APIL DAMAGES SPECIAL INTEREST GROUP MEETING

30TH MARCH 2017 @ 5.45pm

Other Future Loss Claims – Stuart McKechnie Handout

Discussion points: how the new discount rate affects other future loss calculations

- **Lifetime Losses Overview**

  Table 1 example

Age	**2.5%**	**-0.75%**	**% increase**
10	**34.08**	**108.32**	**218%**
20	**32.10**	**88.96**	**177%**
30	**29.60**	**71.43**	**141%**
40	**26.52**	**55.66**	**110%**
50	**22.69**	**41.44**	**83%**
60	**18.30**	**29.19**	**60%**
70	**13.44**	**18.85**	**40%**
80	**8.09**	**9.99**	**23%**

- **Loss of Earnings**

  - Huge impact - particularly in catastrophic claims

  - E.g. 25 year old female who has suffered catastrophic injuries and will never work again – would at very least have been earning £50,000 net per annum to age 70 – baseline multiplier **before** discount for contingencies has now risen from 26.73 to 52.25 [Table 12] – that is an increase from **£1,336,500 to £2,612,500** *[96% increase]*

Practical implications?

- Anticipate that D's will be more keen to offer a PPO for loss of earnings linked to an appropriate index – we may face situation where parties more frequently proceed to contested hearings regarding suitable form of award, with D wanting PPO and C wanting lump sum [PD 41 states that court must take into account preference of C **and** D]

- Practice in my schedules will be to plead **both** to keep both in play – but suspect that C's will be more focussed on recovering lump sums for this head of loss whilst DR remains at -0.75%, even though the DR doesn't adequately reflect wage inflation

- The massive increases in multipliers make it all the more important that C's investigate and plead a loss of chance of achieving promotion or career advancement

- Will probably mean employment reports are easier to justify at case management stage

- Ogden 6/7 disability discount has an even more profound impact on quantum – important to ensure evidence supports this discount where applicable

- **<u>Loss of Pension</u>**

  - Pension loss reports based on revised DR now starting to drip through

  - Have received one report on a case involving 36 year old man with retirement at 68 - had *previously* calculated loss of pension at £41,977 based on loss of employer contributions and loss of tax relief on employee contributions

  - Calculation has now increased to **£189,232** – accountancy expert is now using a new method to calculate loss of pension claim based on **fund value / drawdown** *as at date of retirement* along similar lines to Auty – can see why when look at revised tables for loss of pension

– example: multiplier for loss of pension commencing aged 70 for 35 year old man is now 25.24 [Table 23] – the multiplier would have been 5.57 at 2.5%

Practical Implications?

- Pension loss is going to become a very important head of loss – need to make sure it is fully investigated

- Pension loss reports are going to be a lot more common – particularly if can show that fund value / drawdown methodology is appropriate

- Going to be much easier to justify on grounds of *proportionality* [e.g. HSC charge £1,000 + VAT for typical pension loss report]

- **Care**

  - Goes without saying that the impact of the DR reduction is massive, particularly on the highest value cases

  - E.g. case involving a 10 year old catastrophically injured child with baseline needs of £250,000 per annum to a life expectancy of 75 *[65 additional years]* would take multiplier up from 32.36 to 83.85 [using Table 28] – that's an increase in lump sum from £8,090,000 to £20,962,500 *[159% increase]*

Practical Implications?

- Although there will be more temptation to seek a lump sum for care costs, the advantages of a PPO are still compelling – not least in terms of offering guaranteed tax free payments for life that match earnings inflation

- Anticipate that most IFAs will continue to advise PPOs, particularly on the bigger cases – cannot forget that lump sum for lifetime losses will almost certainly be wrong on account of life expectancy and it does **not** adequately reflect wage inflation

- Think we will see a greater recognition on the part of D's that PPOs are perhaps the appropriate way forward – something that has been a struggle for some insurers to acknowledge in past

- **<u>Future Medical Treatment / Therapies</u>**

  - When making a claim for medical treatment or surgery at specific point in future, no longer going to be applying a **discount** for accelerated receipt

  - Will have to get used to talking about an **increase** for accelerated receipt [counter-intuitive]

  - So, if have surgery recommended in 10 years' time at cost of £10,000 that calculation using updated Table 27 will now be £10,000 x. 1.0782 = **£10,782**

  Practical implications?

  - Suspect D's will now be looking to push PPOs for repeat future medical costs and therapies – potentially via HCHS [Hospital & Community Health Services] index – again, could give rise to increased risk contested hearing on issue

- **<u>Fatal Accident Dependency Claims</u>**

  - Will obviously benefit from reduction in DR

  Practical implications?

  - Decision in **Knauer v. MOJ** addressed inequity of using multipliers from <u>date of death</u> – Cookson v. Knowles meant that a C was suffering a discount for early receipt of the money when in fact that money was not received until after trial or settlement.

  - With a <u>negative</u> discount rate, C is now in slightly worse off position than if calculation for future losses had remained at <u>date of death</u>

    E.g. assume 40 year old deceased male with normal life expectancy who, but for premature death in accident, would have worked to age 70 earning £40,000 net – case settles 2 years post-accident when deceased would have been 42 *[ignore % dependency for purposes of simplicity]*

Cookson v. Knowles approach: multiplier for loss of earnings at date of death = 31.94 [Table 11 @ -.75%]; x 0.88 Table A = 28.11; less 2 year period to date of settlement = 26.11

Past loss of earnings dependency: 2 x. £40,000 = £80,000

Future loss of earnings dependency: 26.11 x. £40,000 = £1,044,400

Knauer approach: past loss of earnings dependency = £80,000

Future loss of earnings dependency: 29.54 [Table 11 @ 42 years]; x. 0.88 Table A = 25.99; x. £40,000 = £1,039,808

- Did MOJ know something we didn't? Can we give the government credit for being that forward thinking?

- **Lost Years**

  - Lengthy multipliers are going to mean lost years claims become even more valuable – makes it all the more important that the decision in Croke v. Wiseman [1982] 1 WLR 71 is overturned soon.

- **Costs Budgeting**

  - Proportionality is king – seems to me that reduction in DR will make it easier to justify higher budgets and expert evidence required

  - At least 1 Master in RCJ adopts a rule of thumb when approaching budgeting of awarding a budget of circa 25% of the likely damages – that is good news for C

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