OUTER HOUSE, COURT OF SESSION

[2025] CSOH 103

A1000/08

OPINION OF LORD ERICHT

In the cause

BRIAN TAYLOR

Pursuer

against

FORTH VALLEY HEALTH BOARD

Defender

Pursuer: E Mackenzie KC, A Sutherland; Livingstone Brown Solicitors
Defender: Reid KC, Clair; NHS Scotland Central Legal Office

14 November 2025

Introduction

[1] The pursuer underwent an operation to cure his cancer. His right kidney was removed. The operation was successful and he is free of cancer. However he subsequently developed Somatic Symptom Disorder. The defender admitted negligence in respect of lack of informed consent. The case went to proof on the questions of whether the Somatic Symptom Disorder ("SSD") was caused by the admitted negligence, and on quantum.

The admitted negligence

[2] The defender admitted liability on record in the following terms:

> "that the pursuer had been advised of the reasonable treatment options available to him and the material risks associated with those options. However, having regard to the level of anxiety exhibited by the pursuer following his admission and prior to surgery, the changes discussed with the pursuer on the morning of surgery were too significant to allow his informed consent to be confirmed. Given the pursuer's level of anxiety, the defenders accept that such a discussion could not properly have taken place on the day of surgery. That ought to have led to a delay in the pursuer's surgery until either Mr Tweedle was available to perform the operation or the pursuer had had time to reflect on the changes discussed. Accordingly, the defenders accept that surgery should not have gone ahead when it did. In those circumstances, and for the purposes of this action only, the defenders accept a liability to make reparation to the pursuer for losses caused by the operation proceeding when it did."

The proof

[3] The evidence, both oral and documentary, was extensive. Witness statements were adopted as evidence. There were 11 days of oral evidence. The written evidence included extensive and detailed medical records relating to the pursuer's SSD and his various encounters with, and complaints about, medical staff. I have taken all of the evidence into account.

The pursuer's witnesses as to fact

The pursuer

[4] Assessment of the pursuer's evidence requires great care. He presented in the witness box as a difficult witness who was dogmatic and argumentative, was obsessed with certain matters (some of which bore little relevance to the matters in issue), was obstructive in his answering of questions, and required to be warned as to potential contempt of court. Normally such a presentation would be fatal to a pursuer's case as completely lacking in

credibility and reliability. However that sort of presentation is typical of individuals who suffer from SSD. His presentation in the witness box was consistent with the way that he generally presents. It is consistent with the way he had presented to expert witnesses and other witnesses in the case. Professor Carson explained that patients with severe SSD are not reliable historians. There was good research evidence that such patients give inaccurate histories to doctors. The research had not established the reason for that: it might be genuine misremembering and reattribution, it might be writing things that the patient thinks are wrong out of the story, it might be a distortion of processing which falls away from how an ordinary person might experience the same event, and it might be outright deception. In these circumstances, in assessing the pursuer's evidence at the proof, his evidence on any particular point must be carefully considered in the round with any other evidence presented on that point and should not be accepted without some other supporting evidence.

Professor Alan McNeill

[5] Professor McNeill was a Consultant Neurological Surgeon at the Western General Hospital in Edinburgh and Honorary Professor at Edinburgh and Heriot Watt Universities. He had been involved in treating Mr Taylor up to July 2007 and had corresponded since. He gave evidence in relation to his dealings with the pursuer under reference to the medical records. I found him to be a credible and reliable witness.

Mr Michael Hehir

[6] Mr Hehir was a Consultant Urologist. He had met the pursuer prior to the operation and on various subsequent occasions. He gave evidence by reference to the medical records and various letters he had written at the time. I found him to be a credible and reliable witness.

Dr James Auld

[7] Doctor Auld was the pursuer's general practitioner. He gave evidence as to his dealings with the pursuer and the pursuer's family. I found him to be a credible and reliable witness.

Dr Alan Semple

[8] Dr Semple was a retired anaesthetist and pain clinician. He had treated the pursuer at a pain clinic after the operation. The pursuer had been a challenging case and his pain problem was insoluble. The pursuer was seeking a physical explanation for his problems but there was a psychological element. I found Dr Semple, whose evidence was uncontroversial, to be a credible and reliable witness.

Gordon Taylor

[9] Gordon Taylor was the pursuer's younger brother. He gave evidence about the pursuer's condition before and after the operation. I found him to be a credible and reliable witness.

Stuart Spence

[10] Stuart Spence was a friend of the pursuer who assisted him with daily living from around 2013 to 2020 and from time to time lent the pursuer money. His evidence was that he cared for the pursuer free as they were close friends. I found him to be a credible and reliable witness.

Ronald Balloch

[11] Ronald Balloch is a carer for the pursuer. He has a job in a care home but cares for the pursuer outwith his working hours at the care home. I found him to be truthful about the mechanics of transfers of cash between himself and the pursuer, albeit I did not accept the explanation that these were wages for care services. In relation to the pursuer's ability to look after himself, I preferred the evidence which Mr Balloch gave spontaneously in the witness box under oath in response to questions, to the carefully constructed account in Mr Balloch's witness statement.

Graham Wright

[12] Graham Wright was a company director within the building sector with over 30 years' experience overseeing construction projects. He had worked with the pursuer prior to the operation, had been Contracts Manager for Weir and McQuiston on the pursuer's sub-contract with them in 2007, and had sought in 2014 and 2024 to offer work to the pursuer. I found him to be a credible and reliable witness. He spoke to the pursuer's condition before and after the operation. He spoke highly of the pursuer's work ethic and the quality of his work.

John McLuckie

[13] Mr McLuckie had worked as a labourer for the pursuer from 1992-2011. He spoke to the pursuer's work and condition before and after the operation. He had worked for the pursuer on a job in Carronshore in 2009 which should have taken 4 weeks but took a year because the pursuer did not have the money to finish the job. I found him to be a credible and reliable witness.

Pursuer's expert witnesses

Doctor Alasdair G Rooney

[14] Doctor Rooney is a Consultant in Neuropsychiatry. He produced a report on causation, and two supplementary reports. He was a suitably qualified expert to give evidence on these matters. He is an Honorary Clinical Senior Lecturer at the University of Edinburgh. In addition to medical training, he spent 9 years in full time research posts and is the author of over 40 academic publications.

Mr Ashok Bohra

[15] Mr Bohra is a Consultant Surgeon at the University Hospitals of Derby and Burton in NHS Foundation Trust. I found him to be a suitably qualified expert. He gave evidence as to whether the size of the scar at the operation had caused or materially contributed to the pursuer's eating and swallowing problems and the need for a hiatus hernia operation in 2005. His conclusion was there was no link between these various symptoms directly to the original operation. His evidence was of little assistance in deciding the issue ultimately

before the court, which was whether a psychological condition (ie SSD), rather than a physical condition (such as the ones Mr Bohra was considering) was caused by the admitted negligence.

Alan Wibberley

[16] Alan Wibberley was a fellow of the Chartered Institute of Architectural Technologist who had specialised in designing for the disabled since 1996. He gave evidence as accommodation for the pursuer. I found him to be a suitably qualified expert witness.

Jill Trevena

[17] Jill Trevena holds a BSc in Occupational Therapy from Robert Gordon University and has been a state registered Occupational Therapist since 1999. She provided a report and supplementary report on the pursuer's care and housing needs. She was a suitably qualified expert to do so.

Mr Antony Charles Paul Riddick

[18] Mr Riddick is a Consultant Renal Surgical Urologist at Cambridge University Hospital, where he has a high volume surgical practice carrying out all aspects of renal cancer surgery. He gave evidence in respect of the circumstances of the pursuer's operation and the type of incision used by Mr Di Mauro. He was suitably qualified to do so. He provided a report and a supplementary report.

Dr Michael Basler

[19] Dr Basler is a Consultant in Anaesthesia and Pain Management. I found him to be a suitably qualified expert. His evidence was uncontroversial.

Sarah Gibbins

[20] Sarah Gibbins was a qualified Speech and Language Therapist and was suitably qualified to be an expert. She gave evidence as to the pursuer's past and future needs in respect of speech and language therapy.

Richard Boardman

[21] Richard Boardman is a Chartered Fellow of the Institute of Personnel and Development with experience as an HR professional. I found him to be a suitably qualified expert.

The defender's witnesses as to facts

Mr James Tweedle

[22] Mr Tweedle is a Consultant Urological Surgeon. He treated the pursuer prior to the operation. I found him to be a credible and reliable witness.

Mr Di Mauro

[23] Mr Di Mauro was the locum surgeon who conducted the operation. He is a Fellow of the Royal College of Surgeons and has a diploma in Urology from University College London. He worked in Forth Valley Health Board for around 6 months in 2005. At that

time he was not qualified to undertake laparoscopic surgery. He subsequently took other qualifications and is now a pharmaceutical physician. I found him to be a credible and reliable witness.

The defender's expert witnesses

Professor Alan J Carson

[24] Professor Carson is a Consultant Neuropsychiatrist at the Royal Infirmary of Edinburgh and Honorary Professor at the University of Edinburgh. He has published extensively in his field. Dr Rooney trained under him. He is a suitably qualified expert.

Mr R P Coggins

[25] Mr Coggins is a General Surgeon at Raigmore Hospital in Inverness. He provided an opinion upon gastrointestinal symptoms that the pursuer alleged arose as a consequence of his operation. He is a suitably qualified expert.

Dr Jonathan Bannister

[26] Dr Bannister was a Consultant in Pain Medicine and Anaesthesia at Ninewells Hospital Dundee and an Honorary Senior Lecturer in the University of Dundee. He retired in 2021. He is a suitably qualified expert.

Brian Keith

[27] Brian Keith is an independent employment consultant and careers advisor. Prior to working in these areas, he worked primarily in the construction industry. He provided an employment report and supplementary reports. He is a suitably qualified expert.

Simone Higgins

[28] Simone Higgins is a Senior Community Occupational Therapist. She provided reports on the pursuer's past, present and future needs. She is a suitably qualified expert.

The facts

[29] On or about 18 October 2005 the pursuer was diagnosed as suffering from renal cancer. He was seen by Mr Tweedle, Consultant Urologist, that day at Falkirk Royal Infirmary. Mr Tweedle advised the pursuer that he would require to undergo a right sided nephrectomy (removal of the right kidney). The nephrectomy was scheduled to take place at Stirling Royal Infirmary on 28 November 2005. Mr Tweedle and the pursuer discussed the operation. The pursuer's evidence was that Mr Tweedle 100% guaranteed keyhole surgery under the pant line. Mr Tweedle's evidence was that the pursuer was never promised keyhole surgery. It was mentioned as a possibility but never 100%. On 27 October 2005 the pursuer attended with Mr Hehir, Consultant Urologist. The pursuer's evidence was that Mr Hehir gave him the same guarantee. Mr Hehir's evidence was that it was not his practice to make that sort of promise or guarantee to a patient. I prefer the evidence of Mr Tweedle and Mr Hehir to that of the pursuer. Their position is supported by contemporaneous letters. On 18 October 2005 Mr Tweedle wrote to the pursuer's GP

reporting on seeing the pursuer urgently at the clinic that day. Mr Tweedle stated: "It is likely to be an open nephrectomy rather than laparoscopic given the size suggested by the ultrasound". On 27 October 2005 Mr Hehir wrote to the pursuer's GP saying:

> "I think I have enough information to consent him for right radical nephrectomy which could be done open or laparoscopic. He is aware that laparoscopic might need to be converted to open surgery but it might offer the advantage of a shorter convalescence."

[30] On 27 November 2005 the pursuer attended Stirling Royal Infirmary for the operation. On the morning of 28 November 2005 he was attended by Mr Tweedle, who advised him that he would not be available to perform the operation. Instead, the operation was to be performed by Mr Di Mauro, Locum Consultant Urologist. Shortly after his meeting with Mr Tweedle, the pursuer was attended by Mr Di Mauro. They discussed the operation. At around midday on 28 November 2005 the pursuer was attended by Mr Tweedle again. Later that afternoon he was attended by Mr Di Mauro again.

[31] After his meeting with Mr Di Mauro the pursuer was attended by Dr Dunsmore. Dr Dunsmore asked the pursuer to sign a consent form. The pursuer signed the consent form.

[32] On 28 November 2005 Mr Di Mauro performed the operation. The operation was successful and the pursuer was cured of cancer. However, the operation was by open surgery and not laparoscopy. There was a large chevron incision centred on the right of the abdomen, with a smaller extension to the left of the middle. The incision left a large scar above the pursuer's pant line.

[33] Thereafter the medical records show numerous interactions lasting until 2022 between the pursuer and the health services relating to pain and other issues.

Preliminary matter: effect on this action of the pursuer's failure to pay tax when working

Introduction

[34] As set out below, when the pursuer was working prior to the operation he did not properly account, nor make payment, to Inland Revenue for the tax due in relation to his work and business. The defender sought to have his loss of earnings disallowed as a matter of policy due to his dishonesty.

Submissions for the defender

[35] Senior counsel for the defender submitted that the fact that the pursuer had for a substantial period of his working life failed to properly declare his income and pay the consequent tax, was a fraud which should at least see the court refuse to entertain his claim for a wage loss. It was also open to the court to dismiss the claim (Lord Reed *Lies, Damned Lies: Abuse of Process and the Dishonest Litigant*, 26 October 2012 *Summers* v *Fairclough Homes Limited* [2012] 1 WLR 2004). The defender did not seek dismissal of the pursuer's claim as an abuse of process, recognising that there was an admitted breach of duty. It was for the court to consider whether the admitted dishonesty was such that the interests of justice required the dismissal of the action. If the court did not consider dismissal appropriate, the part of the claim most directly and inherently tainted by the pursuer's dishonesty (loss of earnings) should be disallowed as a matter of policy.

Submissions for the pursuer

[36] Senior counsel for the pursuer submitted that there was no authority to support the proposition that it was competent to dismiss a claim in its entirety due to a failure to

declare earnings. Outright dismissal of a claim would only be justified where there was a dishonest invention of a claim, and not in respect of dishonest exaggeration of losses caused by a wrong that was admittedly committed (*Grubb* v *Finlay* 2018 SLT 463 at paragraphs 34 to 36). Neither type of such dishonesty was present or pled in the present case. Nor was there authority for the proposition that the court may refuse to make an award of wage loss due to a failure to declare earnings. On the contrary there was authority to the effect that a pursuer was entitled to be compensated for his loss of earnings even though he had in the past failed to disclose them to the Inland Revenue (*Kemp & Kemp Quantum of Damages* paragraphs 8-054 to 8-056, *Dullar* v *South East Lincs Engineers* [1980] 5 WLUK 12, *Newman* v *Folkes* [2002] PIQR (first instance, [2002] EWCR Civ 591 (Court of Appeal).)

Discussion

[37] In this case the defender has admitted liability. Any issues of dishonesty arising out of failure to account to HMRC for tax on earnings apply only to the wage loss element of quantum.

[38] This is not the sort of dishonesty which would result in England in dismissal of the action as a whole or refusal of damages for loss of earnings. In *Newman* v *Folkes*, there was substantial difficulty in establishing the claimant's level of earning as he had never paid tax or National Insurance contributions, had no books or accounts, and neither he nor his employers had been able to produce reliable evidence of earnings (paragraph 8 of first instance decision). The Court of Appeal described his claim for loss of earnings as "little short of being scandalous" and the foundation of his claim being a "concoction of lies"

(paragraph 7). This did not lead to dismissal of the claim as a whole. Nor did the fact that he had not paid tax or National Insurance contributions debar him from advancing a claim for loss of earnings (paragraph 14). The English legal position is summed up in *Kemp* v *Kemp* at paragraph 8-054:

> "A claimant is entitled to be compensated for his loss of earnings even though he had in the past failed to disclose them to the Inland Revenue"

[39] Nor in my opinion should this type of dishonesty result in Scotland in dismissal of the action as a whole or refusal of damages for loss of earnings. In *Grubb* v *Finlay* the Inner House refused to dismiss as an abuse of process a claim which, although exaggerated, was a good claim and not fundamentally dishonest (para [35]). In the current case, liability has been conceded by the defender. It is a good claim. It is not a fundamentally dishonest claim. It is a claim which (assuming causation is proved) will in any event sound in damages on a number of grounds other than loss of earnings.

[40] In the light of these authorities, I find that in the current case that (assuming that causation is proved) the pursuer is entitled to be compensated for loss of earnings. Having said that, lack of accounting to the Inland Revenue and lack of books and records gives rise to challenges when assessing the quantum of such loss of earnings, and I return to that below (para [70]ff).

Causation

[41] The question for the court in relation to causation is whether the admitted negligence in allowing the operation to go ahead on 28 November 2025 contributed, or materially contributed, to the pursuer's Somatic Symptom Disorder.

Somatic Symptom Disorder ("SSD")

[42] There was no substantial disagreement between Dr Rooney and Professor Carson about what SSD is and how it operates. Patients with SSD present with physical symptoms (eg pain, loss of function and limbs, fits and seizures) which cannot be explained by traditional pathophysiological processes that can be understood. The implication is that the genesis of the symptoms must have a significant psychological or behavioural component to it. This is often referred to as "psychosomatic". Previous adverse experiences significantly increase the risk of developing SSD. In patients with SSD, somatoform symptoms may be triggered by almost any form of life event. Trauma can have the same effect.

[43] Patients with the disorder often think the worse about their health and symptoms can dominate their lives. They may frequently tell their doctors how bad things are and will take a long time trying to persuade their doctors that they are ill and require tests. The patients will often feel that they are being marginalised and maligned by medical professionals. The symptoms which a patient presents with can change and it is not unusual for such patients to be poor historians or provide a description which can be difficult to follow. Inconsistency of account is a typical feature. Within somatisation disorder, the more severe form of SSD, the focus of the patient's symptoms will change frequently.

[44] It is in the nature of SSD that it presents as perceived pain. There was extensive evidence of the pursuer attending hospital in relation to pain. There was no real difference of opinion between the pursuer's pain expert, Dr Basler and the defender's pain expert Dr Bannister, who were of the opinion that while the pursuer's perception of pain was genuine and real, his presentation was not in keeping with neuropathic pain (ie pain caused

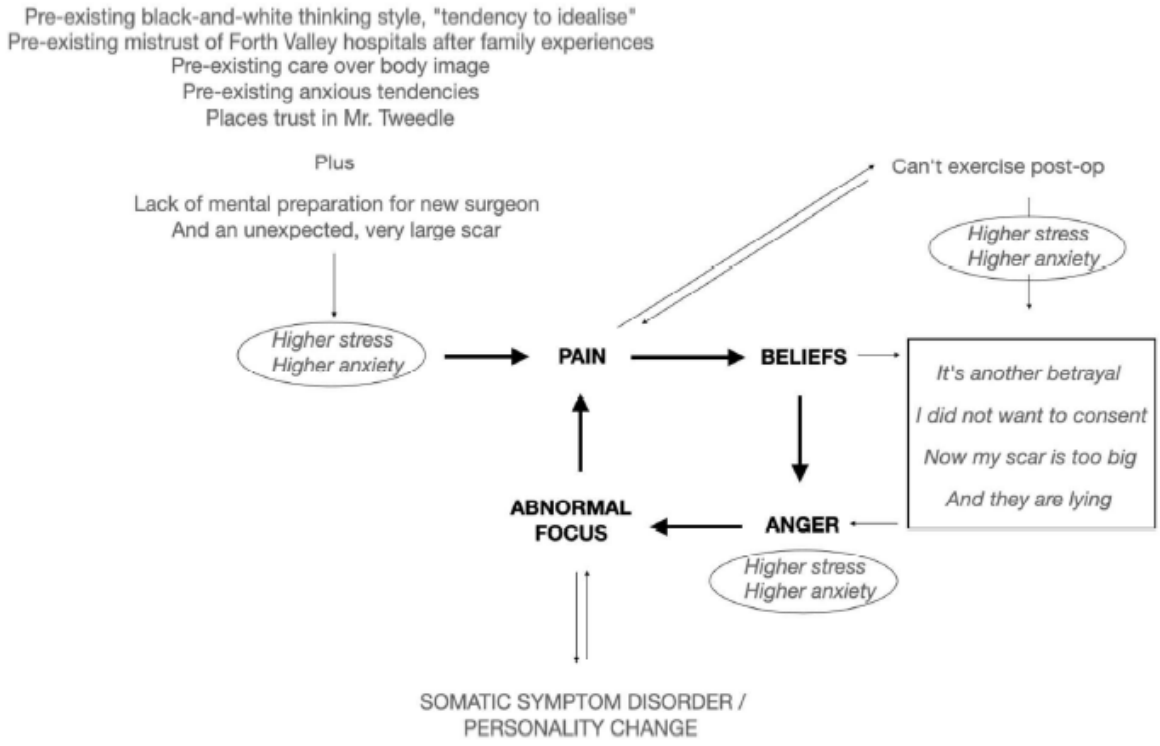
by nerve damage) and, instead, it was likely that psychological factors were driving the pain.

[45] Both Dr Rooney and Professor Carson agreed that the pursuer had severe SSD, where they differed was on the cause. Dr Rooney was of the opinion that the operation proceeding on 28 November caused or materially contributed to the pursuer developing SSD. Professor Carson was of the opinion that three different events (cancer diagnosis, marriage breakdown and the death of his mother) were the primary cause of his SSD, and he would have had a mental disorder as a result of these which were unrelated to the negligence.

[46] Dr Rooney examined the pursuer twice by video link during the coronavirus epidemic and once subsequently in person and gave extensive consideration to the voluminous medical notes covering the pursuer's interaction with health services in the years since the operation. He noted predisposing factors. He noted that the pursuer reported having had an early adverse experience of hospital in childhood when humiliated by a nurse taking off his trousers, and reported further adverse experiences in Forth Valley hospitals prior to the operation: the psychologically traumatising death of his mother following a platelet infusion, an injury to his daughter during delivery and bad communication around his hiatus hernia. Another predisposing factor was the process of consent: it was unlikely that there was enough time for him to psychologically adjust to the change of circumstances. His anger about the unexpectedly large scar and anxiety were likely to have been perpetuated by an inability to cope with them by exercising due to pain, and by the cosmetic result in a man known to care for his appearance. Over time his sense of anger and loss may have been fuelled by marital separation and his experience of

making complaints: it was possible that his pre-existing mistrust of Forth Valley Health Board was exacerbated by the size of his scar.

[47] Dr Rooney advanced a model of how the SSD came about: a vicious circle of pain, negative beliefs, anger and abnormal cognitive process. He expressed the model in diagrammatic form as follows:



[48] In response to Professor Carson's views, he expressed the opinion that at the time of the operation his mother's death was a historical event from which the pursuer's mental health had mostly recovered, but together with any grudges he continued to hold against Forth Valley may have hardened his attitude and left him vulnerable to feeling more angry than another person would have felt. He would have been unlikely to have developed such extreme anxiety for 20 years simply as a result of getting a diagnosis of cancer and his wife subsequently leaving him. His immediate psychological injury was his distress at the combination of a very large scar and acute pain which occurred in the inflammatory context

of him feeling betrayed or otherwise unduly pressured for someone other than Mr Tweedle to do the operation. The contrast between the pre-surgical and post-surgical GP record was stark and he struggled to conclude from this that surgery played no role. In cross-examination he accepted that there were vulnerable traits in the pursuer's history and that the pursuer would have had a mental disorder from the other factors, but explained that the question was how much worse the pursuer would be rather than whether he would have a mental disorder at all. He had extensive experience in dealing with patients with kidney cancer and brain cancer and had interviewed over 150 such patients and he had never seen a reaction like the pursuer's after a diagnosis of cancer.

[49] Professor Carson interviewed the pursuer on-line and obtained a certain amount of information but eventually terminated the interview as he could not get the pursuer to provide clinically meaningful information by that stage in the interview. He found the pursuer to be a difficult man to assess, as his description of events was coloured by his mental state and was not always reliable, which did not of course mean that everything he said was false. There was good research evidence that patients at the severe end of SSD give inaccurate histories.

[50] Professor Carson's opinion was that the primary causes of the pursuer's SSD were three core life events which existed prior to the pursuer's surgery. These were his cancer diagnosis, the breakdown of his marriage, and the death of his mother. He was clearly psychologically vulnerable (in part due to a neglectful and potentially abusive childhood experience) and his mother was seen as a saving light for that and her death hit him hard. He would have had a mental disorder as a result of these three core events which were unrelated to the negligence. He did not think that the pursuer's disorder would be treatable.

The pursuer placed excessive emphasis on the need for laparoscopic surgery rather than open surgery. This was a sublimation instead of dealing with the real fear that, the mother whom he idolised having died from cancer, he too had cancer at a young age. The step change was not at the time of the operation in 2005 but in 2008 when there is a large increase in the medical records as his distortions get greater, although in cross-examination he accepted that although the significant increase had come later there had been an increase in 2005. In his written opinion Professor Carson stated:

> "Even if I assume that the Court accept Mr Taylor's version of events and that the surgeons undertook a procedure without appropriate consent and subsequently lied, covered up, and recorded the records, whilst I think this would have made a material contribution to his mental state I think essentially he would have had a mental disorder as a result of the three core events which are unrelated to the negligence."

[51] In response to Dr Rooney, Professor Carson expressed the view that the diagram was to an extent a truism but it was disordered in that it showed SSD to be an output, and lacked the cancer diagnosis, marital problems and death of mother. The anger shown in the diagram was a factor of personality and he would have been angry anyway.

[52] Both experts were asked about the following counterfactual scenario:

(a) the operation was rearranged and it was carried out by Mr Tweedle;

(b) the pursuer was properly consented (ie there would have been another discussion between Mr Tweedle and the pursuer to ensure that the pursuer had a good understanding of the likely procedure and the scarring);

(c) the keyhole surgery was converted to open surgery and the pursuer who was left with the sort of scarring that had been discussed with him; and

(d) that the longest scar he may have been left with was about 10 to 12 inches rather than the approximately 20 inches scar he has been left with.

[53] Dr Rooney's opinion on the counterfactual scenario was that any counterfactual position could only be a guess. Having said that, he could not see a good reason why the pursuer would not have suffered to an extent. The pursuer had a mistrust of Forth Valley Health Board, and it was unlikely that he would have taken a conversion to open surgery with complete equanimity if he was expecting keyhole surgery. Some psychological reaction may have arisen, but anxiety about how the consent was handled and post-operative anger (at the change of surgeon, the handling of consent and the size of the scar) would have been absent or less intense. He would have had less post-operative pain and been able to return to exercise sooner, exercise being a likely coping strategy. Because these factors were drivers of the model in the diagram, the likelihood of developing SSD of similar severity would have been avoided or materially reduced.

[54] Professor Carson's opinion was that the counterfactual scenario would not have changed the course of events. The issue was not the scar but having cancer and the associated fears that come with that. A delay of 4 weeks would be 4 weeks of anxiety about the tumour growing. He has a lot of cancer patients and without fail they want the cancer to be removed as soon as possible. The delay in waiting for treatment would have been quite destructive to the pursuer.

Submissions for the parties

Submissions for the pursuer

[55] Senior counsel for the pursuer asked me to prefer the evidence of Dr Rooney. Dr Rooney's opinion was more consistent with the factual evidence. His reasoning was more persuasive. Professor Carson did not fully consider all of the medical records and he

was not able to ask the pursuer about the three factors which he considered were the main causes of mental breakdown. He was incorrect in thinking there was a significant increase in the number and frequency of medical attendances in 2008 rather than from shortly after the operation. He failed to properly take into account the fact that the pursuer had a genuine and understandable grievance in relation to events surrounding the surgery and the outcome (late change in surgeon and excessive scar and effect these had on the pursuer). The litigation had been a perpetuating factor in the pursuer's symptoms. There was no basis for a finding that the break-up of the marriage was not caused or contributed to by the breach of duty and would have happened in any event.

Submissions for the defender

[56] Senior counsel for the defender invited me to prefer the evidence of Professor Carson. He had greater qualification and experience. His reasoning was the more cogent and compelling. The pursuer had several pre-disposing factors (cancer diagnosis, loss of mother, financial worries and marital difficulties). It was wholly unusual for a cancer patient to wish to delay removal. Professor Carson's approach of asking what the medical records look like without the events of 28 November 2005 was the correct way to view matters. Had the operation been delayed the pursuer would still have woken with a greater scar than he expected and would have had the uncertainty caused by the tumour having been in place for longer. Professor Carson's explanation of the tendency of the human mind to sublimate or reattribute causation was helpful and instructive. Dr Rooney's analysis was artificial. It placed substantial weight on the presence of a visible above the pant line scar whereas the true comparator was a scar which was materially the same (albeit shorter). The

additional factor that is left was lack of mental preparation for a new surgeon which was of little weight. There were other difficulties with Dr Rooney's approach including (i) he accepted the pursuer's account as credible and reliable; (ii) his assessment was undermined to the extent he proceeded on an untested acceptance of the information given to him by the pursuer and Mr Spence; and (iii) at one point he suggested that his conclusion was inevitable because of the volume of medical records had increased significantly following the index event. Professor Carson's view was the more common sense reaction. The idea that a slightly longer scar in an otherwise curative cancer treatment was a material trigger for SSD is challenging. Delay in his cancer treatment would not have been psychologically soothing for the pursuer. Professor Carson's approach was consistent with the approach to causation in *Andrews* v *Greater Glasgow Health Board* 2019 SLT 727 at paragraph 162 (approving *McGhee* v *National Coal Board* 1973 SC (HL) 37 at page 53).

Decision on causation

[57] I find that the admitted negligence in allowing the operation to go ahead on 28 November 2025 contributed or materially contributed, to the pursuer's Somatic Symptom Disorder.

[58] It has not been an easy task to decide whether to prefer the evidence of Dr Rooney or Professor Carson. Both of them are distinguished in the relevant field. Each had given considerable thought to the issues, and were doing their best to assist the court. Psychological conditions such as SSD do not lend themselves to precise analysis based on observable physical circumstances, and much comes down to differences of judgment on difficult grey areas.

[59] However, on the key matter of whether the admitted negligence contributed or materially contributed to the pursuer's SSD, there was little difference between them. Professor Carson accepted in his written opinion (see the quotation in para [50] above) that the admitted negligence would have made a material contribution to the pursuer's mental state.

[60] Where there was a difference between these experts on other matters, I prefer the evidence of Dr Rooney. Although Dr Rooney trained under Professor Carson, he has now reached an eminent position in his own right, and the seniority of Professor Carson is not determinative. Dr Rooney's reasoning, in particular his explanation set out in his diagram, was at a deeper and more detailed level than Professor Carson's.

[61] Accordingly, I find:

(a) The breach of duty materially contributed to the pursuer's severe SSD and, but for the breach of duty, the SSD is unlikely to have occurred;

(b) The pursuer's anger and a sense of injustice over events around the time of surgery and the scar had played an important role in the development and continuation of the pursuer's symptoms;

(c) While the pursuer had pre-existing vulnerabilities, but for the breach of duty, any psychological reaction that the pursuer may have had to the diagnosis of cancer is unlikely to have been as severe and disabling and resistant to treatment as the psychological reaction that did occur; and

(d) On the counterfactual scenario, while the pursuer may have developed increased anxiety and a depressive episode lasting at most 1 to 2 years, he is

likely to have been able to return to work and exercise, which would have been important and effective coping mechanisms.

Solatium

[62] Both parties referred me to the *Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases* (17th Edition) 2024.

[63] Counsel for the pursuer referred me to:

- Chapter 4(A)(a) - Psychiatric Damage Generally - Severe - £66,920 to £141,240;
- Chapter 9(B)(a) - Chronic Pain - Other Pain Disorders - Severe - £51,410 to £76,870; and
- Chapter 11 - Scarring to Other Parts of the Body - Single disfiguring scar - £9,560 to £27,740.

[64] Having regard to the duration, severity and impact of the pursuer's psychiatric and pain symptoms, the unnecessary long and disfiguring scar and the extent to which the pursuer's life had been seriously and significantly affected by his injuries, counsel for the pursuer submitted that solatium was reasonably valued at £120,000 in the present case, with two thirds apportioned to the past.

[65] Counsel for the defender referred to chapter 11 of the Guidelines, which suggested for a single disfiguring scar £9,560 to £27,740, for exploratory laparotomy £10,550 and for a single scar with minor cosmetic defect £2,890 to £9,560. As the 10% uplift in *Simmons* v *Castle* [2013] 1 WLR 1239 had not been adopted in Scotland the figures required to be multiplied by 0.909. He suggested a figure of under £2,000. He submitted that chapter 9 of the *Judicial College Guidelines*, which dealt with chronic pain, including SSD, was more

appropriate than chapter 4(A)(a) which was for Psychiatric Damage Generally. The appropriate guidance was that offered in respect of severe cases in which significant symptoms are ongoing despite treatment and are expected to persist, resulting in adverse impact on ability to work and the need for some care/assistance. The figure given in the Guidelines is £51,410 to £76,780. Counsel submitted that, adjusted to remove the 10% uplift, the range would be £46,732 to £69,793 and an award at the top end of this range would be appropriate.

[66] In respect of the scar, I have accepted Mr Tweedle's evidence that if he had conducted the operation it was likely to be an open nephrectomy rather than laparoscopic. If that had happened, the pursuer would have been left with a scar, but one that was slightly smaller than the scar he was left with by the method adopted by Mr Di Mauro. In these circumstances, I shall award £2,000 for solatium in respect of the scar.

[67] In respect of the SSD, I agree with counsel for the defender that the relevant chapter of the Judicial College Guidelines is chapter 9. Chapter 9 specifically states "This chapter deals with a variety of what may loosely be described as 'pain disorders'. This includes … Somatic Symptom Disorders." I shall make an award of £65,000.

Loss of earnings

Valuation of wage loss

[68] Both parties were agreed that the appropriate method of valuation of loss of earnings was by using a multiplier and a multiplicand, and that in the particular circumstances of this case it was not appropriate for the court to resort to an alternative broadbrush method (*F* v

Chalmers [2025] CSOH 3, *Bullock* v *Atlas Ward Structure Ltd* [2008] EWCA Civ 194, *Blamire* v *South Cumbria Health Authority* [1993] PIQR Q1).

The pursuer's earnings prior to the operation

[69] Prior to the operation, the pursuer was a highly skilled and good worker whose abilities were held in high regard by those who worked with him. This was apparent from the evidence of Mr Wright and Mr McLuckie and also the pride in his work which shone through the pursuer's own evidence. He was at some times an employee and at others self-employed running his own business.

[70] The problem which arises in this case is the difficulty in assessing the pursuer's earnings prior to the accident. His business finances, both in terms of record keeping and in terms of proper accounting of tax due to the Inland Revenue, were chaotic.

[71] The pursuer's evidence was, in relation to his earnings before the surgery, he described doing groundworks for Barratt Homes in Airdrie for 2 years, from 1985 to 1987, receiving £200 net a week, so £10,400 a year. He was at Triangle Building Services in Falkirk from 1987 to 1993, involved in soft and hard landscaping and brick and blockwork. He states that he received £300 net a week, so £15,000 a year. That was the same at Macrae Homes from 1993 to 1995. He was with Sinclair Landscapes from 1995 to 1999, initially doing paving and monobloc and then as contracts manager. He was paid between £600 to £700 a week, so £31,200 to £36,400 a year. He set up Scottish Landscaping and Buildings Specialists (SLABS) in 2000 as a sole trader and described making "a good living", while from time to time taking time off to care for his mother and to spend time with his children. While self-employed, he estimated that he earned approximately £19,600 in a calendar year.

[72] After the operation, while there were periods when he tried to return to work, in a supervisory capacity, he was unable to sustain employment. Around August 2007 he undertook a 13 week groundworks contract for Weir and McQuiston (but declined work on the second phase of the contract due to his ill health). In 2008 he started an 18 week groundworks contract for Stewarts Building Services, but was unable to complete the works. Between 2009 and 2011 he kept his business open to try and undertake small private contracts, and supervised individuals to work for him. He would undertake work for a period of 2 to 3 months before then taking 3 to 4 months off because of his health problems. He closed his business in 2011. In 2014/15 he attempted to do some local jobs in the community but was unable to do so. He has not worked since and remains unfit for work.

[73] In relation to his post-surgery earnings, the pursuer accepted that his record keeping was poor and that not all of his earnings were declared to HMRC. At one stage, he contacted HMRC to try and clarify what he owed them.

[74] In cross, the pursuer struggled to say whether he had made a profit or a loss on certain jobs or over certain years after the surgery. He referred to a "massive loss" between 2009 and 2011.

[75] Regarding the job in 2007, Mr Wright confirmed that Weir & McQuiston would have paid £52,000 net to the pursuer and tax of £13,000 to HMRC. Mr Wright gave evidence that in 2014 he offered the pursuer the chance to work with him. He said that he would have brought him in as an employee and would have given him a partnership, to give him a share in the business. This was because the pursuer "knew what he was doing" and Mr Wright trusted him. If he had been able to take up the offer of employment, Mr Wright would have

expected the pursuer to make £60,000 to £70,000 gross a year "easily", with bonuses on top of it.

[76] However, there was a new complete lack of vouching for any of the sums suggested. Such vouching as was produced was not reliable.

[77] The only vouching we have the pursuer's earning prior to the accident are his HMRC records. These have been analysed by the pursuer's expert Mr Boardman who sets them out in the following table. The first column sets out, by way of comparison, the estimate of earnings for a comparable employment from the Office of National Statistics' Annual Survey of Hours and Earnings ("ASHE")

Period	Gardener/ Landscaper*	Actual Earnings, HMRC		Gross Actual Vs Gardener/ Landscaper
	Mean	Gross	Net	
1986/87	£6,521	£473	*£449*	7%
1987/88	£6,869	£906	*£861*	13%
1988/89	**£7,587**	**£5,670**	***£5,239***	**75%**
1989/90	**£8,216**	**£9,264**	***£8,572***	**113%**
1990/91	**£9,282**	**£9,114**	***£8,461***	**98%**
1991/92	**£10,280**	**£6,368**	***£5,944***	**62%**
1992/93	**£10,826**	**£10,203**	***£9,466***	**94%**
1993/94	**£11,300**	**£12,055**	***£11,154***	**107%**
1994/95	£11,268	£2,667	*£2,443*	24%
1995/96	£11,591	£3,848	*£3,848*	33%
1996/97	£11,757	£976	*£976*	8%
1997/98	£12,210	£1,080	*£875*	9%
1998/99	£13,073	£2,700	*£2,202*	21%
1999/00	**£12,940**	**£13,103**	***£11,919***	**101%**
2000/01	£13,725	£1,280	*£1,218*	9%
2001/02	£14,246	£737	*£737*	5%
2002/03	£14,904	£2,475	*£2,475*	17%
2003/04	£15,340	£4,988	*£4,771*	33%
2004/05	£15,856	£2,528	*£2,528*	16%
2005/06	£16,334	£3,854	*£3,854*	24%
Totals	**£234,125**	**£94,289**	***£87,991***	**40%**

[78] Mr Boardman has also set out his earnings, according to HMRC for the period after the operation as follows:

Period	Actual Earnings, HMRC	
	Gross	*Net*
2006/07	£756	*£756*
2007/08	£0	*£0*
2008/09	£0	*£0*
2009/10	£1,045	*£1,045*
2010/11	£3,783	*£3,783*
2011/12	£2,346	*£2,346*
2012/13	£0	*£0*
2013/14	£0	*£0*
2014/15	£0	*£0*
2015/16	£0	*£0*
2016/17	£0	*£0*
2017/18	£0	*£0*
2018/19	£0	*£0*
2019/20	£0	*£0*
2020/21	£0	*£0*
2021/22	£0	*£0*
Totals	**£7,930**	***£7,930***

[79] Mr Boardman has confirmed that these tables represent all of Mr Taylor's declared income which would include monies derived from self-employment above the National Insurance threshold. Any cash in hand payments or self-employed earnings below the small profits threshold would not be included in these records.

[80] How, then, should I deal with wage loss?

[81] Given the absence of vouching, the pursuer's expert Mr Boardman took as a benchmark the ASHE figures for gardener/landscaping work, on the basis that was the pursuer's core employment activity. The defender's expert Mr Keith proposed using the sorts of earnings generally associated with employees in the pursuer's occupational area in

ASHE 2005, and took the pursuer's occupational area to be groundworkers and groundwork supervisors/managers.

[82] Senior counsel for the pursuer proposed that loss of earning be calculated as follows. He took the ASHE category of "Construction and building trades supervisors" as suggested by Mr Keith. Median earnings in 2022 were £30,015 net per annum and upper quartile £34,474. Counsel took a figure within these ranges: £20,000 at the time of the operation and £30,000 now, giving average net earnings of £25,000. Taking that over 19 years gives a total of £475,000. Counsel then deducted around 2 or 3 years earnings from that to recognise that few people achieve 100% employment and may have to take time off work. That would result in a figure of between £400,000 and £425,000, with the lower figure being used if a conservative approach is taken. Counsel then made a deduction in respect of the pursuer's earnings after the operation. On the basis that his work and income was sporadic after the operation, counsel suggested that he was unlikely to have a achieved a total profit of more than £50,000. Deducting that £50,000 from the £400,000 gave a final figure for loss of earnings of £350,000.

[83] Senior counsel for the defender submitted that the unsatisfactory nature of the pursuer's evidence and the lack of vouching meant that there was no reliable evidence on which to assess what he had in fact earned and the pursuer had not proved its case on loss of earnings.

[84] In my opinion, although there are difficulties with the evidence on loss of earnings, these difficulties are not so severe that the pursuer has not proved his case. The pursuer is entitled to be compensated for his loss of earnings even though he had in the past failed to disclose them to the Inland Revenue (para [40] above). It is self-evident that the Inland

Revenue's records cannot evidence undisclosed earnings. The pursuer has no records of his undisclosed earnings. In these circumstances it is reasonable to assess his loss of earnings on the basis of the ASHE figures for the relevant occupation. Senior counsel for the pursuer has based his calculations on the occupation proposed by the defender's expert. I agree with that approach and the calculations, and will take the conservative figure suggested by counsel. I agree that a deduction should be made for actual earnings after the operation. As can be seen from the table above (para [78]), the total earnings declared to HMRC were £7,930. In his evidence, the pursuer put his "massive losses" on the contracts he took on as a self-employed basis to errors in estimating the costs. I do not accept that evidence. He could not quantify the losses. He gave no plausible explanation as to how his self-employed business financed such massive losses. In my view it is more likely that he did make profit on post-operation contracts, but in accordance with the way he normally operated, did not properly account to HMRC. In these circumstances I accept that there would have been post-operation earnings which fall to be deducted from the above loss of earnings figure. In the circumstance of the case, I accept the pursuer's figure of £50,000 as a reasonable estimate of the post-operation earnings. Deducting that from the £400,000 figure, I award £350,000 in respect of loss of earnings.

Future wage loss

[85] Senior counsel for the pursuer submitted that the pursuer was born on 2 January 1960 and will reach state age retirement on 2 January 2026. He gave evidence that had he been fit he would have continued working until age 70. The pursuer sought an award for future wage loss working to age 70. Taking the multiplicand as £30,000 net a year (as above)

and a multiplier of 4 (Ogden table 13, aged 65) that would give future wage loss of £120,000. As a secondary position, counsel for the pursuer submitted that he may have reduced his hours as he approached retirement age then an award of one half of that should be £60,000.

[86] I note that the pursuer's job was a very physical one and in my view it is reasonable to suppose that the pursuer would not continue to 70 and would reduce his hours as he approached retirement age. I shall award £60,000 for the reasons set out by the pursuer's counsel.

Past services

[87] The pursuer sought an award in relation to provision of services by his daughter Rebecca. The sums sought was £25,000. This was calculated on the basis of £50 a week (£2,500 a year) for the 10 years from when Rebecca turned 16 in 2005 to date. The sole source of evidence for this award came from the pursuer. The pursuer told Jill Trevena that while Rebecca was working as a carer for the council for around 30 hours a week, she prepared meals for him on a regular basis and also administered his medication. He told Ms Trevena that Rebecca carried out the following tasks, namely: some food preparation; administration of medication; occasional cleaning/tidying; occasional company and reassurance; assistance with contacting suppliers of services and utilities. Ms Trevena allowed for an average of one hour of additional gratuitous care per day.

[88] The pursuer told Ms Higgins that he was fully reliant on others for all other domestic tasks. His daughter assisted as did Mr Balloch. He reported to Ms Higgins that his daughter completed the clothes washing and helped with shopping.

[89] In view of the difficulties with the pursuer's credibility and reliability, I am not prepared to accept the pursuer's evidence without supporting independent evidence. There was no supporting independent evidence of the care provided by Rebecca. In particular there was no evidence from Rebecca herself as what care she provided. In these circumstances I shall make no award for past services provided by Rebecca.

Past paid care

[90] In his case on record, the pursuer sought an award for past paid care from Stewart Spence and Ronald Balloch. However, in closing submission he sought an award in respect of only Mr Balloch.

[91] The difficulties with this claim arise not with the question of whether Mr Balloch provided care services but whether or not these services were paid.

[92] I accept the evidence of the pursuer and Mr Balloch that care services were provided. Mr Balloch's evidence was that he had helped the pursuer on a daily basis since 2018. His hours vary but typically he would be there for an hour in the morning to give the pursuer his medicine and then return in the evening to give him his medicine and stay for 1-3 hours. He sleeps over about two-three times per month. He helps with food shopping, takes the pursuer out for fresh air and assists with the dog. He helps the pursuer to get dressed.

[93] The pursuer's evidence on payment was that he paid Mr Balloch weekly payments of around £150 per week which varied, and he would have paid him around £500 to £600 a month since 2018.

[94] Mr Balloch's evidence in his witness statement was that he received pay from Mr Taylor of around £80 to £120 a week and if he had to sleep over £130-£140. He gave

further detail of this in oral evidence. Each month Mr Balloch lends the pursuer £500. Mr Balloch takes cash out of his wages from his main employment and gives it to the pursuer. The pursuer then makes the payments for care back to Mr Balloch out of that cash.

[95] Mr Balloch's explanation of the transfers of cash between himself and the pursuer makes no sense in terms of the pursuer's claim that they are payments of wages for paid care services. The money is taken out of Mr Balloch's wages from his main job in cash, then given to the pursuer, then given back to Mr Balloch in cash: Mr Balloch is just getting his own money back again. No accounting is made to HMRC in respect of the payment of the cash back to Mr Balloch being wages. In these circumstances I am not satisfied that the pursuer pays Mr Balloch for the care services which Mr Balloch undoubtedly provides to him. I shall make no award for past paid care.

Future paid care

[96] Both care experts recommended broadly the same package of care, although there were differences in some detail. One significant difference was in respect of accommodation, which I deal with below. It has to be borne in mind that their assessment was based on what the pursuer had told them, and to that extent has to be treated with some care given the issues with the credibility and reliability of the pursuer. Having said that, it is clear from the medical expert evidence that the pursuer's SSD is severe, and I accept that he will require considerable assistance to deal with his symptoms. Although the pursuer had, in the past, dispensed with paid care services due to lack of confidence in the staff, a properly funded professional future care arrangement should be able to overcome such trust issues.

[97] There was agreement between the parties that the appropriate scenario was that described by Ms Higgins as:

> "scenario 1 - Mr Taylor continues to experience somatic issues related to SSD .. Mr Taylor will likely require support four times per day for all aspects of his daily life, including personal care, assistance to dress/undress, meal provision and assistance with medication".

This was costed by Ms Higgins at £31,038.31, which the pursuer rounded down to £30,000. The defender agreed with that figure.

[98] The full Ogden tables multiplier for life for the pursuer is 19.08 (Ogden table 1). The pursuer proposed a small reduction of the multiplier to 17 to allow for the possibility that the pursuer may, in any event, have required some services or care towards the end of his life, through the natural process of ageing. The pursuer valued the cost of future care at £500,000 (£30,000 x 17 = £510,000 rounded to £500,000). The defender's position was that the reduction to 17 did not adequately reflect what was required and taking a broad brush approach a more appropriate multiplier would be 12.7 (effectively two thirds of 19.1) which would capitalise future care costs at £381,000.

[99] I agree with parties that a reduction is required. In calculating that reduction, I preferred the defender's multiple of 12.7 to the pursuer's multiple of 19.1, as it took a more realistic approach to the need for care due to ageing. I shall award future care costs in the sum of £381,000.

Case management and therapies

A Case management fees

[100] The defender accepted the pursuer's figure of £10,000 and I shall award that sum.

B Occupational therapy fees

[101] The pursuer suggested £10,000 and the defender accepted that figure. I shall award that sum.

C Physiotherapy

[102] The pursuer proposed £600 and the defender accepted that figure. I shall award that sum.

D Psychological counselling

[103] The pursuer proposed a figure of £2,000. This was opposed by the defender on the basis that should Professor Carson's evidence be accepted, the pursuer's SSD was not treatable and there was no basis for a claim in the costs of psychological therapy. I shall make no award for psychological therapy for the reason given by the defender.

E Podiatry

[104] The pursuer proposed a figure of £270 per annum. This was accepted by both parties but there was the same disagreement as to whether the multiplier should be 17 or 12.7. For the reasons given above I will apply a multiplier of 12.7 which gives a sum of £3,429, which I will round to £3,400.

Equipment

[105] Both care experts recommended various pieces of equipment with the aim of improving the pursuer's life at home.

[106] The pursuer claims annual costs of £900, and applied a multiplier of 17 giving a sum of £15,300, rounded down to 15. These covered items such as a rise recliner chair, an electric profiling bed, a self-propelling shower chair, a long reach flute and body sponge, non-spill urinal bottles, small equipment to facilitate dressing tasks and various kitchen items. Ms Higgins' equipment recommendations do not exactly overlap with those of Ms Trevena but she does recommend various household aids and equipment designed for the same broad purposes. The annual cost of those proposed by Ms Higgins was £315. The defender suggested a compromised figure of £500 and it seems to me that that is a reasonable figure in the circumstances. Applying a multiplier of 12.7 years (see above) and rounding the figure I shall award £6,300.

Past miscellaneous expenditure

[107] Ms Higgins estimated additional past heating costs of just over £5,000 and additional past laundry costs of £2,790 (to the date of her report in November 2023). She estimated ongoing additional heating costs at £630 a year and additional laundry costs of £160 a year. The estimated additional heating and laundry costs totalled £7,790 to which additional costs of £1,185 were added to the date of the proof giving a total for past costs of £8,975 rounded up to £9,000 which was the sum sought for past miscellaneous expenditure. The defender submitted that no damages should be allowed under this head. The losses were based entirely on speculation by Ms Trevena. Any such additional costs would have been objectively and readily ascertainable but this was not done.

[108] These figures were estimates by Ms Trevena and there was no objective evidence vouching that such additional energy and other costs had actually been incurred. I shall make no award under this heading.

Future miscellaneous expenditure

[109] On the basis of the reports of Ms Trevena and Mr Wibberley, the pursuer proposed a multiplicand of £3,500 a year comprising home decorating, £450; DIY/handyman and window cleaning £500; gardening £1,500; additional heating costs, £630; and additional laundry costs, £160, rounded up to allow for inflation since the experts' reports were produced. The pursuer proposed a reduced multiplier of 17, giving future miscellaneous expenditure of £59,500.

[110] The defender accepted that on a broad-axe basis the court could make some award for this sort of expenditure and suggested a multiplicand of £1,000 with a multiplier of 12.7 years, totalling £12,700.

[111] I prefer the multiplicand of £1,000 proposed by the defender. There was no objective evidence that the specific expenses listed were matters which the pursuer was not already paying for prior to the operation, nor any evidence that his energy costs had increased. Further, the pursuer's figures were based to some extent on the assumption that the pursuer would be moving to a three-bedroom house as recommended by Mr Wibberley, which is a recommendation which I have not accepted. I shall apply a multiplier of 12.7 for the reasons given above. I shall award £12,700 under this heading.

Accommodation

[112] At present the pursuer lives in a two-storey house rented from the council, which is the house he grew up in. On the ground floor there is a lounge, kitchen and a dining room used as the pursuer's bedroom. The bathroom is on the first floor along with two bedrooms. The pursuer's ground floor bedroom has been adapted on a temporary basis to form a toilet and shower area. The pursuer urinates into containers in the living room.

[113] Having seen photographs of the adapted ground floor bedroom, I agree with Ms Trevena and Ms Higgins that this does not give the pursuer adequate toilet and washing facilities. He requires facilities such as are currently available only on the first floor.

[114] Both parties' experts agreed that the pursuer's current accommodation was unsuitable for his needs. The issue between them was whether his property could be made suitable by the installation of a stairlift, or whether he required to move to single level accommodation, with an accessible toilet and bathroom.

[115] Ms Trevena was of the opinion that a stairlift would not be suitable as the stairlift could break down. It would require maintenance and care which could be "intrusive". It would not put the pursuer in the position where he would have been, but for the operation, with easy access to all areas of his house. She was also concerned that he would not have the volition to use a stairlift regularly.

[116] Ms Higgins opinion was that a stairlift would be sufficient. At her assessment of him at his home, she did not note any functional reason why Mr Taylor would not be able to use the stairs, but he declined to attempt the stairs. In re-examination she confirmed that her view was that he could manage the stairs. She had been putting in stairlifts for a long

time and had never come across a staircase where it had not been possible to put in a suitable lift.

[117] The difference in cost between a stairlift and the purchase of new accommodation is considerable. The cost of the stairlift would be £3,000. The cost sought of new accommodation was assessed by Mr Wibberley in his report as around £650,000, comprising a three-bedroom house at £325,000 and renovations to that house at a cost of £326,774. In closing submissions counsel for the pursuer moderated this to £326,750 (£155,000 purchase cost of a two-bedroom house and £150,000 adaptions, £7,500 costs and outlays and £14,250 buildings insurance).

[118] In my opinion a chair lift is sufficient.

[119] This question turns on physical capabilities of the pursuer. Ms Trevena's assessment was based entirely on information which had as its source the pursuer. As a result of what he had told her about his mobility, she concluded that he was not able to walk to the local shop. He walks with a crutch or stick and the furthest distance his able to walk outdoors was around 30 meters. He cannot eat solid food and eats blended food. Similarly, Mr Wibberley's assessment was based on information from the pursuer that he uses a crutch to walk short distances and a manual wheelchair outdoors. In his oral evidence the pursuer's position was that he could not take solids and all his food had to be pureed.

[120] As indicated above, information from the pursuer must be treated with care and checked against independent evidence. The independent evidence showed that the pursuer was much less incapacitated than the impression he gave to Ms Trevena and Mr Wibberly. Mr Balloch's evidence in the witness box was that the pursuer had stopped using a wheelchair. The pursuer goes by himself to walk his dog, a labrador who can be wild and

fast and gets off the lead. The pursuer goes out and about and gets exercise. The pursuer had been giving him a lift to the court. The pursuer had parked 10 minutes from the court and had walked from there to the court. He had not brought his crutch with him. For breakfast he eats porridge, cornflakes or Weetabix and toast. He likes soup, potatoes vegetables and corned beef. In cross-examination he said that they often had dinner together of pizza or something from the chippy. On re-examination he explained that the pursuer used to be on soft food but now was open to other things eg cereal, tea coffee and the odd crisp, but nothing fatty, no chips. When they had something from the chippy the pursuer would only eat a pie or maybe a fish but no chips. I accept Mr Balloch's evidence given in the witness box as it comes from someone who has daily contact with the pursuer. Further, it is supported by my own observations of the pursuer's mobility in court: he did not use a crutch, stick or wheelchair and walked with ease within the court and to and from the witness box. Further support for the pursuer having considerably greater physical capacity than he made out to his own experts comes from Ms Higgins. Ms Higgins had interviewed him at his home. He was able to move unaided. His dog took a dislike to Ms Higgins so the pursuer physically held the dog back for around half an hour which in her view took a great deal of strength. When she was testing his ability to lift his arms above his head, he was unable to do so, despite being perfectly able to so at other times during the interview.

[121] I shall award £3,000 for the installation of a chair lift.

[122] Had I come to a different view, and awarded the costs of a new house, I would not have awarded the sum of £326,750 sought by the pursuer, representing purchase cost £155,000, adaptations £150,000, cost and outlays £7,500 and buildings insurance £14,250.

[123] The pursuer currently has a two-bedroom house. He lives there alone, apart from when his daughter is with him. Although the pursuer's expert report from Mr Wibberley originally envisaged a three-bedroomed house, in the witness box without prior notice he changed his position and advocated a two-bedroom house. Although the pursuer currently lives in rented accommodation, Mr Wibberley allowed for the purchase of a house. The reason he gave for that it was unlikely that the rental option would be a viable solution to the pursuer's housing needs. That conclusion was based on a general view that rentals were difficult to secure and adapt, depending on a willing landlord, so generally he did not consider a rental option. Further, he placed considerable emphasis on wheelchair use by the pursuer. I was not satisfied that a suitable single level two-bedroom property could not be rented. It does not require to be adapted for wheelchair use as the pursuer no longer uses a wheelchair. If, contrary to my view, Mr Wibberley was correct that suitable accommodation could not be rented and would have to be bought, I would not have accepted the figures advanced by Mr Wibberley. He allowed for substantial renovations to the house at a total of £150,000. These were entirely hypothetical as there was no particular house in mind. Much of the detail of the proposed renovation was highly speculative and unnecessary, such as, for example the building of an extension so that the washing machine was not in the kitchen, the building of a car port and a covered walkway from the carport to the house, and the installation of smoke alarms notwithstanding that such alarms should already have been installed as they are a legal requirement in Scotland. Had I found that it was necessary to purchase (rather than rent) a house, I would have allowed only for the purchase of a single level two-bedroomed house plus a reasonable sum in respect of renovations. I would

have assessed this, on a broad brush basis, at a total of £160,000 for both purchase and renovations.

Conclusion

[124] I shall make the following awards:

Solatium	£67,000
Loss of earnings	£350,000
Future loss of earnings	£60,000
Past services	£0
Past paid care	£0
Future paid care	£381,000
Case management and therapies	£24,000
Equipment	£6,300
Past miscellaneous expenditure	£0
Future miscellaneous expenditure	£12,700
Accommodation (stair lift)	£3,000
TOTAL	£904,000

[125] That leaves the question of what sums to award in terms of interest. The parties invited me not to address interest in this opinion, but to allow them to address the court separately on that once this opinion was available: there were various possible permutations of the interest calculation depending on what capital sums were awarded, and the situation was complicated by the fact that interim payments totalling £75,000 had been made.

Although an opinion should normally resolve all outstanding matters, in the particular circumstances of this case it would be beneficial to hear such submissions in due course. I will put the case out by order for submissions on interest and the terms of the interlocutor to give effect to this opinion.