

**Frenkel Topping Ltd**  
 4<sup>th</sup> Floor, Statham  
 House Talbot Road  
 Old Trafford  
 Manchester  
 M32 0FP

T: 0161 886 8000  
 F: 0161 886 8002

Frenkel Topping Ltd is authorised and regulated  
 by the Financial Services Authority

**Frenkel Topping**  
 Caring for your financial future

---

---

---

---

---

---

---

---

---

---

**Periodical Payments Post-Thompstone**

**Frenkel Topping Ltd**

**Frenkel Topping**  
 Caring for your financial future

---

---

---

---

---

---

---

---

---

---

**Periodical Payments**

- Hard to argue against logic of Periodical Payment Orders
- Replace losses as they arise
- Paid throughout Claimant's lifetime
- Removes any mortality issues i.e. no need for multiplier
- Removes investment and taxation issues

**Frenkel Topping**  
 Caring for your financial future

---

---

---

---

---

---

---

---

---

---

## Periodical Payments Post-Thompstone

- CPR 41 – "Courts must consider PPO's"
- Rarely complied with
- Imposition even rarer
- Reason/Excuse was RPI Linkage
- Now have ASHE 6115

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---

---

---

---

## Indexation

- Irrelevant whether ASHE or RPI
- Issue is about "what is fair and reasonable"
- Indexation designed to meet care needs  
NB Contractual position?

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---

---

---

---

## Periodical Payments Post-Thompstone

- Other heads of future loss e.g. earnings
- Sarwar –v- Ali and MIB
- Also had contributory negligence
- RPI still in use for certain heads
- Split indexation PPO's

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---

---

---

---

## Periodical Payments Post-Thompstone

- Turned full circle
- PPO's now "standard"
- Each case should be assessed on its merits
- Which heads PPO/lump sum?



Frenkel Topping  
Caring for your financial future

---

---

---

---

---

---

---

---

## Security

- s.2(3) and 2(4) Damages Act 1996
- What if not within definitions?
- MDU/MPS, Lloyds pre 2004, Foreign Insurers



Frenkel Topping  
Caring for your financial future

---

---

---

---

---

---

---

---

## Non s.2(4) Defendants

- Exceptional circumstances to justify lower discount rate?
- Annuity provision?
- Alternatives?



Frenkel Topping  
Caring for your financial future

---

---

---

---

---


---

---

---

### Flexibility

- Once made, inherently inflexible
- Can part-PPO head of damage
- Important to maintain balance
- Tax planning exercise

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---

---


---

---

### Interim Payments

- Courts unwilling to fetter trial judge
- Defendants oppose applications based on above
- Less to do with lump sum for accommodation
- Resistance to setting up of care regime

NB Charge on property?

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---


---

---

---

### Eeles –v- Cobham Hire Services

- Assess likely quantum, leaving aside likely PPO heads, e.g. care, case management.
- Should be done on a conservative basis
- Can award a reasonable proportion, which may be a high proportion.

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---


---

---

---

**Eeles -v- Cobham Hire Services**

- Must be satisfied that there is a real need for the payment now
- If Judge feels confident of his assessment, can award the Interim Payment.
- Report required to evidence above.

 Frenkel Topping  
Carey for your financial future

---

---

---

---

---


---

---

---

**Ancillary Matters**

- Local Authority/HA funding
- "Fairer Charging Policy"
- May apply/disregard income/capital
- Can influence decision as to PPO/lump sum.

 Frenkel Topping  
Carey for your financial future

---

---

---

---

---


---

---

---

**Contributory Negligence**

- Does not preclude PPO's
- Higher level of contrib, lower likelihood of PPO
- Other heads to make up shortfall.

 Frenkel Topping  
Carey for your financial future

---

---

---

---

---


---

---

---

**Periodical Payments Post-Thompstone**

- Thompstone has raised the bar
- CPR 41 – likely to be more rigorously applied
- Decision needs to be taken on an empirical basis
- Likely to lead to increased take-up of PPO's

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---


---

---

---

**Comment**

- "Those who continue to turn a blind eye or otherwise fail to advise their clients on periodical payments expose themselves to the risk of facing a professional negligence claim in years to come, when the lump sum runs out"
- Nicholas Bevan – Bond Pearce

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---


---

---

---

**Periodical Payments Post-Thompstone**

**GET A REPORT**  
from a suitably qualified expert

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---

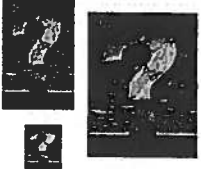
---


---

---

and Finally . . .

- Any Questions?



 Frenkel Topping  
Caring for your financial future

---

---

---


---

---

---

---


---



**Frenkel Topping Ltd**  
4<sup>th</sup> Floor, Statham  
House Talbot Road  
Old Trafford  
Manchester  
M32 0FP

T: 0161 886 8000  
F: 0161 886 8002

Frenkel Topping Ltd is authorised and regulated  
by the Financial Services Authority

 Frenkel Topping  
Caring for your financial future

---

---

---

---

---

---

---

---