STEWARTS

International Law and Compensation

CAVOL – NAFE Workshop : “What is Life Worth?”
9 June 2026

Julian Chamberlayne, Head of Aviation and International Injuries at Stewarts
Cheryl Palmer-Hughes, Partner, Aviation and International Injuries

STEWARTS

Full compensation or what society (or insurers say they) can afford?

Common law – Lady Hale in Simon v Helmot [2012] in the Privy Council, endorsed a principle dating back to Livingstone v Rawyards Coal Co [1880] when she coined the phrase:

"*The only principle of law is that the claimant should receive full compensation for the loss which he had suffered as a result of the defendant's tort,* ***not a penny more but not a penny less***."

STEWARTS

Full compensation or what society (or insurers say they) can afford?

E&W – At the time of the Civil Liability Act 2018, the MOJ consultation in 2018 said:-

"*The objective of applying a discount rate will therefore continue to be to support a 100% compensation rule so that claimants receive full compensation for the loss caused by the wrongful injury neither more nor less.*

The key legal principle will be that the rate should be the rate that, in the reasonable opinion of the Lord Chancellor, a properly advised recipient of a lump sum of damages for future financial loss could be expected to achieve if he or she invested the lump sum in a diversified low risk portfolio."

STEWARTS

Full compensation or what society (or insurers say they) can afford?

Hong Kong – in Chan Pak Ting [2013] Mr. Justice Bharwaney said "*Awards must be proportionate and take into account the consequences of increases in the awards of damages on **defendants** as a group **and society** as a whole. The considerations are ones which the court cannot ignore. They are the background against which the fair, reasonable and just figure has to be determined.*"

NSW, Australia 2006 – "*As the Government sees it, the task is to strike a balance between the rights of the injured person to compensation, and the **ability of the rest of the community to pay for that** compensation.*"

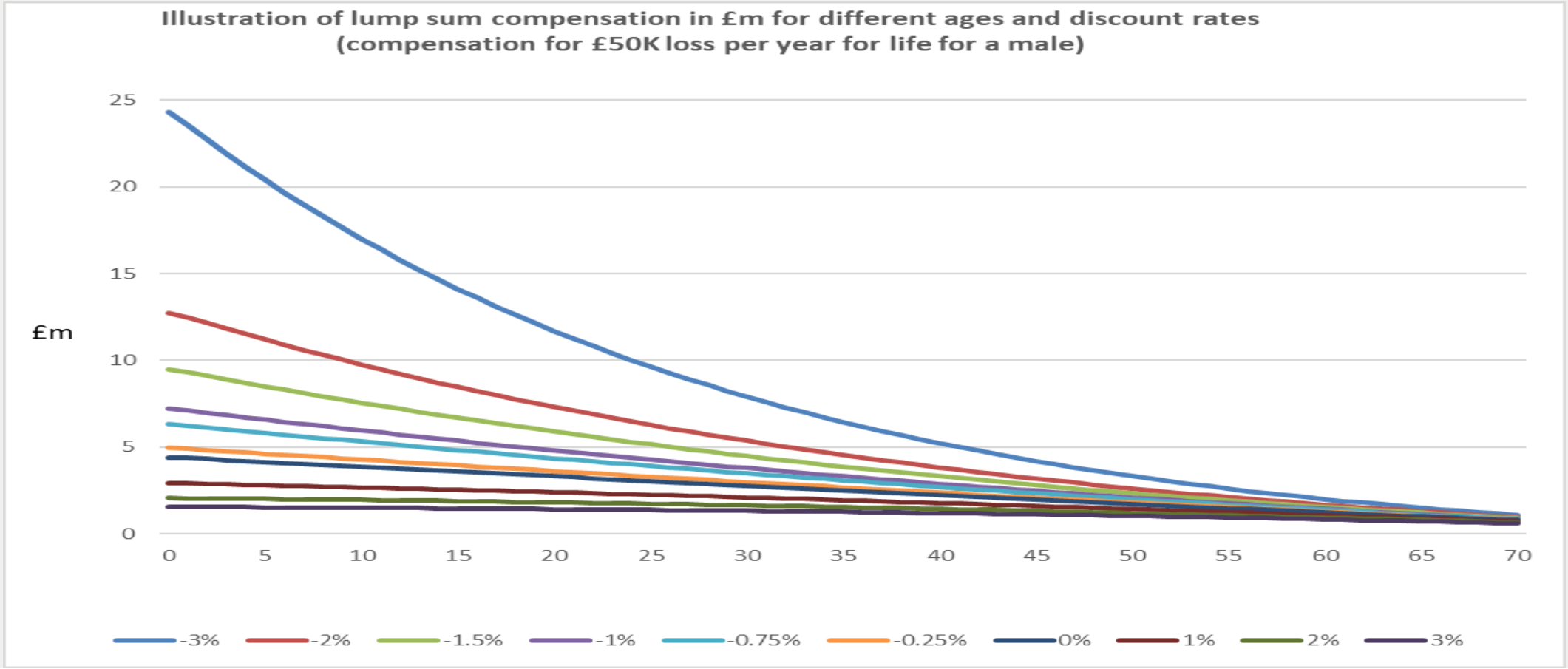
Spain – article 33 of the Law 35/2015. Fundamental principles of the valuation system :

1. The full reparation of the damage and its reparation constitute the two fundamental principles of the system for the objectivization of its valuation.

2. The purpose of the principle of full reparation is to ensure full compensation for the damage suffered. Compensation under this system takes into account any personal, family, social and economic circumstances **of the victim**, including those affecting loss of income and loss or diminution of earning capacity.

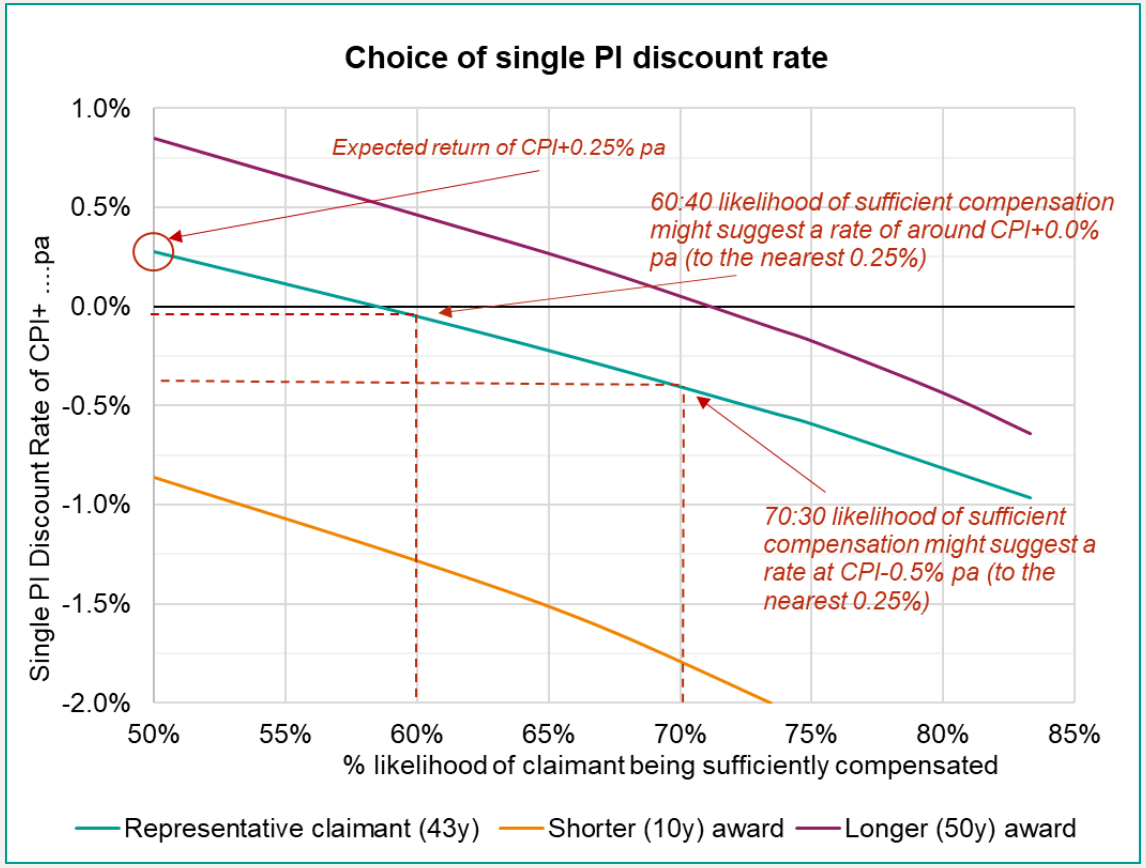
STEWARTS

Vast differences in the value of "full compensation" depending on the PIDR



STEWARTS

Risk of under compensation – E&W



The PIDR was fixed at + 2.5% for over 15 years before it was drastically reduced to - 0.75% in March 2017.

This GAD graph shows that, on their assumptions and modelling, a balance of probabilities approach pointed to a PIDR of +0.25%.

If the PIDR had been set at +0% about 40% of claimants would end up under compensated.

That would have reduced to 30% at -0.5%.

The Lord Chancellor split the difference at -0.25% in August 2019, following the introduction of the CLA (and an updated methodology). The rate was adjusted to +0.5% from 11 January 2025 - which left a projected 30-35% of claimants likely to be undercompensated.

Is that consistent with claiming to be a full compensation regime?

STEWARTS

What are the key challenges to providing full compensation?

- Life expectancy including living longer or shorter
- Investment risk and returns
- Inflation – earnings v prices including care, medical & specialist equipment
- Tax
- Needs or costs change – injuries worsen and/or the cost of meeting needs varies
- Methodology/rates are flawed

STEWARTS

Methods for compensating future loss - PPs

- Periodical Payments / Annuities
  - Risks (including longevity) rest with the D rather than C
  - Compulsory, discretion of court or agreement of parties
  - Which heads of loss
  - Indexation for prices and earnings inflation
  - Variation for future change in needs

STEWARTS

Methods for compensating future loss - PP

- Issues with Periodical Payments
  - Barriers – security of funding and indexation
  - Claimant concerns - distrust, flexibility, optimistic investment plans, inheritance
  - Insurer behaviour – the desire to close books and very thin secondary market
  - Take-up rate –State backed Ds v Insurers
  - Foreign insurers

STEWARTS

Methods for compensating future loss – Capitalised lump sum

- Lump sum by years of loss (no PIDR)
- Lump sum applying PIDR
    - Single rate
    - Dual/multiple rate by period
    - Dual/multiple rate by heads of loss

STEWARTS

Dual/multiple international rate examples

- Ontario - 0.5% for first 15 years of loss, switching to 2.5% for losses beyond 15 years
- Hong Kong – Triple rates; 0.5% < 5years, or 1% if 5-10 years, or 2.5% if >10 years
- Jersey – Dual rates; 0.5% < 20years or 1.8%% for >20 years
- Ireland, Guernsey and Bermuda – Dual rate by earnings v prices heads of loss at discretion of court. Informed by latest expert evidence and usually negative
- Dual rates were under consideration in 2024 reviews in E&W, Scotland and N.Ireland but not adopted

STEWARTS

Departing from PIDR if C resides abroad

The Damages Act 1996, Section A1 :

"(1)In determining the return to be expected from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury the court must, subject to and in accordance with rules of court made for the purposes of this section, take into account such rate of return (if any) as may from time to time be prescribed by an order made by the Lord Chancellor.

*(2)**Subsection (1) does not however prevent the court taking a different rate of return into account if any party to the proceedings shows that it is more appropriate in the case in question**."*

But narrowly interpreted by the courts with exceptionality required to depart from the PIDR as set by the Lord Chancellor in *Hodgson v Trapp [1989] AC 400*

STEWARTS

Exceptional departure from the PIDR

Hodgson v Trapp [1989] AC 400 (Lord Oliver):

"There might be very exceptional cases, where it could be positively shown by evidence that justice required it, in which special allowance might have to be made for inflation and, inferentially, for tax. Such cases are not, I suppose, impossible, although for my part ***I do not find it easy to envisage circumstances in which evidence could satisfactorily establish that which is inherently uncertain****. It would, I think, be extremely undesirable that trials of personal injury cases should be encumbered with evidence from actuaries and accountants directed to demonstrating the unprovable as scientific fact for the purposes of an exercise which is, in its very nature, incapable of being scientific. Moreover, I cannot think that such evidence would in the end be of any real assistance to the trial judge in making his assessment. Tax is merely one of the many imponderables that are taken care of in the conventional method of assessing damages. There may, I suppose, be cases, although, again, I cannot for my part readily imagine one arising in an exercise in its nature imprecise, where the considerations pointing to the selection of one of two possible multipliers are so finely balanced that the future incidence of taxation may be taken into account as one, but only one, of the factors which might properly tip the balance in favour of selecting the higher rate rather than the lower, but the course sanctioned in Thomas v Wignall of making a specific addition on account of this factor alone is, in my judgment, as incorrect as would be a specific addition to cover the risk of future inflation."*

STEWARTS

Departing from PIDR if C resides abroad

Biesheuvel v Birrel [1999] WL 1043504

Dutch claimant with catastrophic injuries and high value claim for loss of future earnings and care. Eady J considered that the case fell within the exceptional category referred to by Lord Oliver in *Hodgson v Trapp [1989] AC 400* and adopted "enhanced" multipliers

"*It seems to me that it is appropriate to use a model along the lines of that prepared under the supervision of Mr Chalk; the objective being to counter the effect of Netherlands tax, so as to ensure that the fund awarded does not run out before the time during which the court intends to provide for the plaintiff's losses and needs.*"

There was an appeal but the case settled for an unreported significant sum.

STEWARTS

Departing from PIDR if C resides abroad

Van Oudenhoven v. Griffin Inns Ltd [2000] EWCA Civ 102 (4 April 2000) (bailii.org)

"21. Thus, in the case of a foreign claimant who is saying that his or her case is exceptional because of the incidence of foreign tax the court is bound to look, in general terms at least, at whether there are corresponding advantages in the country concerned. For example, could the money be invested in the equivalent of ILGS producing higher yields? How does the level of indirect taxation and the cost of living compare with that of the UK? In this case the only information which we have is that Dutch income tax is higher than UK tax. Does this fact alone mean that this is an exceptional case?"

"22. We do not think so."

STEWARTS

Dual rate in UK cases if C resides abroad

- Surprising dearth of reported cases in England and Scotland and none since CLA 2018
- Anthony Gold – 2014 Brazilian PPO case: Barbara Picoli Oliva
- The grounds should not be limited to tax, but could include earnings inflation, prices inflation, assumed investment portfolio and net returns or even social factors relating to other State support

STEWARTS

INTERNATIONAL CASE STUDIES

CAVOL – NAFE Workshop : “What is Life Worth?”
9 June 2026

Julian Chamberlayne, Head of Aviation and International Injuries at Stewarts

STEWARTS

CASE STUDY 1 - JERSEY / POLAND

- The Plaintiff, a 22 year old Polish national, sustained a severe TBI in RTC in Jersey in 2010
- Not wearing seatbelt
- Good physical recovery, but permanent cognitive impairment (memory, concentration and executive functioning)
- Personality and behavioural changes, becoming argumentative, impulsive and prone to anger outbursts
- Lacked capacity and would not be capable of returning to employment or driving
- Returned to Poland to be cared for by his family in their home town of Przemysl

STEWARTS

Proceedings in Royal Court in Jersey

- Settlement at a JSM in April 2014 for:-
  - a lump sum of £1.6 million plus
  - annual periodical payments in respect of future care (£38,500 to age 40 then £58,500 p.a)
  - case management (£10,000 p.a) and
  - loss of earnings in Poland (£6,500 p.a)
- The terms of settlement were approved by the Polish Family Court
- The Royal Court in Jersey in October 2014 then, by consent, made the first Periodical Payment Order (PPO) on the Island, despite the lack of a statutory framework such as the Damages Act 1996
- A final hearing in which the issue of security of the PPO was determined took place in February 2015

STEWARTS

Care and brain injury rehabilitation overseas

- No case managers or even OTs in Poland. In-patient neuro-rehab was heavily focused around physical recovery
- Little provision in the community and a sanatorium was unsuitable
- CCMS appointed as case managers as they had experience in Poland
- Priority issues were to relieve the Plaintiff's family from being the main carers and develop the Plaintiff's independence
- Unable to find any local agency carers so they recruited and trained a small team of PAs to provide buddy support
- AXA agreed to apply the APIL/FOIL Multi-Track Code and provided reliable stream of interim payments £464,000

STEWARTS

Care rates – Defendant position

Peter Walmsley, Clyde & Co

- *"The difficulty we faced was that the plaintiff was paying for care worker and case manager input on the basis of UK care rates, despite the fact that local agency rates in Poland were, unsurprisingly, substantially less than in the UK. We engaged local Agents to obtain witness statements from care agencies in the Przemysl area confirming their ability to provide the care required by the Plaintiff and to confirm the rates that they would charge for their services.*
- *In addition we obtained a report from Labour Economist, Dr Victoria Wass, to consider carer wage rates collected and published by the Central Statistical Office for Poland. The upshot of this evidence was that we were able to show that local support workers were paid on average £3 per hour, significantly reducing the future care claim from the Plaintiff's contention for £9 per hour."*

STEWARTS

Care rates – Plaintiff position

- Care expert, Jo-Clark Wilson, made two visits to Poland and her investigations corroborated CCMS that there were no local care agencies who could provide buddy support
- She met with the State and charitable care organisations identified by the Defendants expert Jane James, but they could not provide care of the type the Plaintiff required
- The care and case management PPs which we ultimately agreed largely provided for the annual costs claimed
- Further novel features were that the PP for the Polish care is paid in Polish Zloty and indexed to the aggregate average (mean) rate reported in the Employment, Wages & Salaries by the Polish Central Statistics Office. The PP for case management was paid in £ and indexed to ASHE category 222 (therapy professionals). Victoria Wass provided the expert evidence on these indexation issues

STEWARTS

Accommodation

- Plaintiff's parent's flat was tiny and up 4 flights of stairs
- All of the Plaintiff's neuro-experts recommended that he move with his family very close by to support him
- P's mother found a 2 storey house which our expert, Tom Wethers, agreed could readily be portioned to form 2 living units; one for the Plaintiff and his PAs and the other for his parents
- There were several tricky issues relating to the accommodation claim
  - no reported cases in Jersey applying Roberts v Johnstone
  - negative discount rates would, if Robert v Johnstone applied, knock out that aspect altogether
  - Plaintiff and his parents would, but for the accident, have had housing costs anyway

STEWARTS

Discount Rate – Defendant position

- The Royal Court ought to follow the discount rate then used in the UK courts of +2.5% to promote certainty for parties
- In the alternative they challenged Wells v Wells and the assumption that ILGS is a risk-free investment, proposing an assumption of mixed portfolio (including 70% equity)
- A combination of financial evidence from Polish & UK Investment Advisors, Macro and Labour Economists and Actuaries was obtained
- Defendants' proposed lifetime multipliers utilising the 2.5% discount rate resulted in a multiplier of 27.65

STEWARTS

Discount Rate – Plaintiff

- Guernsey CofA & Privy Council judgments in Helmot v Simon were compelling and should be followed in Jersey
- Expert reports from actuary, Chris Daykin and economist John Llewellyn, a further report from an economist specialising in the Polish economy, Simon Commander and a Polish IFA, Adam Rucinski who advised that indexed linked bonds in Poland were only available for a 10 year period
- Based on our expert evidence P claimed that the appropriate discount rate for future losses in:-
  - Jersey for prices was -1% and -2.5% for earnings
  - Poland that should be -1.5% and -4.5% for earnings
- Poland had a rapidly developing economy; likely higher earnings inflation that England/Jersey
- Claimant life multiplier at -1.5% was 81.41 and at -4.5% was 259.70

STEWARTS

PPO settlement – side stepping the gulf

- Provided for the care and case management at P's claimed rates and currency
- Future loss of earnings to also be paid as a PP; provided a budget for P's day to day living expenses
- It is impossible to put a precise value to the overall settlement package:-
  - On the Plaintiff's PIDR expert evidence the grossed up value would be circa £18 million
  - On the Defendant's expert's evidence then the figure would be £5 million
  - If you assumed somewhere in between, say a 0% discount rate for prices heads of loss and -2.5% for Polish earnings-related losses, then the grossed-up value was over £9 million
  - Any way you look at it the result was much closer to full compensation than the figure you would get to in England applying the unfair 2.5% discount rate

STEWARTS

PPO issues – tax and continuity

- Written rulings from the Jersey Comptroller and the Polish Ministry of Finance were obtained confirming that no tax would be payable on the PPO in Jersey or Poland
- The Damages Act 1996 has no application in Jersey and the Royal Court has no legislative power to award a PPO
- The parties jointly instructing Richard Cropper (Financial Planner), to obtain evidence for the court in relation to the security/continuity of the proposed PPs
- Royal Court accepted that it was able to make a PPO by consent as the conditions precedent to making such an order in the UK were satisfied

STEWARTS

If you want to know more about this case

JOURNAL OF PERSONAL INJURY LAW

Issue 2 2015

Articles

Liability

Occupiers' Liability: Issues Arising in Recent Case Law
William Norris QC and Quintin Fraser

Non-Delegable Duties and Worthless Admissions
Nigel Tomkins

Intoxication and Inebriation: Another Late Night
Christopher Kennedy QC and Matthew Snarr

Quantum/Damages

Care Act 2014: Changes to the Means Testing of Personal Injury Damages and their Implications for the Form of Award.
Austin Thornton

The Multi-Track Code: A Case Study of Consensual Resolution of a Complex Claim
Julian Chamberlayne, Peter Walmsley and David Fisher

Procedure

Fundamental Dishonesty and the Criminal Justice and Courts Act 2015
Brett Dixon

The Rome II Regulation in the English Courts
Matthew Chapman

STEWARTS

2026 postscript - Jersey

Damages (Jersey) Law 2019 passed, so Jersey Courts :-

- can make a PPO, subject to security/continuity of funding
- uses a dual statutory Personal Injury Discount Rate (PIDR):
  - +0.5% for future financial losses expected to last 20 years or less.
  - +1.8% for future financial losses expected to last more than 20 years

STEWARTS

Case study 2 - Bermuda/Wales

- Plaintiff, Kate Thomson, was Welsh but had been living and working as a nurse in Bermuda for many years
- Front seat passenger in a car, driven by her husband, which hit a wall on 15 January 2006
- Multiple injuries including:-
  - back (complex burst fracture of L5)
  - left ankle (complex pilon fracture of the distal tibia and fibula)
  - lacerations and surgical scarring
  - chronic pain
  - She had numerous operations in Bermuda, Miami and Wales and was at significant risk of needing further procedures, notably a fusion of the ankle joint

STEWARTS

Where would P live?

- Kate would have stayed in Bermuda but for the accident
- Post-accident, the she was unable to return to her nursing work and consequently she and her husband were unable to pay for her daughter to continue to attend a private school in Bermuda
- They were unable to fund her ongoing private medical costs
- Had to return to Wales in July 2007
- Kate had returned to part-time work for 18 hours per week, but was, in the opinion of P's ortho expert unlikely to work full-time in the future, nor in nursing

Residual disability

- The extent of her residual disability was hotly contested
- D relied on extensive surveillance evidence to suggest she was more mobile/active
- P's ortho expert did not agree that the surveillance evidence made any difference:-

  "Mrs Thomson has experienced very severe injuries. She has coped remarkably well and comes across as a genuine and uncomplaining individual"
- After the below mentioned trial and then appeal of the discount rate issue the case ultimately settled for
  - a substantial confidential sum, which
  - included a sum for the Plaintiff's loss of satisfaction from her former work as a nurse

STEWARTS

Discount rate trial in the Supreme Court of Bermuda in 2015 – Kawaley CJ (as he then was)

- Bermudian courts have relied on the English Ogden Tables
- Following English 1970's vintage case law, the adjustment rate in Bermuda had been between 4 and 5%, despite the fact that in England the discount rate had since 2001 been fixed it at 2.5%
- The C's submitted Court should follow the Privy Council's decision *Simon-v-Helmot* and adopt the approach to discount rates established by the House of Lords in *Wells-v-Wells*
- The Defendant insurers contend that, having regard to economic realities, the more nuanced approach adopted by the Hong Kong Court of First Instance in *Chang Pak Ting-v- Chan Chi Kuen* [2013] HKCFI 179 (Bharwaney J) should be preferred

STEWARTS

Investment assumption for prudent Bermudian claimants

- First occasion on which a common law court has been required to consider, in the PIDR context, the respective merits of an assumed investment in:

  a) Treasury Inflation-Protected Securities (TIPS), the US equivalent of ILGS (the Claimants); or

  b) A mixed basket of equities and ILGS (the Defendants/insurers).

- We called economist Dr John Llewellyn and actuary Mr. Christopher Daykin.
- The Defendants called actuary Mr. Peter Gorham

Dr John Llewellyn (economist) - Claimant

- Addressed the link between the US and Bermuda economies and the likely difference between earnings and price inflation during the claimant's lifetime in Bermuda and the UK. By way of background, he commented that:

  "...a major consideration when calculating the present values of future cash-flows i.e. the 'lump sum', is the appropriate rate of interest to reflect the time value of money...In Bermuda a practical difficulty is that there are no 'index-linked' government bonds...a further difficulty is that , in Bermuda, fixed interest bonds have a maximum duration of 10 years, so for most compensation cases, it would be necessary to make assumptions about reinvesting maturity monies for subsequent periods.

  An alternative, given the close links between Bermuda and the US, would be to assess the discount rate for compensation in Bermuda having regard to the yields on US index-linked securities, and making an adjustment for any systematic differential between Bermud[i]an and US inflation…"

STEWARTS

Dr John Llewellyn (economist) - Claimant

- His first substantively significant finding was:

  "...For as long as Bermuda's authorities maintain both fiscal discipline and the fixed peg with the US dollar, the chances of a major systematic divergence between the US rate of inflation and Bermuda would seem small..."

- His second substantive finding was that price inflation in Bermuda over the next 20 years would on average be 0.5% above the US rate
- Third the likely differential between prices and earnings inflation or real earnings growth. He concluded that the US 1.6% annual increase in real earnings would likely be matched in Bermuda
- His fourth substantive finding was he could not see any well-established basis for assuming any systematic divergence between price inflation in the US and the UK

STEWARTS

Dr John Llewellyn (economist) - Claimant

- Finally, Dr. Llewellyn addressed the real earnings projections for the claimant in the UK during the remainder of her likely working life
- *"Accordingly, when thinking ahead 20 years or so, it is to the underlying, fundamental economic forces, rather than the exceptional years from 2008 to 2014, to which I appeal*

  In my judgment, therefore, the appropriate assumption to make about the growth of real wages over the coming 20-odd years is that, appropriately measured, they will average 2% per year."
- Kawaley CJ was clearly impressed and assisted by Dr Llewellyn
  - *"Although this evidence was tested in cross-examination, it was not contradicted by any other expert evidence within the discipline of economics. The Defendant's actuary, Mr. Gorham, himself very properly conceded under cross-examination that it was beyond his expertise to challenge the economic analysis of Dr. Llewellyn."*

STEWARTS

Christopher Daykin (Actuary - Claimant)

- The Exhibits attached to Mr Daykin's reports included an article tracing the history of actuarial science back to astronomer Edmund Halley as well as one of his own papers that noted the courts' historical scepticism about actuarial evidence:

  "…as a method of providing a reliable guide to individual behaviour patterns or to future economic and political events, the predictions of an actuary could be only a little more likely to be accurate (and would almost certainly be less entertaining) than those of an astrologer."

  Per Oliver LJ in Auty-v-National Coal Board [1985] 1 WLR 784 at 800-801

- Mr Daykin opined that as Bermuda's economy is closely linked to the US economy it was appropriate to assess the discount rate on lump sum payments by reference to an assumed investment in US TIPS (excluding shorter-dated), which gave a figure of +0.465% a year

STEWARTS

Christopher Daykin (Actuary - Claimant)

- Mr Daykin supported Dr Llewellyn's conclusions that
  - Bermuda inflation would exceed US inflation in the future by an average of 0.5% per year;
  - 1.6% is the best working assumption for Bermudian real earnings growth.

- He made the following recommendations as to discount rates for expenses and earnings:

  "I recommend, therefore, that heads of damage which are considered to be likely to go up in line with Bermuda consumer inflation should be valued using a multiplier based on a discount rate of 0.25% a year, as proposed in paragraph 5.2. Heads of damage relating to cash-flows likely to go up in line with Bermuda earnings , such as loss of earnings in Bermuda, should be valued using a multiplier based on a discount rate of -1.85% a year (after adjustment for a real earnings growth assumption of 1.6% a year)."

STEWARTS

Peter Gorham (Actuary - Defendant)

- Mr Gorham queried the quality of the comparatively short-term historical data available for Bermuda and recommended adopting a 1% rate for real wage growth

- He also opined that:

  "The use of a mixed portfolio coupled with a safe fund eliminates much of the risk commonly attributed to having equities as part of an investment. In addition this is an investment a prudent plaintiff would make...

  Finding the balance between insufficiency and fluctuation risk is important. In my opinion, the balance lies with a mixed portfolio of between 60% and 75% equities coupled with a three-year safe fund. "

The Expert Evidence – Findings of Kawaley CJ

*"this Court is not bound as a matter of law by the conclusions in Simon-v-Helmot which were, strictly speaking, based on the facts of that case. However, this Court is bound as a matter of mixed law and fact to deploy "**the best tool that is available**" to ensure that personal injuries claimants are fully compensated when assessing damages generally and damages for future loss in particular*

"I accepted the expert evidence (primarily of Dr. Llewellyn on this issue) that US TIPS are investment instruments available for consideration by a prudent Bermudian claimant because of the strong ties between the Bermudian and US economies. This requires an adjustment to the discount rate because price inflation in Bermuda is projected to be on average 0.5% per annum above the US CPI, although real earnings growth in Bermuda is likely to be the same as in the US (1.6%) over the next 20 years

The Expert Evidence – Findings of Kawaley CJ

"On the Reports, a crucial controversy was whether Mr. Gorham's test was that of a prudent investor or that of a prudent claimant or plaintiff….. Mr. Gorham testified that he had taken into account what a reasonable plaintiff would do, but conceded under cross-examination by Mr. Harshaw that on his investment model between 50 and 33% of plaintiffs would not have sufficient funds. ***He viewed his approach as fair to both claimants and defendants. I viewed his approach as a stunning dilution of the prevailing legal policy preference****, in the future loss discount rate calculation context, for a hypothetical investment in an instrument likely to generate a risk-free rate of return." (my emphasis)*

The Expert Evidence – Findings of Kawaley CJ

" I find that there is a fundamental distinction between the investment goals of the hypothetical prudent investor, especially an institutional investor (who is not investing sums received by way of compensation for tortious injury), and the investment goals of the hypothetical prudent plaintiff." As regards the latter, there are explicit ***legal policy imperatives which require*** *the courts assessing the appropriate level of lump sum to award to:*

a) ***assume that the least possible risk will be taken*** *when the lump sum is invested by the prudent claimant with a view to achieving* ***the goal of full compensation****;*

b) ***ignore the commercial realities of how lump sums may actually be invested****; and*

c) ***utilize tools for the calculation of the discount rate which are sufficiently simple*** *to be conveniently deployed both in the context of assessing damages in and out of court without the need for the expense of expert evidence save in exceptional cases. (my emphasis)*

STEWARTS

The Expert Evidence – Findings of Kawaley CJ

"The mixed portfolio with a safe fund model proposed by Mr. Gorham may well be fit for a variety of investment purposes, including (as Mr. Daykin creditably conceded) for actual investment of lump sum awards received by personal injuries claimants in respect of future loss. However, it does not provide a clear or convincing basis for this Court declining to utilise what remains the only recognised English common law approach to determining the discount rate on damages for future loss in personal injuries cases…. How the mixed portfolio/safe fund concept could be conveniently applied in future cases without expert evidence is very doubtful and in any event was never satisfactorily explained."

Findings: the applicable discount rate

"I accept the evidence of Mr. Daykin (based on the uncontradicted inflation/earnings projections of Dr. Llewellyn) that the appropriate discount rate for Bermuda a regards Mrs. Thomson (44.5 years old at the date of the Report) should be:

(a) -0.25% for heads of damage likely to be affected by price inflation; and

(b) -1.85% for heads of damage likely to be affected by real earnings increases.

The extent to which, if any, a separate UK rate falls to be computed because the claimant Thomson now resides in the UK will be determined in a separate judgment however, I accept the further evidence of Mr. Daykin again (based on the uncontradicted inflation/earnings projections of Dr. Llewellyn) that the appropriate discount rate for the UK should be:

(a) -0.5% for heads of damage likely to be affected by price inflation; and

(b) -2.5% for heads of damage likely to be affected by real earnings increases (i.e. future loss of earnings)."

STEWARTS

Case study 3 - England/Spain

- Fernandez, a Spanish citizen living in England
- Traumatic amputation of both hands in work accident in England
- In 2020, my colleague Scott Rigby achieved a negotiated settlement under English law that provided a substantial lump sum payment and periodical payments
- Fernandez had moved back to Spain post accident
- Expert evidence, from Victoria Wass (labour economist)and Richard Cropper (financial planner) to analyse the various options and to select the most appropriate index for care PPO:-
- Quarterly Labour Costs Series (QLCS) by the Instituto Nacional de Estadistica (INE), the central statistical office for Spain
- Spanish counsel confirmed PPO would not be taxed

STEWARTS

Case study 4 - England/Eastern European country

- AXV, originally from Eastern Europe, was living and working in the UK
- On 27 August 2018, he was travelling as a rear-seat passenger in a car on a dual carriageway when smoke started billowing from the car, engulfing the inside. The driver was forced to stop at the side of a slip road. As AXV and another passenger were escaping they struck by a car. Tragically, the other passenger was killed instantly
- AXV sustained a severe TBI and an open fracture to his right leg. He underwent six surgeries to save his leg, including the application of a Taylor Spatial Frame for 18 months
- Two years after the incident, having learnt to walk again, he returned to his family home in Eastern Europe

STEWARTS

Case study 4 - England/Eastern European country

- Expert evidence from Chris Daykin(actuary) on a bespoke PIDR
- Informed the schedule of loss with the claims for future care, case management and protection measures were calculated at -3%
- Not necessary for the loss of earnings claim because an inflationary multiplicand for earnings growth had already been applied
- The settlement was approved in the High Court (of E&W) by Master Eastman in December 2023, following an explanation to him of the key issues including the PIDR of -3%

STEWARTS

Case study 5 - Guernsey - JG v AC

- Chris Deacon and Rebecca Huxford of Stewarts' International Injury team represented JG, who was 20 years old at the time of the collision in November 2021
- JG had been travelling with friends as a rear-seat passenger, on his way home after a night out socialising in St Peter Port, Guernsey. While travelling along a 25mph road in the centre of the island, the driver lost control of the vehicle
- JG sustained C7 complete tetraplegia

STEWARTS

Case study 5 - Guernsey - JG v AC

- Claimant experts John Llewellyn (economist) and Chris Daykin (actuary) advised on bespoke PIDRs based on the *Wells/Helmot* approach
- Defendant experts, Min Shi (economist), Kate Angell (actuary) and Graham Parrott (tax). Defendants PIDR was informed by returns on 4 hypothetical investment portfolios modelled by Angell
- In 2025 The Royal Court of Guernsey approved settlement of £23m which the Claimant legal team interpreted as effectively at their claimed PIDRs

PIDR	Claimant	Defendant
Future losses linked to Guernsey RPI	+0.3%	+1.67%
Earnings-related losses	-1.2%	+0.42%
Future medical costs	- 2.7%	+1.67%

STEWARTS

June 2026 postscript - Guernsey

- In 2025 States of Guernsey commission an expert panel report, which recommending either triple of dual approaches to the PIDR (but not PPOs):

  Triple PIDRs, which should initially be set at

  - +1.0% for price inflation-related damages,
  - -0.5% for earnings inflation-related damages and
  - -0.75% for care cost inflation-related damages.

- This is the approach favoured by the expert panel.

- If, for simplicity, the Dual-PIDR approach is preferred, the experts recommend prices at +1% as above, but with a blended PIDR of -0.75% for earnings and care cost inflation-related damages

- Consultation closed but no announcement has yet been made on implementing these recommendations

STEWARTS

International Law and Compensation

CAVOL – NAFE Workshop : “What is Life Worth?”
9 June 2026

Julian Chamberlayne, Head of Aviation and International Injuries at Stewarts
Cheryl Palmer-Hughes, Partner, Aviation and International Injuries