



CHARLES RUSSELL

Quantum

Edwina Rawson

March 2010

PERIODICAL PAYMENTS

- Cobham v Benjamin Eeles, (March 2009) C/A

Facts

- Aged 11, brain damaged in RTA when baby
- Interim payment of £450,000
- Wanted to buy property
- Sought further interim payment of £1.2m

PERIODICAL PAYMENTS

- Cobham v Benjamin Eeles, (March 2009) C/A
First Instance



- Yes, £1.2m
- Valued case at £3.5m if won at trial
- Would not exceed a reasonable proportion of final award

PERIODICAL PAYMENTS

- Cobham v Benjamin Eeles, (March 2009) C/A
Court of Appeal



PERIODICAL PAYMENTS

- Cobham v Benjamin Eeles, (March 2009) C/A
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- **ASK**

1. Will trial judge make PPO?
2. What would the trial judge award as lump sum? (or capitalised value) – separate out likely lump sum from periodicals

- Lump sum: General damages, past losses, interest, accommodation
- Possibly others from future losses if trial judge would award higher than above. And, a real need.
- Tension

PERIODICAL PAYMENTS

- Cobham v Benjamin Eeles, (March 2009) C/A
- Value of lump sum = £590,000
- Already had £450,000
- Big house anyway



PERIODICAL PAYMENTS

Life after Eeles

PERIODICAL PAYMENTS

1. Preston v City Electrical Factors/Stockham (November 2009)



- £100,000 requested for interim payment (already had £100,000)
- PPO not likely to be awarded at trial, as amount would be low and C didn't want one
- Didn't exceed a reasonable proportion

PERIODICAL PAYMENTS – POST EELES

2. FP v Taunton & Somerset NHS Trust (2009)



- Wrongful birth
- £1.2m for accommodation
- Read need established

PERIODICAL PAYMENTS – POST EELES

3. Johnson v Compton-Cooke (October 2008)



- Sought £1.5m
- Not possible to second guess whether PPO
- £600,000 only
- Excessive claims

PERIODICAL PAYMENTS – POST EELES

4. Brown v Emery (March 2010)

Sought £800,000 (already had £76,000)

£250,000 only

BUT:

- Loss of earnings – Judge decided trial judge would pay lump sum as only 15 and not working
Therefore loss of earnings could be taken into account
- Didn't take accommodation into account

PERIODICAL PAYMENTS – POST EELES

5. Harris v Roy (February 2010)

- C had had 3 interim payments, £110,000
- Wanted £50,000 more
- Issue was whether the loss of earnings between application and trial should be taken into account. Yes.

PERIODICAL PAYMENTS – POST EELES

6. Patel v Patel (September 2009)

- Interim payment sought for school fees
- Parties agreed that should be dealt with by preliminary issue
- The C tries to get interim payment for school fees
- Judge refused to interfere with what had been agreed by consent

PERIODICAL PAYMENTS – POST EELES

7. Kirby v Ashford & St Peter's Hospital (2009)

- Not assessed until age 5
- Very poor conditions
- £850,000 already by interim payment
- Sought £350,000 for property
- Recognised need, but only £150,000

FATAL ACCIDENTS ACT 1976

- Watson v Cakebread Robey Ltd (2009)
- Mesothelioma at work
- Claim during life
- Funeral expenses claimed. C said whilst alive he should be able to step into shoes of estate



- LR(MP)A 1934 made it clear claim arose on death
- Otherwise, any C with reduced life expectancy could claim



CARE

- XXX v A Health Authority (November 2008)

Claim

60 weeks p.a. (to reflect time when carer is paid, but not caring)
Employer pension contributions



CARE

- D's noisy about care – private vs state

Review

- Sowden v Lodge (2004), C/A
Recover only to extent necessary to **'top up'** state care by private care
- Crofton v NHSLA (2007), C/A
State funding for care should be taken into account.

Discounted **multiplier**



CARE

- Chantelle Peters (March 2009), C/A
- Congenital rubella syndrome
- £4m for future care and accommodation
- Care home costs shared between LA and LHA

CARE

- Chantelle Peters (March 2009), C/A

BIG QUESTION: Was C obliged to make use of state care or could she claim full cost of care privately?



CARE

- Chantelle Peters (March 2009), C/A

Having looked at statutory framework and principles of tort ...

“There was no reason in policy or principle why a C who wished to opt for self-funding and damages in preference to reliance on the statutory obligations of a public authority should not be entitled to do so as a matter of right, provided there was no double recovery.”

CARE

- Chantelle Peters (March 2009), C/A
- Witness Statement
- But, is the fight over?

CARE

- C v Dixon 2009

Taxi hit lamp post

Care needs for physical and cognitive problems

Organic personality change

Aggressive

Partner, but ? for how long



Good example



EARNINGS

- Palmer v Kitley (November 2008)
- Blamire awards

Where loss of earnings/pension subject to imponderables, court would approach case by “impression” rather than “precise calculation”



- Collett v Smith (July 2009), C/A
- Career dreams
- budding footballer for championship level
- strong evidence
- reduced by 15%, reasonable



LIFE EXPECTANCY

- Smith v LC Window Fashions (2009)
- C's life expectancy reduced by 6.5 years
- C argues to use Table 28 of Ogden Tables to avoid double counting
- D argues for Table 1

LIFE EXPECTANCY

- Smith v LC Window Fashions (2009)
- Table 1 appropriate
- Only necessary to avoid double discount for mortality if could determine exactly how long C would live.

EXAGGERATION

- Hullock v East Riding CC (2009), C/A
- Video evidence
- Past care claim reduced
- Future care claim abandoned
- No Part 36s
- Settlement – at level of an interim payment
- Costs?
- First instance, D pays 50%



EXAGGERATION

- Hullock v East Riding CC (2009), C/A
- Exaggeration was ...
‘a central, if not decisive, consideration in determining who should pay costs’
- Who was winner?
- D
- D pay costs up to time of interim payment



EXAGGERATION

- Widlake v BAA Ltd (2009), C/A
- Fall downstairs at Stansted airport
- Failed to disclose to two experts pre-existing back problem
- D payment in, C beats at trial
- Factors
- No order



HOLIDAYS

- Divergence in approach
- Objective rather than subject
- Usually modest

- Pankhurst v (1) White (2) MIB (2009)
Test is one of reasonableness
Rejected multiplier/multiplicand
Lump sum £160,000
Rejected C's evidence



HOLIDAYS

- It's all about proof

DISCOUNT RATE

- Rumour had it.....

BENEFITS

- New regs

CASES, CASES, CASES

- Bend v Derbyshire PC (2009)
- Norman v Wandsworth PCT (2009)
- Gallagher v Heart of England NHS Trust (2008)
- Bradlaugh v MoD (2009)
- B, E, F, G, H, J, K, v Centre Island Hotels
- G v Farooq Hameed (2009)



CASES, CASES, CASES

- Clark v Churchill Insurance (2009)
- F v Lancashire NHS Trust (2009)
- G v Ealing NHS Trust (2009)
- H (2009)
- DG v North Bristol Trust (2009)
- Ale v VVV University NHS Trust (2009)



CASES, CASES, CASES

- Stankovic v Aintree NHS Trust (2009)
- H v M (2009)



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THANK YOU!!



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