

SCHEDULE TO THE ORDER

Part 1 of the Schedule to the order

Each sum payable under part(s) 2 and 3 of this schedule is a “periodical payment” subject to the conditions set out in paragraphs 1-8 of this part

1. Unless specifically stated, all the periodical payments under part(s) 2 and 3 of this schedule will continue during the lifetime of the Claimant

2. No minimum number of periodical payments under part(s) 2 and 3 of this schedule shall be made

3. Payment of the periodical payments under part(s) 2 and 3 of this schedule will cease on the death of the Claimant

4. The final periodical payment under part(s) 2 and 3 of this schedule will be pro-rated for so much of the final year that the Claimant had survived and any balance owing to the NHSLA or its successor will be repayable to it out of the Claimant’s estate, subject only to deduction by the Claimant’s estate of such sums as the Claimant’s estate may be liable for in respect of the termination of the employment of any persons employed to care for the Claimant

5. The NHSLA shall be entitled to require the Claimant to produce evidence in a form reasonably satisfactory to the NHSLA that the Claimant remains alive before making any periodical payment
6. The periodical payments under part(s) 2 and 3 of this schedule are to be made by BACS to the Court of Protection (or its successor) for the benefit of the Claimant under reference [] (where applicable)
7. At the time of each periodical payment under part(s) 2 and 3 of this schedule the NHSLA shall provide to the Claimant and/or the Deputy details in writing explaining how the periodical payment has been calculated
8. The NHSLA shall pay the relevant annual sums set out in part[s] 2 and 3 of this schedule on 15 December of each year,¹ save that:
 - 8.1. If the Office for National Statistics [‘ONS’] does not publish by 17th November in the relevant year all the relevant data and as a result the NHSLA is unable to perform the relevant calculations under part(s) 2 and 3 to recalculate the periodical payment(s) due to the Claimant before 15 December of the relevant year, the NHSLA shall on 15 December of the relevant year make the periodical payment(s): (a) in the same sum as that paid in the previous year; or (b) in the increased/decreased sum recalculated in accordance with the relevant data for the previous year where in the relevant year the

¹ This restates the position whereby under the model order under parts 2-3 the obligation to pay is on 15 December of each year and sets out the circumstances in which the NHSLA is entitled to derogate from that provision. It also separates out two different circumstances in which interest is payable by the NHSLA: (1) where there is a failure to pay anything by 15 December of the relevant year and (2) a failure to make the balancing payment as a result of late publication.

annual sum was due to be increased or decreased or commenced under the relevant sub-paragraph of paragraph 1 of part(s) 2 or 3.

- 8.2. Any balancing payment due to the claimant or the NHSLA shall be made within 28 days after the publication of all the relevant data by the ONS.
 - 8.3. The NHSLA shall pay interest at the then applicable Judgment Act rate on any outstanding periodical payment or part of a periodical payment not paid on 15 December in any year from 16 December in that year until full payment is made, except that in the circumstances contemplated in paragraphs 8.1-2 interest due on any balancing payment shall only be payable by the NHSLA from 28 days after publication of all the relevant data until full payment is made.
9. For the period from [the date when the future loss period accrues assuming periodical payments relate only to future loss] to [14 December of the relevant year when the periodical payments will commence] to represent the periodical payment under part(s) 2 and 3 of this schedule for that period the Defendant do pay the sum of [£] () due as the balance of the periodical payment for the above period and that sum shall be paid 4.00 pm on the [].

Part 2: The RPI-Linked Periodical Payments

1. The following present value annual sums as recalculated in accordance with paragraph 3 shall be paid in advance:
 - 1.1 The annual sum of [£] () payable on the 15th of December in each year from 15th December [] until 15th December [] inclusive, with the first such payment to be made on 15th December []
 - 1.2 The annual sum of [£] () payable on the 15th of December in each year from 15th December [] until 15th December [] inclusive
 - 1.3 The annual sum of [£] () payable on 15th of December in each year from 15th December []

The expiry of one period and the commencement of another period under the above sub-paragraphs constitutes a “step change” under this Schedule

2. The index to be applied is the United Kingdom General Index of Retail Prices for all items [‘RPI’] published by the ONS (January 1987 = 100) or any equivalent or comparable measure which in the parties’ reasonable opinion replaces such index from time to time. In the event of a dispute between the parties as to the appropriate alternative measure and/or the formulae to be applied in the event of a rebasing of RPI the same shall be determined by the court
3. Each periodical payment referred to in paragraph 1 [1.1 to 1.3] above shall be recalculated annually in November in each year prior to payment on 15th December of the same year from November [] in accordance with the following formula

$$PP = C \times \frac{NF}{A}$$

3.1 Where

3.1.1 'PP' = the amount payable by way of periodical payment in each year, the first PP being the payment made on 15th December []

3.1.2 'C' = the relevant annual sum set out in paragraph 1 [1.1 to 1.3] above respectively

3.1.3 'NF' = the index applicable to September in the year in which the calculation is being carried out, the first NF being in respect of September []

3.1.4 'A' = the index applicable to [the index applicable to three months prior to the date of settlement or judgment]

Part 3: The ASHE 6115-Linked Periodical Payments

1. The following present value annual sums as recalculated in accordance with paragraphs 3-10 shall be paid in advance
 - 1.1 The annual sum of [£] () payable on 15th December in each year from [] until 15th December [] inclusive, with the first such payment to be made on 15th December []
 - 1.2 The annual sum of [£] () payable on 15th December in each year from [] until 15th December [] inclusive
 - 1.3 The annual sum of [£] () payable on 15th December in each year from []
The expiry of one period and the commencement of another period under the above sub-paragraphs constitutes a “step change” under this Schedule

2. The relevant earnings data are the gross hourly pay for “*all*”² employees given by the present Standard Occupational Category [‘SOC’] for (Care assistants and home carers) [‘6115’] at the relevant percentile shown below (currently in table 14.5a at the tab for “*all*” employees) of the Annual Survey of Hours and Earnings in the United Kingdom [‘ASHE’] published by the ONS. The original relevant percentiles are:
 - 2.1 [] percentile shall be applied to paragraphs [] above
 - 2.2 [] percentile shall be applied to paragraphs [] above

² The terms “all”, “first release” and “revised” gross wage rates are terms of art drawn from the ONS website and have been italicised so that the reader can see they have a special meaning in this context.

First payment of periodical payments under each step

3. Unless paragraphs 5-10 below apply, the annual periodical payments referred to in paragraph 1 [1.1 to 1.3] above shall be recalculated in November prior to payment on the 15th December of the same year from November [] in accordance with the following formula

$$PP = C \times \frac{NP}{A}$$

- 3.1 Where

- 3.1.1 'PP' = the amount payable by way of periodical payment in each year being calculated in November and paid on the 15th of December the first 'PP' being the payment on the 15th of December []
- 3.1.2 'C' = the relevant annual sum set out in paragraph 1 [1.1 to 1.3] above respectively
- 3.1.3 'NP' = the "first release" hourly gross wage rate published by the ONS for the relevant percentile of ASHE SOC 6115 for "all" employees for the year in which the calculation is being carried out, the first NP being the figure applicable to the year [] published in or around October []
- 3.1.4 'A' = the "revised" hourly gross wage rate for the relevant percentile of ASHE SOC 6115 for all employees applicable to [] and published by the ONS in or around October []. In the event of a correction by the ONS it will be the replacement "revised" figure issued by the ONS

Subsequent payment of periodical payments under each step

4. Unless paragraphs 5-10 below apply, the annual periodical payments referred to in paragraph 1 [1.1 to 1.3] above shall be recalculated annually in subsequent years in November in each year prior to payment on the 15th December of the same year from November [] in accordance with the following formula

$$PP = C \times \frac{NP + (NF - OP)}{A}$$

- 4.1 Where in addition to the definitions previously set out
- 4.1.1 ‘NF’ = the “revised” hourly gross wage rate published by the ONS for the relevant percentile of ASHE SOC 6115 for “all” employees for the year prior to the year in which the calculation is being carried out, the first NF being that applicable to the year [] and published in or around October []
- 4.1.2 ‘OP’ = the “first release” hourly gross wage rate published by the ONS for the relevant percentile of ASHE SOC 6115 for “all” employees for the year prior to the year in which the calculation is being carried out, the first OP being the figure applicable to the year [] published in or around October [] .

Payments upon reclassification of the SOC or a change of methodology by the ONS

5. Reclassification for the purposes of paragraphs 6-9 below occurs when the ONS publishes for the same year “revised” hourly gross wage rates for both:
- 5.1 the previously applied SOC (for which the “revised” wage rate is defined as ‘AF’ in paragraph 6.1.1 below) and

5.2 for a new SOC (for which the “revised” wage rate is defined as ‘AR’ in paragraph 7.1.4 below) that includes those currently defined as “home carers” in ASHE SOC 6115.

In that event the new SOC shall be applied.

6. The relevant annual sum referable to the sums at paragraph 1 [1.1 to 1.3] above following reclassification shall be known as ‘CR’ and shall be calculated only in the year of reclassification, in accordance with the following formula

$$CR = C \times \frac{AF}{A}$$

6.1 Where in addition to the definitions previously set out

6.1.1 ‘AF’ = the final published “revised” hourly gross wage rate for the relevant percentile of the previously applied SOC for “all” employees

7. When reclassification occurs the first payment only shall be

$$PPR = \left[CR \times \frac{NPR}{AR} \right] + \left[C \times \frac{AF - OPF}{A} \right]$$

The second bracket of the above formula shall not apply where at the time of reclassification, either (a) there has been no periodical payment made in the previous year or (b) where at that time a step change in the annual sum is due under paragraph 1 above and in those circumstances the first payment shall be calculated in accordance with the following formula

$$PPR = \left[CR \times \frac{NPR}{AR} \right]$$

7.1 Where in addition to the definitions previously set out

7.1.1 'PPR' = the amount payable by way of periodical payment in each year following reclassification

7.1.2 'NPR' = the "first release" hourly gross wage rate published for the relevant percentile of the new SOC following reclassification for the year in which the calculation is being carried out

7.1.3 'OPF' = the final "first release" hourly gross wage rate published for the relevant percentile of the previously applied SOC for "all" employees

7.1.4 'AR' = the "revised" hourly gross wage rate for the relevant percentile of the new SOC, when first published, which is closest to AF, and the new percentile shall be the percentile to which AR corresponds

8. Until further reclassification the formula for calculating subsequent values of PPR shall be

$$PPR = CR \times \frac{NPR + (NFR - OPR)}{AR}$$

8.1 Where in addition to the definitions previously set out

8.1.1 'NFR' = the "revised" hourly gross wage rate published for the relevant percentile of the new SOC following reclassification for the year prior to the year in which the calculation is being carried out

- 8.1.2 ‘OPR’ = the “*first release*” hourly gross wage rate published for the relevant percentile in the new SOC following reclassification for the year prior to the year in which the calculation is being carried out
9. Further reclassifications shall be dealt with in the same way by the application of paragraphs 5-8 above
10. For the purposes of this part a change of methodology occurs when the ONS publishes two sets of data for the applied SOC. In that event, the same process as set out in paragraphs 6-9 above shall be undertaken. However, in these circumstances references to
- 10.1 ‘*reclassification*’ shall be treated as being a reference to ‘*a change of methodology*’,
- 10.2 ‘*the new SOC*’ shall be treated as being a reference to ‘*the existing SOC using the new methodology*’, and
- 10.3 ‘*the previously applied SOC*’ shall be treated as being a reference to ‘*the existing SOC using the old methodology*’.

Miscellaneous

11. In the event of a dispute between the parties arising out of the application of this Part, there be liberty to apply.