the age of 16*

7. The claimant was born on 11 September 1984; he is now 23 years old. When he was very young, he played for a junior football club. His talent for the game was spotted by one of Manchester United's "scouts" and he was recruited for the Club's Youth Academy at the age of 9 years.
8. Manchester United is one of the most successful football clubs in the world. Its record in national and international competitions is second to none. The Club is particularly well known for its commitment to, and expertise in, the training and development of young players. It has excellent training facilities and a team of coaches dedicated to the development of young players at every stage of their careers. It provides young players with the ideal opportunity to realise their full potential. I was told by the witnesses that the Club has one of the best youth development systems in the world. Manchester United's Manager, Sir Alex Ferguson, takes a great interest in the Club's young players and in their potential for the future. Many players who are, or have in the past been, regular members of Manchester United's first team have come up through its Youth Academy. Among these players are well known names such as Gary Neville, David Beckham and Paul Scholes. As might be expected, the standard required of the young players is high and, if it becomes apparent that a boy is not going to "make the grade", he will not be retained. Registration in the Youth Academy is on an annual or, at most, a two-yearly, basis and, at the expiration of each registration period, the Club may decide not to re-sign the player.
9. One point at which the future of a member of the Youth Academy will be under particular scrutiny is at the age of 14 years. Some boys will not have their registration renewed at this point. An even more important time of decision comes when a boy reaches the age of 16 years. It is then that the Club has to make a decision whether to offer a boy a two-year scholarship (also known as an apprenticeship) with the Club or to let him go. At that time, the Club is seeking to retain only those boys who are showing real potential to go on to play professional football. A significant proportion of boys at the Youth Academy are "culled" at this stage; other young players will be brought in from other clubs to replace them.
10. The claimant surmounted these various hurdles. In January 2001, when he was 16 years old, he was offered a two-year scholarship contract with Manchester United for the 2001/2002 and 2002/3 seasons. He was also promised a one-year professional contract at the expiration of his scholarship. This was a fairly standard arrangement. It avoided the risk that another club might step in and offer him a professional contract at the age of 17 years (the minimum age that a player can enter into a professional football contract) before Manchester United could do so.

#### *The 2001/2002 season*

11. During their two scholarship years, young players get the opportunity to play matches for various Youth teams. Their performance in such matches, as well as during training, is monitored by the Manchester United coaching staff on a continuous basis. Regular written appraisals are undertaken, together with structured face-to-face reviews.
12. During the football season running from mid-August 2001 to May/June 2002 (the 2001/2002 season), the first year of his scholarship, the claimant established himself as a regular member of the Club's Under 17s team.

*The 2002/2003 season*

13. In the 2002/2003 season, the claimant was promoted to the Club's Under 19s team. He made 18 appearances in the team and scored two goals. In addition, he was a member of the Club's team for the Football Association (FA) Youth Cup, which was open to players aged under 18 years at the start of the season. I was told that the FA Youth Cup is the major competition in the season for youth players and is dominated by teams from Premiership clubs. Manchester United has had a great deal of success in the competition over the years and the staff regard it as highly important. One witness referred to it as "the holy grail". The claimant was selected for the team and played in all but one of the eight knock-out rounds. His team qualified for the Final against a team from the second defendant and, in the first leg of the Final, the claimant scored a goal, thus assisting in winning the Cup for Manchester United. That was in late April 2003.
14. At the end of the 2002/2003 season, the claimant was awarded Manchester United's highly prestigious Jimmy Murphy Award for the Young Player of the Year. The Award was presented to the claimant before a First team match at the Old Trafford ground. Sadly by that time, he had sustained his injury and his future career in football was already in doubt.
15. The claimant sustained his injury only days after his team's success in the FA Youth Cup. The various rounds of the Youth Cup had taken up much of his time during that season. However, earlier in the season, he had been given his first opportunity to play for the Club's Reserves team.
16. On 26 September 2002, the claimant was named as a substitute for the Club's Reserves team for the first time and played in the second half of the match. In February and April 2003, the claimant was again named as a substitute for the Reserves team, but did not play on those occasions. The match in which he sustained his injury was the first time that he had started a match for the Reserves team.

**After his injury**

*The claimant's attempts to continue with his professional football career*

17. Shortly after his injury occurred, the claimant was informed by Manchester United that he was to be offered a two-year professional contract with the Club. He signed that contract in July 2003. At that time, he was still unable to play football as a result of his injury. He missed the end of the 2002/2003 season, all the pre-season training and half of the 2003/2004 season. He returned to training in January 2004, and,

between February and June 2004, played four or five games for the Under 19s team and the last game of the season for the Reserves team.

18. In the 2004/2005 season, the second year of his contract, Manchester United had two Reserves teams. The claimant played 18 games for the “second” Reserves team and one game for the “first” Reserves team. However, he never regained his pre-injury standard of play and, in February 2005, he was informed that his contract with Manchester United would not be renewed. In June 2005, his contract expired and he left the Club at the age of 20 years 9 months.
19. During the 2005/2006 season, the claimant failed to get a contract with any professional club in the UK. However, he was offered a contract with a New Zealand team, the New Zealand Knights. He played 16 or 17 games for the team, the standard of which was fairly low. The team finished bottom of its League and his contract was terminated by agreement in February 2006. In the 2006/2007 season, he played for a team named Agovv Apeldoorn, in the Netherlands. The team played in the lowest League of professional football in the Netherlands. He played about 27 out of 39 games but was dropped from the team for lengthy periods. The club was at the bottom of the League. In July 2007, recognising that he would not have a chance of a successful career in professional football, the claimant left Agovv Apeldoorn and retired from the game. It is accepted by the defendants that the claimant showed considerable and commendable determination in persisting in his attempts to play professional football after his injury. There is no suggestion that he acted otherwise than reasonably in deciding that he could not succeed in doing so.

*An alternative career*

20. The claimant took and passed a number of GCSEs at the age of 16 years. He then left school in order to concentrate on his footballing career. While at Manchester United, he studied for and obtained a BTEC in Sports Science. In September 2007, he began an Access course at the City College, Manchester, with the objective of gaining a place at a good University to study English. He received conditional offers from a number of Universities, including Leeds. During the course of the trial, he heard that he had obtained a “pass” in his course and he therefore intends to take up his place at Leeds University in September 2008.
21. The claimant gave evidence before me. I found him a most impressive young man. He was plainly intelligent and it is clear that he has brought – and will in the future bring - to his academic studies the same dedication and commitment that he formerly applied to football. This is confirmed by the reference provided by his Access tutor for the purpose of his applications to university. The reference contains these remarks;

“... Ben is the most remarkable student I have had the pleasure to teach in many years. His articulation in his assignment work is worthy of a 1<sup>st</sup> or 2<sup>nd</sup> year undergraduate. He is highly disciplined, no doubt derived from his career as a professional footballer. He is often quiet and unassuming, but listens in earnest and when required, is an excellent team worker, often inspiring his peers. His contribution to group discussions and projects is profound and respected by all. With a 100%

attendance and punctuality record, Ben is utterly reliable and trustworthy. He always meets deadlines and researches independently on all assignments he is given”.

22. That assessment accords entirely with what I have heard and read about the claimant during the course of this case. His positive attitude towards his injury and to the devastating blow of being unable to pursue his chosen career does him great credit.

## **The claimant’s prospects of a successful career in professional football**

### **The lay evidence**

#### *The witnesses*

23. All the lay evidence in the case was called on the claimant’s behalf. It related to the claimant’s personal attributes and abilities and his achievements during his time at Manchester United. I heard oral evidence from Sir Alex Ferguson; Mr Gary Neville (member of the Manchester United first team for many years and its current Captain); Mr Paddy Crerand (former Manchester United player, Youth coach and Assistant Manager, and now commentator for Manchester United Television Ltd, the Club’s own satellite channel, which screens all its Reserves team games and some of its Youth teams games live); Mr Paul McGuinness (former Manchester United player, now Under 18s coach and Assistant Youth Academy Manager, who coached the claimant between the ages of 9 and 16 years); and Mr Brian McClair (former Manchester United player and coach and now Manager of its Youth Academy, who coached the Under 19s team and the victorious FA Youth Cup team of which the claimant was a member). All these witnesses were familiar with the claimant’s playing and his character prior to his injury.
24. In addition, there were witness statements from Mr David Jones, Mr Chris Eagles, Mr Sylvan Ebanks-Blake and Mr Kieran Richardson (all of whom were contemporaries of the claimant and fellow members of the FA Youth Cup team) and from Mr Richard Sbragia (Reserves team coach at Manchester United from November 2002 until October 2005).

#### *The claimant’s abilities*

25. As Mr Andrew Prynne QC, for the defendants, acknowledged in his closing submissions, the evidence about the claimant’s ability and achievements, as well as his character and attitude, was all one way. During his 11 years at Manchester United, he had impressed players and staff at all levels, from Sir Alex Ferguson and Mr Gary Neville to the contemporaries who played alongside him.
26. The witnesses all spoke highly of the claimant’s technical skills on the field, together with his speed, agility, stamina and energy. He worked hard on the pitch and was a consistent team player. In addition to these attributes, the witnesses referred to four particular strengths possessed by the claimant:
- i) He was a dominantly left-footed player, although he was able to use both feet effectively. Left-footed players are a rarity in the professional game, particularly at international level. Left-footed players are especially well-suited

to playing left midfield, which was the claimant's favoured position. I was told that a good left-footed player has a scarcity value that makes him particularly attractive to football clubs.

- ii) The claimant had the ability to combine an attacking game at left midfield with a defensive game. Sir Alex told me that players rarely possess this ability. Indeed, he said that he had seen only one or two players in his lifetime who had it.
  - iii) The claimant was an intelligent young man with a keen interest in and good understanding of the game. Mr McClair described him as a "student of football". He said that one of the claimant's great strengths was his speed of thought and knowledge of the game.
  - iv) His character and attitude were ideally suited to a career in football. They were described by Sir Alex as "A Class" and "magnificent" and the evidence of the other lay witnesses echoed this. He was self-disciplined, focused and professional, both on and off the pitch. His work ethic was described by one witness as "phenomenal". He demonstrated commitment and determination to improve his game. He was regarded as a model for other young players to emulate.
27. The witnesses described how, after his injury, the claimant demonstrated characteristic determination and hard work in his attempts to understand and overcome the effects of his injury and to regain his former level of play. Despite his best endeavours, however, he was unable to do so.
28. The witnesses told me that, at the time of his injury, the claimant had successfully met all the challenges with which he had been presented up to that point. He had had an excellent 2002/2003 season, playing a vital part in the Club's victory in the FA Youth Cup. Playing in the Youth Cup team was considered to be an important progression, involving as it did performing under pressure before larger crowds than a young player would previously have encountered. It provided valuable experience for the future. Sir Alex said that the claimant's performance in the Youth Cup – particularly in the two legs of the Final – was "absolutely outstanding" and there were signs that he was going to fulfil his potential.
29. The claimant was given the Jimmy Murphy Award to reflect the outstanding season he had had and, in particular, the contribution he had made to the Club's victory in the FA Youth Cup. There was some debate in the course of the evidence about the precise nature of the Award. Sir Alex, who (together with members of the Manchester United coaching staff) is responsible for selecting the winner of the Award, said that it was given to the player who had performed best and shown the greatest potential during the season.
30. The list of former winners of the Jimmy Murphy Award includes a number of distinguished players such as Ryan Giggs (1990/1991 and 1991/1992 seasons), Paul Scholes (1992/1993), Phil Neville (1993/1994) and Wesley Brown (1997/1998 and 1998/1999). Of the winners in the 13 years prior to the claimant, 10 are currently playing Premier League football. The two winners immediately after the claimant are making good careers for themselves. They have both played in the Premier League (or

a foreign equivalent) and at international level. The winner for the 2006/2007 season, although still a young man, is already showing great promise. Mr Gary Neville predicted that all three would have “great careers in football”. The 2007/2008 winner, Danny Welbeck, was a member of Manchester United’s First team squad for the final of the European Cup when he was only 17 years old. Of course, as was conceded on the claimant’s behalf, winning the Jimmy Murphy Award does not guarantee success. There are a small number of previous winners who have not broken into the higher levels of the game. But, in most cases, the potential recognised by those selecting the winner of the Award has been confirmed by subsequent events.

31. In the early part of the 2002/2003 season, the claimant had been judged ready to “step up” to the Reserves team. At that time, the Club had only one Reserves team. The team was extremely successful, winning the Premier League Reserve North League in 2002, 2003, 2004 and 2006.
32. Membership of Manchester United’s Reserves team (and opposing teams) was not limited to youth players. Regular First team players coming back from injury, and other members of the First team squad who were not playing for the First team, would on occasion play in the Reserves team. The team would also include players (usually the majority) who, while relatively youthful and inexperienced, would nevertheless be older and more experienced than the claimant and his contemporaries. There was some difference of opinion during the hearing as to whether Reserves team matches gave young players their first experience of the “adult” game. Whether or not that is the case, it is clear that the matches would be played at a greater speed than Youth team games and against players of greater experience and strength. The inclusion of the claimant in the Reserves team was intended to give him the opportunity to prove himself at that level. Sadly, since his injury occurred in what was to have been his first full game for the Reserves team, he was deprived of that opportunity.

*Comparisons between the claimant and his contemporaries*

33. The view of the witnesses from Manchester United was that the group to which the claimant and his contemporaries belonged was a strong one. It produced a team which had won the FA Youth Cup for the first time for several years. The evidence was the claimant was considered to be one of the strongest players in the group.
34. Mr McGuinness was responsible for the claimant’s progress from his arrival at the Youth Academy until the age of 16 years. He told me that the claimant was the outstanding player in the group at that time. When he was about 15 years old, Kieran Richardson joined the Youth Academy. He had considerable talent and flair. The two boys trained together. Mr McGuinness said that both boys benefited from the challenge posed by the other. By the time the claimant was 16 years, Mr McGuinness still regarded him as the strongest all-round player in the group.
35. Mr McClair took over responsibility for the claimant at the beginning of the 2002/2003 season. During the 2001/2002 season, the claimant’s coach had been Mr Bailey. At the time Mr Bailey handed over responsibility to Mr McClair, he told him that the claimant was the best player in the group. In May, 2003, having coached him for ten months, Mr McClair’s view was that the claimant was still at the top of the group. He considered that the claimant demonstrated “top potential” at that stage and

it was for that reason that, in February 2003, he recommended him for inclusion in the Reserves team.

36. Mr Sbragia joined Manchester United in November 2002 and was responsible for coaching the Reserves team. He described the claimant as technically gifted, extremely fit, with an “eye” for a goal. He said that he was able to “do things that surprised opponents”, as a result of which he could “change games”. He described his commitment and professionalism as “first rate” and said that they “made him stand out from the group”. He said that the fact that he received the Jimmy Murphy Award ahead of such talented players as Kieran Richardson, Phil Bardsley, Chris Eagles, Paul McShane and Sylvan Ebanks-Blake “cannot be underestimated”. He considered that, prior to his injury, he was at least on a par with those players.
37. Sir Alex’s evidence was that the claimant had been of rather slight physical build at the ages of 14, 15 and 16 years. Over the season of 2002/2003, he had developed physically. His performance in the FA Youth Cup Final had been “absolutely outstanding” and there were signs that he was going to fulfil his potential. However, Sir Alex was clear that, at that stage, the claimant was not as strong as Kieran Richardson, who was, he said, far better equipped to play at the top level at that time. However, the claimant was, according to Sir Alex, “easily” on a level with other members of his group, such as Paul McShane, Phil Bardsley, Sylvan Ebanks-Blake and Chris Eagles.

*The careers of the claimants’ contemporaries*

38. It is relevant to examine the career paths taken by the claimant’s fellow members of Manchester United’s FA Youth Cup squad. It must, of course, be borne in mind that these are all young players still and may well not yet have realised their full potential.
39. The midfield players in Manchester United’s team for the FA Youth Cup Final (in addition to the claimant), were Kieran Richardson, David Jones and Chris Eagles. Of those three:
  - i) Kieran Richardson is a few weeks younger than the claimant. He joined the Youth Academy at the age of about 14 years, and he was given his first professional contract with Manchester United in July 2002. He played his first match for their First team during the 2002/2003 season. In January 2005, whilst still under contract with Manchester United, he was sent on loan to West Bromwich Albion FC, where he played for their First team, which was near the bottom of the Premier League, for the remainder of the season. The team narrowly escaped relegation to the Championship League. In May 2005, he played for England for the first time. He returned to Manchester United in May 2005 and played for their First team. In July 2007, he was “sold” to Sunderland FC, a Premiership club, for £5.5 million.
  - ii) David Jones is a few weeks younger than the claimant. He joined the Manchester United Youth Academy at the age of ten years. He entered into his first professional contract with Manchester United in July 2003 (the same time as the claimant), when he was given a three-year contract. Whilst still under contract with Manchester United, he was loaned to Preston North End FC, a Championship club, for the 2005/2006 season. In January 2006, he was

loaned to NEC Nijmegen (a club in the top division of the Dutch Football League). He then entered into a further three-year contract with Manchester United.

At the start of the 2006/2007 season, Manchester United agreed to loan him to Derby County FC, who were seeking promotion from the Championship to the Premier League. In January 2007, Derby County paid a transfer fee of more than £1 million so as to secure his permanent transfer. The team was duly promoted and Mr Jones played in the Premier League during the season 2007/2008. Derby County FC has now been relegated to the Championship League. Mr Jones was recently “sold” to Wolverhampton Wanderers FC, another Championship club.

- iii) Chris Eagles is 14 months younger than the claimant. He joined the Manchester United Youth Academy at the age of 14 years. He entered into his first professional contract with Manchester United in July 2003 (the same time as the claimant). He first played in the Club’s First team in October 2003. In January 2005, whilst still under contract with Manchester United, he was sent on loan to Watford FC, whose team was in a high position in the Championship League. The following season, he went on loan to another Championship club, Sheffield Wednesday FC. His loan period there expired in January 2006, when he returned to Watford FC and contributed to their promotion to the Premiership. For the 2006/2007 season, he was loaned to Nijmegen, before returning to Manchester United, where he is now part of the First team squad.

40. Other members of the FA Youth Club team who are also having successful careers are:

- i) Sylvan Ebanks-Blake is 18 months younger than the claimant. He entered into his first professional contract with Manchester United in October 2004. In February 2005, he was given a further two and half year contract. He was then loaned to a Belgian team. At the end of the 2005/2006 season, Manchester United “sold” him for a transfer fee of £200,000 to Plymouth Argyle FC, a Championship club. In January 2008, he was “sold” to Wolverhampton Wanderers FC, a Championship club, for £1.5 million.
- ii) Phil Bardsley is almost a year younger than the claimant. He entered into his first professional contract with Manchester United in July 2003 (the same time as the claimant). He remained with the Club until January 2008. During the period of his contract, he was loaned to a Belgian team, to Burnley FC (a Championship club), to Glasgow Rangers FC (a Scottish Premier League club), to Aston Villa FC (a Premiership club) and to Sheffield United FC (a Championship club). In January 2008, at the age of 21 years, he was “sold” to Sunderland FC, a Premiership club, for a transfer fee of £2 million.
- iii) Paul McShane is 15 months younger than the claimant. He first entered into a professional contract with Manchester United in August 2004. During the course of his contract, he was loaned to Walsall FC and Brighton FC (both League One sides). In August 2006, he was given a free transfer (as part of a larger deal) to West Bromwich Albion FC, which was then in the

Championship League. In July 2007, he was sold to Sunderland FC, a Premiership club, for £2.5 million.

41. The up-to-date position about the remaining nine players is not entirely clear. Doing the best I can, it seems that one (Tom Heaton) is still contracted to Manchester United and on loan to Cardiff City FC, a Championship club. Another (Mark Howard) plays for a Danish club which is in a League equivalent in England and Wales to the low Premiership/upper Championship. A third (Luke Steele) plays for a Championship club. Four players (Ramon Calliste, Eddie Johnson, David Poole and Phil Picken) play in Leagues One or Two. The eighth (Lee Lawrence) previously played in League Two but now has no team. The ninth (Lee Simms) did not make a career in football.

*The evidence about the claimant's future*

42. The world of professional football is intensely competitive. There are many talented young players and only a limited number of places in the teams of those football clubs playing at the highest level. Competition has been increased by the influx of foreign players into the UK game. Even those young players who have the talent and the good fortune to be under contract to a leading club like Manchester United may not be selected to play in the First team on a regular basis. This is frustrating for them and prevents them from gaining the experience they need of playing matches at a high level. Accordingly, it is customary for Manchester United to loan out young players to other Premiership or Championship clubs. Such players remain under contract to Manchester United for the duration of their loan. Depending on their progress with the "borrowing" club, they may then be loaned out again, taken into Manchester United's First team squad or "sold" to another club. A player may be told (as the claimant was after his injury) that his contract with Manchester United will not be renewed; in that event he will be left to seek a contract with another club. The fact that a player is "sold" to another club does not necessarily mean that he is not good enough to remain with Manchester United. It may be that he plays in the same position as an established member of the First team and therefore has no realistic chance of playing regularly for the team in the foreseeable future. He may want the guarantee of regular First team games that he will not get at Manchester United.
43. The intense competition and the high standard of players in the UK game mean that the difference between a successful and unsuccessful player may be a very fine one. Not all young players fulfil their potential. Some fail to rise to the challenge of the adult game.
44. The evidence from those who knew the claimant was that, at the time he sustained his injury, he was on course for a successful career in professional football. The opinion of Mr Sbragia, given in his witness statement, was typical of the views expressed by the other witnesses:

"During my time at the Club, Ben Collett certainly demonstrated that he had sufficient ability prior to the injury to have played for a team in the Championship ... if not higher. At that age it is difficult to ascertain how much further that a player would be able to progress. Had Ben Collett continued to develop as he had been prior to the injury, then he might have been able to break into the First team squad at Manchester

United. Given his determination, professionalism and focus to succeed, it would not have surprised me had he subsequently gone onto become a Premiership player. The injury he suffered certainly deprived him of the opportunity of demonstrating that he had the potential to play to that level.”

45. In their witness statements, David Jones, Chris Eagles, Kieran Richardson and Sylvan Ebanks-Blake all said that they would have expected the claimant to have continued to play professional football at least to Championship level. Manchester United’s Captain, Gary Neville, who was familiar with his game, said that he was right at the top of the group in the FA Youth Cup Final squad. He described the question as to whether he would have succeeded in top level football as a “no-brainer”, explaining that:

“... it would have been a certainty for any football person with knowledge to have seen that Ben would have gone on to become a top level football player”.

46. Sir Alex Ferguson explained that, despite the claimant’s injury, the Club had entered into a two-year professional contract with him in July 2003. That course had been recommended by the coaching staff and Sir Alex himself had agreed. He said that he had done so because of the claimant’s “fantastic focus”, “great attitude”, “great desire to work very hard” and the fact that he was “very receptive”, all qualities that, he said, generally gave players an “outstanding chance” of doing well in the game.
47. Sir Alex said that some of the claimant’s contemporaries had received two-year contracts and some had been given three-year contracts in July 2003. He said that, had the claimant not been injured, he would not have expected him to be given a contract for a shorter period than that given to David Jones. It seems from the other evidence that David Jones was given a three-year contract as from July 2003.
48. Sir Alex said that, during the currency of the claimant’s contract, he would have wanted to loan him out to another club, as he did with a number of the claimant’s contemporaries. This would be so that the claimant could gain experience and have the satisfaction of playing regularly at a good competitive level. It would also have given Manchester United the opportunity of seeing how the claimant rose to the challenge and to assess whether he was likely to be good enough for the Club’s First team. He said that he would have monitored the claimant’s progress while on loan before deciding what to do next. He said that, since the claimant played left midfield, the same position as Ryan Giggs (an established and highly successful member of Manchester United’s First team), there was no real prospect of him breaking into the First team. He said that, that being the case, it is likely that he would have “sold” the claimant to another club, probably a “progressive” or “aspiring” Championship club which was looking for good players to assist it in obtaining promotion to the Premier League. Sir Alex cited a number of examples (including David Jones) of players who had left Manchester United and joined a Championship club which had subsequently been promoted to the Premier League. He also gave examples of players who had been “sold” by Manchester United to Championship clubs, and later “bought” by a Premiership club.

## The expert evidence

49. I heard evidence about the claimant's prospects as a professional footballer from three experts.

### *Mr Howard Wilkinson*

50. Mr Howard Wilkinson, who gave evidence for the claimant, is a former professional footballer and football manager. During his time as manager of Leeds United FC, he established a Youth Academy and took a close interest in the development of young players, several of whom have progressed to be successful established players at international and national level. Between 1996 and 2002, he was Technical Director of the FA; during this period, he devised a strategy for development of the game at all levels, including for young players. He also coached at various levels, including the England Youth Under 18s team, and the England Under 21 team. He acted as caretaker manager of the full England team on two occasions. He has been Chairman of the League Managers' Association since 1993 and is still involved in initiatives to assist the development of young players.
51. Mr Wilkinson had never seen the claimant play "live", although he had viewed DVD footage of several of his games, together with a compilation DVD prepared by the claimant's solicitors. His views about the claimant's prospects were based primarily on the evidence of the witnesses from Manchester United, coupled with his own extensive experience of the development of young players and his knowledge of the high standards and competitive atmosphere prevailing at Manchester United. He also took into account the claimant's achievements in winning the Jimmy Murphy Award, the prominent part he played in Manchester United's victory in the FA Youth Cup and the subsequent careers of the claimant's contemporaries.
52. In answer to questions from Mr Andrew Prynne QC, for the defendants, Mr Wilkinson said that improvements in the development of young football players meant that there was a greater degree of accuracy in identifying the most talented players early in their careers than had previously been the case. Thus, since the claimant had survived in the Manchester United Youth system for nine years or so, and having regard to his achievements and the high regard in which he was held by Manchester United's coaches and Manager, he was able to assert with confidence that the claimant would (barring injury) have had a successful professional football career.
53. In his report, Mr Wilkinson had assessed the likelihood of the claimant playing football at Premiership level as 60%, at Championship level as 35%, at League One as 5% and at League Two as negligible. In oral evidence, having heard the lay evidence, he explained and refined his views somewhat. He explained that he now believed that, had the claimant's injury not occurred, he would have played professional football at least at Championship level throughout his career. That would, in his opinion, have been the gloomiest assessment. However, he felt that the claimant had had a 60% chance of playing in the Premiership League for at least some part of his career. He could not say for how long; that would have depended on how the claimant had responded to the challenges presented by playing at that level. Mr Wilkinson expressed the view that, barring injury, the claimant had had "too much in his locker" to have played only at League One or League Two level.

54. Mr Wilkinson made an impressive witness. I am satisfied he had given considerable thought to the percentage chances given in his report. Insofar as those percentage chances had been interpreted by the claimant's advisers to reflect the chance that the claimant would have played at the relevant levels throughout his career (rather than for only part of it), I am satisfied that that was as a result of a misunderstanding on their part and not any change of mind on the part of Mr Wilkinson. Inevitably, since Mr Wilkinson had no personal knowledge of the claimant, his opinions were based to a very large extent on the evidence of the lay witnesses, especially that of Sir Alex Ferguson.

*Mr Nigel Spackman*

55. Mr Nigel Spackman gave evidence for the defendants. He played football for Hampshire in his teens. He suffered an injury when he was 15 years old, as a result of which his football career was temporally interrupted and he went to college. He joined Bournemouth Football Club at the age of 18 years and, from then until he was 37½ years old, he played football at the highest level (mainly in the equivalent of the Premier League) for Liverpool, Queen's Park Rangers, Glasgow Rangers and Chelsea FCs. Since August 1997, he has had three fairly short periods (7 months, 9 months and 3 months) as manager of football clubs and, under Mr Wilkinson's supervision, has done some coaching of the England Youth Teams. He is currently employed in the media as a commentator on football matters.
56. Like Mr Wilkinson, Mr Spackman had not seen the claimant play "live" but has viewed DVD footage of him, including the compilation DVD. In his report, Mr Spackman acknowledged the limitations of DVDs (especially compilations), as compared with being present at a live game, when a player's abilities off - as well as on - the ball can be assessed properly. On the basis of the DVD footage, however, Mr Spackman concluded that the claimant's play in the Under 19s games was less impressive than in the Under 17s games. He observed that he was less prominent than his colleagues, Kieran Richardson, Chris Eagles and David Jones. He judged that the claimant showed less potential than those players. Mr Spackman went on to emphasise the difficulty of predicting with any degree of certainty whether a player of 18 or 19 years would have a successful career in professional football. He said that the fact that a young player had made one or two appearances in the First team of a Premiership club like Manchester United was no guarantee that he would enjoy a long-term career in the Premiership. Premiership clubs, he said, might field young players in their First teams for a number of reasons. It was only if a player had made several appearances in the First team that a confident prediction of success could be made. That was not the case with the claimant.
57. At paragraph 4.4.6 of his report, Mr Spackman accepted that the claimant had some chance of succeeding as a top level footballer. However, he went on to say:

"From what I have seen, Collett did not show the attributes necessary to succeed in the Premier League. Because he was not the outstanding player of his group and because most (sometimes all) players are discarded, I do not believe he had a prospect of success at that level. In forming this view I have also taken into account Sir Alex Ferguson's witness statement in which he says that Ben Collett's pre-accident attributes were

similar to many Championship players. From what I have seen, I think that Collett would probably have struggled to make it at Championship level but given Sir Alex's comments I consider that this is the best that Ben Collett could have hoped for".

58. Having viewed the DVD footage of games in which the claimant played after his injury, Mr Spackman expressed the view that the effect of the injury upon his ability to play football was limited. He observed at paragraph 5.3.2:
- "... I suspect that Collett may have considered that the injury was to blame, when in actual fact it is my view that the true picture is probably more that he was simply unable to make the required standard".
59. Not surprisingly, in the light of the rest of the evidence, this contention was not pursued at trial.
60. In evidence-in-chief, Mr Spackman said that he doubted that the claimant had the power and pace to succeed in the Premiership. He also doubted whether he would have had the physical strength. He pointed out that foreign competition was making it more and more difficult for young, home-grown, players to come through. The question would have been how the claimant coped with the extra challenges in front of him.
61. In cross-examination, Mr Spackman accepted that those people, such as Sir Alex Ferguson, Mr McClair and Mr McGuinness, who had known the claimant's game over a period of years and had great experience with young players, were in a far better position than he to assess the claimant's abilities and potential. He accepted that his comment that the claimant would have probably "struggled" at Championship level did not, on the evidence of the claimant's witnesses, represent a fair appraisal. Having heard that evidence, he said that he accepted that the claimant would probably have coped at that level and may indeed have coped at Premiership level. He indicated that he would defer to those witnesses who were familiar with his game.
62. I was not impressed by Mr Spackman's evidence. It seemed to me that he was somewhat selective in his references to the witness evidence when preparing his report, and that, whilst acknowledging the limitations of DVD footage, he placed undue emphasis on his own assessment of the claimant's skills as derived from that source. The claimant's achievements in winning the Jimmy Murphy Award and playing a key part in his team's FA Youth Cup victory were given little prominence in Mr Spackman's report. His assessment that the claimant's game was not significantly affected by his injury was plainly wrong. Mr Spackman had not previously acted as an expert witness and it may well be that his inexperience accounted for the somewhat one-sided content of his report. In evidence, he readily conceded that the views of those who had known the claimant over a period of years must carry greater weight than his own.

*Dr Bill Gerrard*

63. Dr Bill Gerrard, who gave evidence for the defendants, has a first class Honours degree in Economic Sciences, a Masters degree and a Doctorate in Economics. He is

Professor of Sports Management and Finance at the Leeds University Business School, and has particular expertise in the economics, finance and management of professional team sports. He has published prolifically on a variety of topics. He has worked as a consultant in the sports industry, which has involved, *inter alia*, estimating the financial returns of football academies and analysing player performance data. Dr Gerrard is not a statistician, but he told me that his working life is based on the use of numbers to produce evidence-based information.

64. Dr Gerrard was instructed by the defendants to assess the available statistical evidence and to reach a conclusion as to what chance the claimant had of pursuing a successful career as a professional footballer and at what level and, in the light of his conclusions, to assess the claimant's likely earnings.
65. Dr Gerrard analysed the "survival rates" of all young players who joined Manchester United (at the age of 16 or 17 years) on scholarships between 1990 and 2007. He prepared two Tables (Tables 3 and 4) which appear at pages 7 and 8 of his report. Table 3 is reproduced below:

| Age   | Entry | Exit | Truncated | Survival Rate |
|-------|-------|------|-----------|---------------|
| 16/17 | 222   | 41   | 16        | 80.10%        |
| 18    | 165   | 9    | 9         | 74.62%        |
| 19    | 147   | 32   | 6         | 57.07%        |
| 20    | 109   | 19   | 8         | 44.81%        |
| 21    | 82    | 7    | 4         | 39.66%        |
| 22    | 71    | 3    | 4         | 36.57%        |
| 23    | 64    | 7    | 8         | 29.34%        |
| 24    | 49    | 4    | 3         | 25.61%        |
| 25    | 42    | 3    | 4         | 21.88%        |
| 26    | 35    | 2    | 3         | 19.11%        |
| 27    | 30    | 5    | 3         | 14.29%        |
| 28    | 22    | 2    | 3         | 11.26%        |
| 29    | 17    | 2    | 3         | 8.11%         |
| 30    | 12    | 1    | 0         | 7.43%         |
| 31    | 11    | 0    | 7         | 2.84%         |
| 32    | 4     | 0    | 2         | 1.44%         |
| 33    | 2     | 0    | 0         | 1.44%         |
| 34    | 2     | 0    | 2         |               |
| 35    | 0     | 0    | 0         |               |

66. The first horizontal row of the Table shows the total number of scholars (222) who joined Manchester United at the age of 16 or 17 years during the relevant period. The "Exit" column shows that, of those 222 scholars, 41 left at the age of 16 or 17 years and have not subsequently made any League appearance for a professional football club. The "Truncated" column shows 16 current or former Manchester United scholars who, at the time when the Table was compiled, was still aged 16 or 17 years and in the professional game. They were left out of Dr Gerrard's calculations because, at the time the Table was compiled, their future was unknown.
67. The second horizontal row shows, under the heading "Entry", the number of scholars remaining in the professional game (not necessarily with Manchester United) at the age of 18 years (165, i.e. 222-(41+16)); under the heading "Exit", the number (9) who

left the professional game at the age of 18 years; and, under the heading “Truncated”, the number still aged 18 years at the time the Table was compiled and therefore left out of account.

68. The remaining rows show the same figures for ages 19-35 years. The percentage year by year of the initial 222 who “survived” by remaining in professional football is shown in the right hand column. The Table shows that, by the age of 20 years, just over 55% of the original 222 scholars had left the professional game. This is significantly less than the average exit rate across all professional English football clubs, which is 85% at the age of 20 years. Manchester United’s greater survival rate arises as a result of its position at the top of the professional football pyramid which means that those leaving the Club have a large number of opportunities for re-employment in professional football. Nevertheless, there is a very substantial exit rate, even at Manchester United.
69. Dr Gerrard acknowledged that, since the claimant was still under contract with Manchester United at the age of 19 years, it was more appropriate to include in his calculation only those players who had remained within the professional football game three years after joining the Club at 16 or 17 years old. He set out this information in Table 4:

| Age | Entry | Exit | Truncated | Survival Rate |
|-----|-------|------|-----------|---------------|
| 19  | 147   | 32   | 6         | 77.30%        |
| 20  | 109   | 19   | 8         | 61.65%        |
| 21  | 82    | 7    | 4         | 55.04%        |
| 22  | 71    | 3    | 4         | 51.20%        |
| 23  | 64    | 7    | 8         | 41.88%        |
| 24  | 49    | 4    | 3         | 36.84%        |
| 25  | 42    | 3    | 4         | 31.82%        |
| 26  | 35    | 2    | 3         | 28.04%        |
| 27  | 30    | 5    | 3         | 21.15%        |
| 28  | 22    | 2    | 3         | 16.83%        |
| 29  | 17    | 2    | 3         | 12.24%        |
| 30  | 12    | 1    | 0         | 11.22%        |
| 31  | 11    | 0    | 7         | 4.40%         |
| 32  | 4     | 0    | 2         | 2.25%         |
| 33  | 2     | 0    | 0         | 2.25%         |
| 34  | 2     | 0    | 2         |               |
| 35  | 0     | 0    | 0         |               |

70. The information in the first four columns is taken from that in Table 3. However, the percentage survival rate in the fourth column has altered as a result of using a cohort of 147 nineteen year olds, rather than the original 222 sixteen or seventeen year olds. It is to be noted, however, that the 147 nineteen year olds shown in Table 4 would not all be at Manchester United.
71. Using the same data, Dr Gerrard analysed the percentage chance of a former scholar having a career of different lengths in, respectively, the Premiership, the Championship, League One and League Two. He explained that, for these purposes, he categorised a player as having played at a particular level if more than half of his professional appearances had been at that level. This exercise showed (Table 5) that 38.35% of the former Manchester United scholars who played at Premiership level made an early exit from the professional game at the age of 19 or 20 years; 10.53%

had a full career to the age of 31 and beyond. Of those who played at Championship level, 3.9% had a short career, exiting at between 21 and 25 years; 10.39% left the professional game aged 26-30 years and none had a full career to the age of 31 years and beyond. Of those playing in Leagues One and Two, most did not remain beyond the age of 25 years. From this analysis, Dr Gerrard estimated that the claimant had a 10.53% chance of a full career at Premiership level and a 14.29% chance of a career in the Championship. In Table 6 of his report, Dr Gerrard analysed the same information year by year for former Manchester United scholars from the age of 20 years. In oral evidence, he illustrated various ways that his analysis could be used to calculate the probabilities of a player continuing to play at any given level.

72. Dr Gerrard made clear that his evidence was based solely on an analysis of a “benchmark group” of Manchester United scholars. He had calculated the average chance of success for a member of that group. His analysis took no account of the claimant’s personal attributes, abilities or achievements.
73. Dr Gerrard’s analysis was subjected to a number of criticisms from Mr Richard Hartley QC, for the claimant. He pointed out that if, as Sir Alex Ferguson had said would have happened, the claimant would have been given a professional contract extending to the age of 21 years, his prospects of a successful career would have been far greater than that suggested by Dr Gerrard’s analysis. Not only would the claimant have survived beyond the age at which the maximum wastage occurred, but he would have survived at Manchester United. Dr Gerrard accepted that, had he made that assumption, the statistical chance of a successful professional career would have been greater. He emphasised that he had deliberately avoided making any subjective assumptions when carrying out his analysis. He had sought to choose a “benchmark group” or cohort which represented the achievement level that the claimant had actually reached at the time of his injury.
74. Mr Hartley also pointed to problems caused by, *inter alia*:
  - i) Dr Gerrard’s categorisation of the levels at which players were playing;
  - ii) the fact that many former Manchester United scholars included in the analysis had not yet reached the age of 35 years (so that, for those who were still playing professional football, their future career path was unknown);
  - iii) the small numbers in the sample beyond the age of 21 years;
  - iv) the fact that the analysis looked only at scholars starting at the age of 16-17 years, whereas the claimant had been at the Club since he was nine years old; and
  - v) the fact that the analysis did not take account of those who had joined Manchester United after the age of 17 years and who were the claimant’s direct contemporaries.

He also pointed to findings that, he said, appeared to defy commonsense. For example, Table 5 suggested that a former Manchester United scholar aged 31 years old and over had a 10.53% chance of playing at Premiership level, but no chance at all of playing at Championship level, while Table 6 showed that a former Manchester

United scholar had the same chance of playing Premiership football at 21 years as at 35 years.

75. While I have no criticism at all of Dr Gerrard or the exercise he carried out, it is clear that his analysis had considerable limitations, as highlighted by Mr Hartley. The most serious of these was that it took – and could take – no account of the claimant’s personal attributes and achievements, nor the opinion of his prospects held by others. Dr Gerrard readily acknowledged this. The analysis does, however, confirm the highly competitive nature of the professional game and the fact, that even for those who train at the highest level, a successful career is by no means assured. That is a matter which I take fully into account when making my findings on the claimant’s prospects.
76. However, it would not be appropriate in my view to use Dr Gerrard’s analysis to calculate the chance of the claimant achieving a career at Championship or Premiership level, as the defendants suggest I should. An assessment of the prospects of an individual scholar is not susceptible to a mechanistic statistical approach, particularly when (as here) there is a wealth of good quality evidence about his abilities and potential. The correct approach, it seems to me, is to consider the totality of the evidence and to make a judgment about the claimant’s prospects, giving appropriate weight to his personal attributes and abilities.

## **Remuneration**

### **The evidence of Mr Melvyn Stein**

77. I heard evidence about players’ remuneration from Mr Melvyn Stein, who gave evidence for the claimant. Mr Stein was until 1997 senior partner of a London firm of solicitors, where he developed a specialist sports law department. Thereafter, he was for several years the sole director of a sports management company and acted for many footballers, including some leading names, in the UK and abroad. He is now a consultant to a management company which represents a large number of professional footballers, as well as football clubs and managers. He supervises agents working for the company and retains some of his own clients. He has been responsible for establishing an Association of Football Agents. He continues to be active within the sports law field. He has extensive experience of the football industry, in particular its financial aspects.
78. Mr Stein said that a number of circumstances have combined to cause footballers’ remuneration – in particular in the Premiership – to rise sharply in recent years. The sale of television rights announced in May 2006 brought in a great deal of money for Premiership clubs. Mr Stein said that promotion of a club playing in the Championship to the Premier League for only one season could be worth £60 million to that club. He said that, meanwhile, the problems associated with relegation from the Premier League to the Championship League had been reduced. The inevitable loss of income for clubs which were relegated from the Premiership (and which might otherwise result in less money to pay players’ wages) is now cushioned by the payment of “parachute monies” to relegated clubs, payable for three seasons after relegation. Also, clubs which are liable to move between the Premier and the Championship Leagues will now draft their players’ contract so as to ensure that their

levels of remuneration are significantly higher when the club is in the Premiership than when it is in the Championship.

79. Mr Stein said that, for all these reasons, it was now very much more attractive for Championship clubs to seek promotion to the Premiership than it had been hitherto. As a result, Championship clubs were becoming increasingly keen to obtain good players who would assist them to secure promotion. That has, he said, led to a narrowing of the gap between the wages paid to players in clubs at the lower end of the Premiership and those payable to players in “aspiring” clubs at the higher end of the Championship. Mr Stein’s evidence was that he believed football was “recession-proof” and that income from technology and broadcasting would continue to drive the market for players up and up.

*“The Independent” surveys*

80. In 2002 and 2005, “The Independent” newspaper conducted surveys of professional footballers, designed to gather their views on various topics and to obtain information about their working lives, including their levels of remuneration. The surveys were organised by Mr Nick Harris, who has been a staff sports writer with “The Independent” since 1998 and who specialises in football finance and business. In conducting the surveys, “The Independent” obtained the support and assistance of the Professional Footballers Association (PFA), which distributed copies of the questionnaire to every professional footballer in England. In 2000, the response rate was more than 20%; in 2005, 400 footballers replied, which represented a slightly lower percentage. The results of both surveys were published in “The Independent”.
81. Players were asked to provide details of their basic weekly wage, i.e. excluding bonuses and all other additional payments. On receipt of the completed questionnaires, “The Independent” calculated the average basic weekly wage of players at each of the four levels of professional football. The results were communicated to the PFA, whose Chief Executive confirmed, according to Mr Harris, that the figures were broadly in line with the PFA’s own data. The PFA has access to the earnings of every professional footballer in England and Wales. In his witness statement, Mr Harris said that no other comparable study of footballers’ earnings has ever been undertaken.
82. The 2005 survey (based on wages in the 2005/2006 season) showed that the average basic salary of a footballer in the Premiership was £676,000 a year. The average basic annual salary for a Championship player was £195,750 per annum. The survey reported that the average Premiership salary had risen by 65% since 2000 and the average Championship salary had risen by 53% over the same period.
83. In his original Schedule of Loss, the claimant’s claim was based on figures contained within the 2005 survey. Subsequently, however, the Schedule of Loss was amended to rely on figures given by Mr Stein. In his report, Mr Stein explained that he had used figures derived from his own experience, rather than from “The Independent” survey. He said that the survey dealt only with average figures, which took no account of an individual’s personal circumstances and abilities. Also, he said that the survey dealt primarily with basic wages, whereas a large proportion of player’s remuneration came from bonuses and other additional payments.

84. In oral evidence, Mr Stein went much further in expressing reservations about “The Independent” surveys. He described them as “a waste of time” and claimed that they distorted the figures. He pointed out that they were based on voluntary responses to questionnaires; he suspected that those players with really high earnings would not have completed the questionnaires. He pointed out that, although global percentages of those responding were given in the newspaper reports of the surveys, there was no information about the percentage response at each level. He said that the figures contained within the 2005 survey did not accord with his personal experience.

#### *The Deloitte Annual Reviews*

85. The accountants, Deloitte, conduct Annual Reviews of football finance, the most recent of which was published in May 2008 and covered the season 2006/2007. The Annual Review does not contain any information about the remuneration of individual players. It measures the total wage costs of football clubs competing at all four levels of the professional game.
86. The 2008 Deloitte Review shows that Premier League clubs’ wage costs increased by 13% in 2006/07, a second consecutive year of growth after a fall (described as “unprecedented”) in 2004/05. The wage costs of Championship clubs were reported to have increased by an average of 14% in 2006/2007. There were, at both Premiership and Championship level, considerable fluctuations between the wage costs of different clubs. The May 2008 Deloitte Review also showed that, during the 2006/07 season, the four Championship clubs with the highest wages costs occupied the four top positions in the Championship League. Although there were other clubs (such as Plymouth Argyle FC) which had achieved a good position in the League table while keeping wage costs low, the May 2008 Deloitte Review appeared to support Mr Stein’s evidence that “aspiring” Championship clubs are prepared to pay high wages to players who might assist them in reaching the Premier League.
87. The May 2008 Deloitte Review predicted an increase in Premier League average wage costs of 18-22% in 2007/08.

#### **The evidence of Doctor Gerrard**

88. Doctor Gerrard used the figures in “The Independent” 2005 survey for the purposes of the calculations contained in his report. He rejected the criticisms of that survey made by Mr Stein. His view was that the 2005 survey was the best evidence available in relation to individual salaries of footballers. He said that it had had a good response rate and there had been an attempt to evaluate the results with the PFA. He regarded it as statistically reliable. He also accepted that the Deloitte Annual Reviews were the best evidence available on inflation which had occurred since the 2005 “The Independent” survey.

#### **The approach to remuneration**

89. I do not doubt Mr Stein’s expertise as a football agent and negotiator on his clients’ behalf, or his knowledge of and “feel” for the professional football market. However, his evidence was unsatisfactory in a number of respects. It was somewhat anecdotal and subjective in nature and was based to a large extent on his personal experience of negotiating on behalf of individual clients. It did not provide any overview of the

earnings of players at the relevant levels. Moreover, the tone of his evidence was not always as measured as is to be expected from an expert witness; this was particularly evident in the intemperate manner in which he criticised “The Independent” survey and there were other examples. For those reasons, I do not feel able to use his evidence (save in certain limited respects) as a basis for my findings in relation to loss of earnings.

90. I consider that “The Independent” survey of 2005 provides a more secure basis on which to make my findings. I note that at least part of its purpose was to obtain authoritative data for use in damages claims and that was made clear on the questionnaires sent to players. No doubt the fact that it was to be used for that purpose was one of the reasons why the PFA was prepared to co-operate. It is in my view significant that the figures contained in the 2000 survey were confirmed by the Chief Executive of the PFA as being broadly in line with his expectations and knowledge and that, having assisted in the 2000 survey, the PFA thought it worthwhile assisting in a similar exercise five years later. I accept that the survey may have some flaws. I recognise that it is possible, as Mr Stein said, that there might have been some resistance among the best-paid players to volunteer details of their earnings to a newspaper. I agree that it would be useful to have data about such matters as the number of responses received from players at each level of the professional game. Nevertheless, it seems to me that the survey provides the best evidence available about average earnings in professional football and I shall therefore use it as the starting point for my calculation of the claimant’s loss of earnings. As to increases in wages since the 2005 “The Independent” survey, I shall use the figures contained in the May 2008 Deloitte Annual Review, which are generally agreed to be authoritative. I have been shown a number of players’ contracts containing details of terms relating to basic earnings and additional payments. These provide snapshots of the relevant players’ earnings at a certain time or times in their careers. Insofar as those contracts relate to contemporaries of the claimant, I have found them useful, if only as a check against my own figures.
91. “The Independent” surveys deal only with basic wages. A large proportion of players’ earnings are composed of additional payments such as various types of bonus, appearance fees, signing on fees and sell-on fees. Terms in relation to additional payments vary widely. Mr Stein agreed with Mr Prynne’s suggestion that a reasonable rule of thumb was that additional payments represented, on average, 50% of a player’s basic wage. In re-examination, he said that he would exclude from that 50% one-off payments such as signing on and sell on fees. I accept that evidence which, as I shall explain, is consistent with “The Independent” survey.
92. Agents’ fees comprise 3-5% of basic wages and signing on fee. In the past, Mr Stein charged 3% if the player was paying and 5% if the fees were to be paid by the club. He explained that, as from 1 January 2008, agents’ fees are to be paid by players out of net income. Mr Stein said that he would hope to recoup the fees by negotiating an equivalent increase in remuneration in the contract. There can, however, be no certainty that this will be possible and I have assumed in my calculations that, as from 1 January 2008, agents’ fees must be deducted.

## The law relating to loss of a chance

93. The principles of law governing the assessment of damages in cases involving the loss of a chance (e.g., as here, the chance of a successful career) are not in dispute, although the application to some aspects of the evidence are not agreed. Where there is significant uncertainty as to whether the chance would have materialised, the appropriate course is to apply a discount, reflecting the prospects that the chance would, but for the injury, have materialised. If no significant uncertainty arises, no discount is appropriate and the full amount of damages should be awarded. I was reminded of the leading cases of *Davies v Taylor* [1974] AC 207 and *Doyle v Wallace* [1998] PIQR Q 147, in which these principles were set out and applied.
94. I have been referred to the Court of Appeal decision in *Langford v Hebran* [2001] PIQR Q13 and also to other decisions relating to lost footballing careers namely *Appleton v LEL Safty* [2007] EWHC 631 (QBD) and *Watson v Gray* [1999] (unreported).
95. In *Langford*, the judge considered four different courses of varying success which the claimant's kickboxing career might have taken. The judge accepted that, whether or not those scenarios had materialised, the claimant would have earned a base level of income from giving kickboxing classes. He then evaluated the percentage chance of each scenario being realised and applied the percentage to the earnings the claimant would have derived on the basis of that scenario. Although the Court of Appeal approved the judge's general methodology, it criticised the way the evaluation was carried out as being illogical. The Court of Appeal also found that the judge should have applied an overall discount to reflect the many contingencies (including risk of injury) arising in respect of each scenario and the fact that none of them might have been realised. In calculating its own figures, the Court of Appeal applied its chosen percentage chance to both past loss and future loss, but applied the discount to future loss alone.
96. In *Appleton*, Christopher Clarke J made findings in relation to past losses on a balance of probabilities in relation to the first three years after the injury and on a percentage chance basis in the fourth year. For the future, his assessment was based on the percentage chance of different scenarios being realised.

## Discussion and conclusions

97. In making my findings in relation to the claimant's prospects of a successful career, I remind myself that the onus of proving what those prospects were is on the claimant. I take into account all the evidence I have heard. Sir Alex Ferguson, the Manchester United coaches and the claimant's fellow players all had an intimate knowledge of the claimant's abilities and character which gave particular weight to their evidence. That of Sir Alex Ferguson was the most significant. He has a wealth of experience in the development of young players. He gave his evidence in a fair, measured and balanced way and I have no hesitation in accepting it. It was he who would ultimately have had to make the decisions about the claimant's future career and about whether to retain him at Manchester United or to let him go. He would no doubt have been asked for his views about the claimant's potential by football clubs interested in "buying" him. His evidence, though not expert evidence, must inevitably carry great weight.

## **Pre-trial loss of earnings**

### *The 2003/2004 season*

98. At the beginning of the 2003/2004 season, the claimant, in company with his contemporaries, was given a professional contract with Manchester United. A year's professional contract had been guaranteed to him at the beginning of his scholarship. In the event, although he was unfit to play at the relevant time, he was given a two-year contract. The object of the additional year was to give him time to recover from his injury and, it was hoped, to return to his old form.
99. The terms for the first year of the claimant's contract had already been fixed at the time he entered into his scholarship. The terms of his contract were that he would receive a basic wage of £460 per week, together with a signing on fee of £10,000 (a total of £33,920 gross). Appearance money was to be paid only for First team fixtures and there were other small bonuses available. As Mr Stein points out, the claimant was in a weak position at the time that this contract was signed. It is, I suppose, possible that, had the claimant been fit and well, the basic wage for the first year of his contract might have been re-negotiated upwards. It is contended on behalf of the claimant, on the basis of Mr Stein's evidence, that the claimant could have achieved a total package of £56,800 gross. However, I have heard no evidence from the Manchester United witnesses about the potential for re-negotiating rates contained within a scholarship agreement. That being the case, it seems to me that I should assume that, even had the claimant been uninjured, the same rates would have been paid for this first year and that, therefore, there is no loss for 2003/2004.

### *The 2004/2005 season*

100. At the same time that the claimant was given his two-year contract, his direct contemporaries were given contracts for two or three years. Sir Alex said that the claimant would have received a similar contract to them if he had been uninjured, certainly no shorter than that given to David Jones. It seems from Mr Jones' evidence that he was given a three-year contract in 2003, which took him up to the end of the 2005/6 season. He was then given a further three-year contract. I find that the overwhelming likelihood is that, in July 2003, the claimant would have been offered a three-year contract with Manchester United (rather than the two-year contract which he was in fact offered) and that he would have thus have been under contract with Manchester United at least until the age of 21 years. The contract would have been offered at a time just after the claimant had received the Jimmy Murphy Award. It is inconceivable in my view that he would not have been given a contract equally favourable as that signed by contemporaries such as David Jones.
101. The claimant's contract provided that his remuneration for the 2004/2005 season should remain at the same rate as for the previous season. I have no information about the remuneration payable under Mr Jones' contract or similar contracts with the claimant's contemporaries. It is clear, however – and the defendants accept – that, had it not been for his injury, the claimant would have been paid substantially more in the second year of his contract. Mr Stein's evidence was that he was likely to have been receiving a basic wage of £1,500 per week (£78,000 pa), together with a signing on fee and other bonuses. The claimant contends for a total package of £127,000 gross (£80,071 net) for this year.

102. Some guidance about the remuneration received by young players contracted to Manchester United in their second and subsequent seasons is to be gained from the Club's contract with Sylvan Ebanks-Blake, signed towards the end of his first year's professional contract in February 2005. The terms of his second contract were that he would be paid £1,200 per week to June 2006 and £1,300 per week from July 2006 to June 2007 with signing on fees of £37,334 in 2005 and £18,667 in 2006, and various bonuses. Mr Stein pointed out that Mr Ebanks-Blake was younger than the claimant and had not been a winner of the Jimmy Murphy Award. His view was that the claimant would have been able to negotiate a significantly better deal than Mr Ebanks-Blake.
103. Mr Ebanks-Blake's contract was negotiated more than 18 months after the claimant's, and was intended primarily to cover the 2005/2006 and 2006/2007 seasons. Thus, one would expect the rates to have been somewhat higher than those which he would have been able to negotiate in July 2003. I accept that the claimant would probably have been able to achieve a slightly better deal than Mr Ebanks-Blake. In those circumstances, it seems to me fair, as the defendants suggest, to take a basic wage of £1,250 per week (being the midpoint of Mr Ebanks-Blake's two basic wage rates) as representing the claimant's likely basic wage rate for 2004/2005. To that I have added a signing-on fee of £18,667 and bonuses of £7,500 (to reflect sums payable for wins and draws in the Reserves team and/or the odd appearances in the First team), making a total of £91,167 gross or £58,929 net.

*The 2005/2006 season*

104. During the 2004/2005 season, the claimant would have played in Reserves team matches and would probably have made the odd appearance in the Manchester United First team, perhaps in the Carling Cup. It is clear that, because of the presence of Ryan Giggs in the First team, the claimant would not have become a regular First team player. It is highly probable that during the 2005/2006 season (if not sooner), the claimant would have been sent on loan, most likely to an "aspiring" Championship club. During this time, he would have continued to be paid at Manchester United rates.
105. Mr Stein's evidence was that the claimant's basic wage would have risen from £1,500 per week to £3,000 during the 2005/2006 season. This is based on the premise that the claimant would have made frequent (at least ten) appearances in Manchester United's First team and would have been able to secure an increase as a result of this. I regard it as unlikely that the claimant would have played for the First team as frequently as Mr Stein has assumed and I cannot accept his figures. Instead, using Mr Ebanks-Blake's contract as a reference point, I find that it is probable that the claimant would have secured a basic wage of £1,400 per week for the 2005/2006 season. To that I have added the signing on fees of £18,667 and bonuses of £10,000, making a total of £101,467 gross or £65,168 net.

*The 2006/2007 season*

106. The claimant has contended for a basic salary of £5,000 per week during this season, based on him making further appearances in the Manchester United First team and continuing to make satisfactory progress there.

107. Towards the end of the 2005/2006 season, when the three-year contract that I have found he would have been given in July 2003 would have been due to expire, a decision would have had to be taken as to whether to retain the claimant at Manchester United or to let him go at that stage. Sir Alex Ferguson made clear that there would have been no opening for him in the First team at Manchester United in the foreseeable future. The claimant would therefore have been an asset which could be sold. In any event, he would no doubt have wanted to have the prospect of playing First team matches on a regular basis. I find, on a balance of probabilities, that the claimant would have been “sold” at the end of the 2005/2006 season to an “aspiring” Championship club and would have been with that club at the time of the trial.
108. The defendants contend that, in the event that the claimant transferred to a Championship club, he would have done so on similar terms to Mr Ebanks-Blake, who transferred to Plymouth Argyle FC in July 2006. His basic wage for the 2006/2007 season was agreed at £3,000. Mr Stein regarded this as very low and plainly thought that, if he had been acting for Mr Ebanks-Blake, he might have secured rather better terms. (I note that the contract states that no agent was in fact employed by Mr Ebanks-Blake.) Mr Stein also pointed out that, at the time of Mr Ebanks-Blake’s transfer, Plymouth Argyle was a low spending club. Indeed, the May 2008 Deloitte Annual Review shows that it had the lowest wage costs of any Championship club in 2006/2007, although occupying seventh place in the Championship League. Nevertheless, Mr Ebanks-Blake’s remuneration compared well with the average basic wage for a 21/22 year old Championship player (as per “The Independent” Survey uplifted by 14%), which was £90,288 for 2006/2007.
109. I consider that Mr Ebanks-Blake’s contract provides a reasonable starting point for estimating the claimant’s likely earnings. I accept that the claimant would have been likely to secure a rather better deal than Mr Ebanks-Blake. The evidence is that he would probably have been bought by an “aspiring” club which was seeking to acquire talented young players with a view to promotion to the Premier League. Such clubs are frequently prepared to pay high wages for such players.
110. I have therefore increased the basic weekly wage secured by Mr Ebanks-Blake to £4,000 per week. I have added 50% to cover additional bonuses and a signing on fee. No signing on fee appears to have been payable in Mr Ebanks-Blake’s case but I find that the claimant would have achieved one. This makes a total of £312,000 gross or £189,546 net.

*The 2007/2008 season*

111. I find that the claimant would have been at the same Championship club on an increased basic wage of £5,000 per week. This would equate almost exactly to the basic wage of an average Championship player according to “The Independent” 2005 Survey, updated to 2007/2008. With an uplift of 50% to cover all additional payments, that produces an annual sum of £390,000 gross or £235,774 net.
112. The total past loss of earnings before any discount is therefore £549,417.

*Discount for the risk of injury and other contingencies*

113. The defendants argued that there was considerable uncertainty about the path the claimant's career would have taken after the 2003/2004 season. However well he had done as a junior, there was, they said, no guarantee that he would have coped with the challenges posed by playing at a higher level. The defendants acknowledged that he may have been retained by Manchester United for two or three years and that he might then have transferred to a Championship club. However, they submitted that the figure for past loss of earnings based on that scenario should be heavily discounted to reflect the risk that the claimant would have been unable to "make the grade" at all at this level. They contended that I should assume that the claimant had a 74% chance (which represents Dr Gerrard's calculation of the percentage of Manchester United scholars playing at Premiership level at the age of 20 years: Table 6) of following this career path.
114. I have already indicated that I reject this statistical approach. The fact is that, up to the end of the 2002/2003 season, the claimant had met every challenge with which he had been presented. He had developed particularly well during that season and had coped with the pressures and competitiveness of the FA Youth Cup. He had been training for the Reserves team and had impressed Mr Sbragia who had known him only since November 2002. He had remained, in the opinion of those who knew his abilities best, on a par with (if not better than) all his contemporaries, save for Kieran Richardson. I can see no reason to believe that, barring injury or some completely unforeseen circumstance, the claimant would not have followed the path I have described. All those of his contemporaries with talent comparable to his have done so. Consequently, I decline to apply the substantial discount contended for by the defendants.
115. Nevertheless, some modest discount for at least part of the period to trial is necessary to reflect the risk of injury and other contingencies. I make no such discount for the first three seasons, when I have found that the claimant would have been under contract to Manchester United and when, even if he had sustained injury, his only loss of income would have been a loss of a relatively small sum by way of bonuses. For the subsequent two seasons, a discount is appropriate. In my view, this should be small because of the short period involved, and the fact that the risk of the claimant's career being disrupted by contingencies other than injury at this stage was remote. I shall apply a discount of 5% for the seasons 2007/2007 and 2007/2008.
116. Taking into account the discount, the figure for total past loss of earnings is £528,151. From that figure must be deducted actual earnings received by the claimant during the pre-trial period, which have been agreed at £72,056. The net loss of earnings to the date of trial is therefore **£456,095**.

### **Post-trial losses**

117. The amended Schedule of Loss was based, like the claimant's case in *Langford*, on four scenarios, namely:
- i) a full career in the Premiership;
  - ii) a full career in the Championship;
  - iii) a full career in League One; and

iv) a full career in League Two

118. The chances were assessed on the basis of Mr Wilkinson's report: see paragraph 53 of this judgment. That was on the basis that Mr Wilkinson's assessment of the chance of the claimant attaining any of the four levels referred to a full career at that level. In the event of course, his oral evidence was to the effect that the "worst case scenario" (barring injury) was Championship level throughout, with the chances of him playing only at League One or Two level falling away entirely. Mr Wilkinson's evidence reflected that of the claimant's other witnesses, which I accept.
119. That being the case, I am left with only two possible scenarios: a career at Championship level and a career (or part of a career) at Premiership level.

*At Championship level*

120. Once again, the defendants invited me to apply a statistical approach which would have involved my finding that the claimant had only a 40% chance of playing at Championship level throughout his career. Such a finding would fly in the face of the evidence. That evidence showed that the claimant had the character and ability to play professional football at the highest level. Those of his contemporaries with similar, or even slightly lesser, abilities have already established themselves at Championship level or above. I find that, barring injury or some unforeseen contingency, the claimant would have played professional football, at the least at Championship level throughout his career.
121. Thus, the claimant's prospective earnings at Championship level will form the base level for his claim for future losses. They will be subject to an overall deduction to reflect the risk that he might have suffered a career-threatening injury or that his career might have been curtailed for some other unforeseen reason.
122. In calculating the claimant's likely earnings at Championship level, I have adopted as a starting point the annual basic wage for 2005/2006 taken from "The Independent" survey. I have taken the overall average wage, rather than the average wage for a midfielder player (as suggested by the defendants), to reflect the claimant's pedigree as a former Manchester United player and his scarcity value as a left-footed player. I have up-dated that figure by 14% for 2006/2007 (as per the May 2008 Deloitte Annual Review). That Review predicted an increase of 18-22% in Premiership wage costs for 2007/2008; I have adopted a rather more modest increase of 15% for Championship wages. Given the evidence of Mr Stein (which I accept) to the effect that wages are continuing to rise markedly, and his evidence and that of Mr Wilkinson that the gap between the wages paid by clubs at the top of the Championship League and at the bottom of the Premier League is narrowing, I have assumed a further 15% rise for the 2008/2009 season. That gives an average basic wage for 2008/2009 of £295,047.
123. Mr Hartley contended that, if I were to adopt "The Independent" survey figures, I should apply an uplift of about a third to reflect the fact that the claimant would be playing for an "aspiring" Championship club which would be paying greater than average wages. I accept this argument in principle. It is clear from the May 2008 Deloitte Annual Review that many of the "aspiring" Championship clubs have wage costs far in excess of the average and it is clear also that they must be paying

significantly higher wages than other clubs in the Championship League. I find that, for much of his career in the Championship, the claimant would have been contracted to an “aspiring” club. I therefore increase the average basic wage by 25% to reflect this. That produces an average basic wage of £368,809 per annum. By way of a check, I note that that figure approximates closely to the basic wage that David Jones would have been earning at Derby County FC for the 2007/8 season (had they been in the Championship) and is about £20,000 less than he would have been paid for the 2008/9 season had he stayed at Derby County FC. This confirms my view that the uplift is reasonable and realistic.

124. To the figure for basic wages must be added 50% for bonuses and additional payments. That uplift excludes further sums for signing on and selling on. These are difficult to assess and will no doubt vary widely according to the career path of each individual player. I have assumed a further uplift of 10% per annum over the claimant’s career to reflect these further sums. I note that, in “The Independent” survey, additional payments are estimated at between 60% and 100%. An uplift of 50% plus 10% would equate with the lower end of that range and therefore seems to me reasonable. Applying that uplift produces an annual figure of £590,094 gross or £354,125 net. From that figure must be deducted agent’s fees, payable by players under contracts signed after 1 January 2008. Assuming fees of 4%, the net annual figure is reduced to £338,635.
125. The claimant contends for an assessment of future loss year by year (discounted for accelerated receipt) to reflect variations in annual income as predicted by Mr Stein. Initially, those variations would be upwards, culminating in a basic weekly wage of £18,000 (£936,000 pa) in 2014/2015. Later in his career, his earnings are assumed to reduce year by year. It seems to me that the claimant’s suggested approach is inappropriate. The figures for annual earnings advanced by him are in reality purely speculative; there is no way of knowing whether or not they would have been achieved. Moreover, it would in my view be wrong in principle to take account of possible future increases in wage rates which, despite Mr Stein’s evidence, I regard as inherently uncertain.
126. I consider that I must take a more broad brush approach. By using uplifted average basic wage figures, I have sought to reflect the position over the whole of the claimant’s playing career. There may well have been periods when he would have been earning more than the average; there may also have been times (at the very beginning and the end of his career) when he would have been earning less. It seems to me that the proper approach is to apply the conventional multiplier/multiplicand approach.
127. In determining the appropriate multiplier, it is necessary to consider at what age the claimant is likely to have retired from the professional game. When considering this, I take no account of the risk of injury which I shall include within the overall discount to be applied to the figure for future loss of earnings. Injury would, in the case of this claimant, have been the most likely reason for retiring prematurely. Sir Alex Ferguson’s evidence was that there was nothing else which would have led him to believe that the claimant would not have continued to play professional football to the normal retirement age. (The “normal” retirement age is, as I understand it, 35 years, the age at which PFA pensions become payable.) Sir Alex said that the claimant “lived his life the right way”; for those players who were prepared to make sacrifices

and look after themselves, it was possible, he said, to have a long career in football. Mr Neville (who is himself 33 years old and, although currently injured, hopes to continue to play for at least two more years) said that, putting aside injury, he believed that the claimant would have had a long and successful football career. He had the necessary desire and ability, as well as the character to “keep coming and coming”. Mr Wilkinson and Mr Spackman both agreed that the claimant would have carried on until at least 35 years. Mr Wilkinson observed that the average age of those finishing the game is rising yearly. Some players (like Mr Spackman) play beyond the age of 35 years.

128. The defendants pointed to Dr Gerrard’s analysis, which showed that only those former Manchester United scholars who played in the Premier League were still playing professional football beyond the age of 30 years. The problem with that evidence is that, since many of the players under consideration have not attained the age of 30 years or so, it does not reflect what Mr Wilkinson said was the growing trend to retire later. Once again, it seems to me that I must give due weight to all the evidence, including that of the defendants’ expert, Mr Spackman. In all the circumstances, I conclude that, barring injury, the claimant would have continued to play professional football until the age of 35 years.
125. The appropriate multiplier for a period of 11 years certain (to the claimant’s 35<sup>th</sup> birthday) is 9.63. Applying that multiplier to a multiplicand of £338,338 gives a figure of **£3,261,055**.

*At Premiership level*

129. The Premiership is intensely competitive, particularly with the current influx of foreign players. Only the most talented players become established Premiership team members. However, as a young player who was considered to be one of the most talented of his contemporaries at Manchester United and winner of the Jimmy Murphy Award, the claimant must have had a good chance of spending at least part of his career – possibly the majority of his career - in the Premier League. The evidence of the witnesses was to that effect, although they acknowledged that, given his young age when his injury occurred, there was inevitable uncertainty as to whether he would have achieved this. That being the case, it seems to me that I cannot make a finding on a balance of probabilities. Instead, I must assess the percentage chance that the claimant would have succeeded in playing in the Premiership for some part of his career.
130. It is in my view significant that five of the claimant’s contemporaries at Manchester United (Kieran Richardson, David Jones, Chris Eagles, Phil Bardsley and Paul McShane) – all of whom are still young men – have spent at least part of their careers to date with Premiership clubs. All of those five except David Jones are currently under contract to Premiership clubs. Another contemporary, Sylvan Ebanks-Blake has played at Championship level to date but I was told that he is highly likely to play in the Premiership in the future. Mads Timm, another contemporary, is playing in the Danish equivalent of the Premiership. These are players with whom the claimant was in the FA Youth Cup squad; he, Kieran Richardson, David Jones and Chris Eagles played together in the midfield. He was in competition with all those players for the Jimmy Murphy Award.

131. In assessing the prospect of the claimant playing in the Premier League, I must consider the percentage chance in conjunction with the length of time for which he would have played in that League. There are of course endless possible permutations. Looking at the evidence as a whole, I consider that Mr Wilkinson's assessment of the claimant's prospects of playing in the Premiership as 60% was both reasonable and realistic and I adopt it. I consider that he had a 60% chance of playing in the Premiership for one third of his playing career.
132. As with earnings in the Championship, I take as a starting point the average basic wage rates for a midfield player in "The Independent" survey of 2005. In this instance, I take the figure for a midfield player (rather than the average rate, which is significantly less). To that figure, I have applied uplifts of 13% for 2006/2007 (as per the May 2008 Deloitte Annual Review), 20% for 2007/2008 (the midpoint of the 18-22% rise estimated in the same Review) and 15% for 2008/2009. That produces an annual basic wage of £1,175,788 for 2008/2009. An increase of 60% for additional payments results in a figure of £1,881,261 gross or £1,115,914 net. Deducting agent's fees at 4% results in a net figure of £1,066,531.
133. The difference between the claimant's prospective earnings in the Premiership and in the Championship is £727,897 pa. Applying a percentage chance of 60% to a reduced multiplier of 3.21 produces a figure for loss of Premiership earnings of **£1,401,930**.

*Earning capacity*

134. The claimant is about to embark upon an English degree course at Leeds University. He has previously expressed an interest in a career in either law or journalism. At the time of the trial, he was contemplating becoming a lecturer. It is quite possible that he will undergo a number of further changes of heart before embarking upon a career.
135. For the defendants Dr Gerrard prepared figures on the assumption that the claimant would take up a career in journalism. He assumed that the claimant would start work in 2011/2012, after three years at university. (That does not allow for any period of training in journalism.) He calculated the claimant's annual earnings by reference to the 2007/2008 figures for journalists, with an annual growth rate of 3% per annum in future years.
136. The claimant's Schedule of Loss refers to surveys of graduate earnings which show average earnings of about £25,000 gross. These figures include earnings in London. It is contended on the claimant's behalf that, since he intends to live and work in the North West and might undergo further periods of study and might, in any event be unable to find work, a reduction of average graduate earnings to £20,000 gross, (£15,389 net) is appropriate. That figure is assumed to increase annually from 2011/2012 by 5% above inflation.
137. The claimant is an intelligent and hard-working individual who has made an excellent start to his academic studies. However, his ability to undertake more advanced academic work is unproven and his success cannot be regarded as assured. The claimant will be at least 27 years old when he starts work (older if he undergoes further education) and the period I am considering (to age 35 years) is likely to be spent establishing himself in his chosen field. If he does go on to make a successful

career, it is probable that his earnings will rise significantly from his late 30s onwards, rather than in this initial period.

138. Taking into account those factors, together with the matters referred to by the claimant, I consider that a fair average salary to adopt is £25,000 gross (£19,058 net), based on average graduate earnings. As with loss of earnings, I adopt the conventional multiplier/multiplicand approach. The appropriate multiplier for the period of eight years from the age of 27 years to the claimant's 35<sup>th</sup> birthday is 7.26 discounted by 0.9286 to reflect the fact that his earnings will not start for three years at the least. That gives a figure of **£128,482**.

*Total future loss of earnings as a footballer*

139. I calculate the claimant's loss of earnings as a professional footballer as follows:

|                                |            |
|--------------------------------|------------|
| At Championship level:         | £3,261,055 |
| At Premiership level:          | £1,401,930 |
| Less                           |            |
| Prospective earnings to age 35 | £ 128,482  |
| Total:                         | £4,534,503 |

140. It is, however, necessary to apply to that total a discount to reflect the risk of injury and other contingencies. The risk of injury reflects only the risk that the claimant might have sustained an injury that prevented him from playing at all or playing at the expected high level. Injuries with only temporary effects would not necessarily result in significant loss of earnings. The risk of injury should be viewed over the whole of his playing career.
141. The other contingencies must reflect the risk (which I regard as small) that the career path of the claimant on which I have based my calculations might for some reason not have materialised at all or might have been cut short by circumstances other than injury. However, in considering the discount to be given for the various risks, it seems to me that I must also bear in mind the possibility (which I have not yet taken into account in my calculations) that the claimant might have had an even more successful career than that on which I have based my findings.
142. Doing the best I can to balance the various relevant factors, I regard it as appropriate to apply a discount of 15% to the figure for future loss of earnings to take account of the risk of injury and of the various other contingencies. A discount of 15%, when applied to loss of earnings of £4,531,429 results in a figure of **£3,854,328**.

*Loss of the chance to be a football manager or coach*

143. Some successful professional football players go on to become managers or coaches. However, openings are relatively scarce and former players who take that course are few in number. Given his character and attitude, the claimant may well have been an excellent candidate for such a post and could possibly have made a successful career

in management or coaching after his playing days were over. As it is, he has no realistic prospect of achieving a career in management or coaching.

144. While there is, as I have said, the possibility that the claimant might have made a good career for himself in management and coaching, I regard it as too speculative to form a basis for an award of damages. I therefore make no award under this head.

### **Summary of damages**

145. The award of damages can be summarised thus:

|   |   |   |                  |
|---|---|---|------------------|
| General Damages for pain and suffering,<br>loss of amenity and loss of congenial employment<br>(agreed) | = | £ | 35,000.00        |
| Interest thereon (agreed)   | = | £ | 1,515.00         |
| Value of past gratuitous care (agreed)  | = | £ | 2,469.00         |
| Interest thereon (agreed)   | = | £ | 740.00           |
| Past loss of earnings   | = | £ | 456.095          |
| Interest thereon  | = | £ | To be determined |
| Future loss of earnings   | = | £ | 3,854,328.00     |
| Future loss of pension  | = | £ | To be determined |

146. The issues of pension loss and interest remain to be determined and, if necessary, there will be a further hearing for that purpose in October 2008.