



What is Life Worth?
Fairer Compensation for Personal Injury and Death
Centre for Actuarial Compensation and Valuation of Life (CAVOL)

Date: Thursday 10th April 2025, between 09.15 and 16.30.

Venue: School for Business and Society (SBS), Church Lane Building, CL/A/057, University of York, YO10 5DD, York.

Organising Committee: Dr. Şule Şahin and Prof. Alexander J. McNeil

Fiona Dunsire (Government Actuary at Government Actuary's Department)

Paul Butcher (Senior Actuary at Government Actuary's Department)

Setting the Personal Injury Discount Rate

The personal injury discount rate (PIDR) is the investment return that a claimant could expect to generate if investing their settlement and is therefore a key assumption in determining the lump sum a claimant could receive. In setting this investment return, the level and variability of future expected investment returns is considered, factoring in the composition of the investment portfolio, the investment period, how returns can be stated relative to inflation and what allowance to make for items such as tax and expenses.

Reviews have recently been concluded in England and Wales, Scotland, and Northern Ireland with the PIDR being set at +0.5% across all three jurisdictions. The processes in Scotland and Northern Ireland have largely aligned, with the relevant factors being set in legislation and the Government Actuary being the 'rate setter'. This is different to England and Wales, where the Lord Chancellor sets the rate after consulting with HM Treasury and an expert panel, which is chaired by the Government Actuary.

This session will set out some of the mechanics of how the personal injury discount rate is set across different jurisdictions in the UK, the role of the Government Actuary and the Government Actuary's Department in those processes and the impact of this being the first review in England and Wales where the Lord Chancellor consulting with an expert panel, as opposed to the Government Actuary. We will also reflect on the evidence gathered as part of the recent review processes and its impact on the decision making process.

Fiona Dunsire (Government Actuary's Department)

Fiona Dunsire took up the role as Government Actuary on 1 November 2023. She joined GAD following 35 years of experience in the private sector where she held a variety of roles across pensions and investments, including as UK CEO of Mercer from 2012 to 2019. She has led teams around the world to deliver investment and retirement solutions to clients and supported a three-year project with the World Economic Forum on Transformational Investment. She has been a fellow of the Institute and Faculty of Actuaries since 1993. Fiona is the first female Government Actuary since the post was created in 1917. She is an active advocate for diversity, is a Trustee of a charity whose purpose is to alleviate poverty and improve health in North London, and a volunteer maths tutor for a charity supporting students from disadvantaged backgrounds to access top universities.

Paul Butcher (Government Actuary's Department)

Paul is an actuary who works on a range of investment and insurance related areas for the UK Government. He led the GAD team providing advice in relation to the personal injury discount rate, for the processes in England & Wales, Scotland and Northern Ireland.

Julian Chamberlayne (Partner & Head of Aviation and International Injury at Stewarts & Chair of the Forum of Complex Injury Solicitors)

Challenging the Personal Injury Discount Rate

The personal injury discount rate (PIDR) plays a significant part in calculating the compensation of seriously injured claimants. In January 2025, the PIDR was increased from -0.25% to +0.5%. This was the first review under the Civil Liability Act 2018 (CLA 2018) and the first time that an expert panel report was relied on in determining the new rate. Given the fundamental influence of the PIDR on compensation levels for the most seriously injured claimants, it is vital that the process for reviewing the rate is truly consistent with the 'full compensation' principle and as transparent as possible.

In this presentation, Julian Chamberlayne will explore key elements of the decision-making process underpinning the PIDR that could be vulnerable to challenge by judicial review. This includes the assumption of long term earnings inflation of just 1.25-1.5 percentage points, a lower rate than the long-term projections produced by the Office for Budgetary Responsibility. This area was also examined by the Forum of Complex Injury Solicitors (FOCIS) and the Association of Personal Injury Lawyers (APIL) in a joint Freedom of Information request in autumn 2024, after the new rate was set in Scotland and Northern Ireland using similar assumptions.

This presentation will also examine the risk profiles of assumed investment portfolios, as well as the lack of modelling for de-risking investment portfolios, and whether that is in line with the level of risk expected to be taken by vulnerable claimants having taken reasonable financial advice. Julian will also reflect on whether the methodology and evidence-based range used for the three core claimants was justified and highlight the numerous instances where the evidence pointed to a range of figures, but the Expert Panel adopted the least favourable figure to claimants rather than the mid-point.

Finally, Julian will reflect on whether the methodology required by the CLA 2018 is virtually impossible to follow in a fair manner and whether it is worth the effort when contrasted with the preceding Wells v Wells methodology that was simpler and avoided speculating about investment risk.

Julian Chamberlayne (Stewarts, FOCIS)

Julian is the Chairman of the Forum of Complex Injuries Solicitors (FOCIS) and Head of Stewarts' market-leading Aviation and International Injury department. He combines the rare dual specialities of acting for clients who have sustained life-changing or fatal injuries in an international context. He is a leading author and campaigner on issues impacting his clients, notably the full compensation, future losses and fatal accidents.

William Latimer-Sayer (Cloisters, Chair of the OWP)

The Ogden Tables: Past, Present and Future

In this session, the historical evolution of the Ogden Tables will be discussed. William will explain the process behind the creation of the Ogden Tables and how the guidance notes are drafted. We will look at the makeup of the OWP, the funding of the Ogden Tables and how decisions are made. Assumptions underpinning the application of the Ogden Tables will be highlighted. There will be a focus on significant developments over time in the approach to calculating future expenses and losses, with reference to decided case law and its impact on subsequent editions of the Tables.

The present 8th edition of the Ogden Tables will be considered. William will lift the mask off the current OWP to reveal its inner workings. The current constitution of the OWP will be elucidated. The online publication of the Additional Tables and their use will be covered. The current approach to OWP meetings, the method of publishing the Ogden Tables and raising

funding for research will be addressed. Issues regarding the current edition of the Ogden Tables, based upon out-of-date life expectancy data, will be debated with potential solutions. Finally, the forthcoming 9th edition of the Ogden Tables will be considered. Possible changes to the makeup of the current OWP will be raised. Potential amendments to the current format and presentation of the Ogden Tables and the accompanying guidance notes will be adumbrated. An openness to exploring ways of improving the current Ogden Tables and approach to the calculation of future loss will be encouraged. General feedback and constructive criticism will be welcomed.

William Latimer-Sayer KC (*Cloisters, Chair of the OWP*)

William specialises in catastrophic personal injury and clinical negligence. He is consistently highly-rated by the independent legal directories and took silk in 2016. He has a special interest in quantum and the majority of his work is related to the contested assessment of damages. William is the General Editor of Facts & Figures (Sweet & Maxwell, 29th edn), Schedules of Loss: Calculating Damages (Bloomsbury Publishing, 4th edn) and is the current Chairman of the Ogden Working Party. William won Chambers and Partners' Personal Injury Junior of the Year in 2008 and 2010, and silk of the year in 2018.

John Mead (Technical Claims Director at NHS Resolution)

David Roberts (Partner at DAC Beachcroft LLP)

Resolving NHS clinical negligence claims using Periodic Payments

Resolving high value clinical negligence claims through the use of Periodic Payments (PPs) has become routine practice for NHS Resolution (NHSR) and its panel solicitors. In this talk David Roberts will offer his reflections as an NHSR panel solicitor on the use of periodic payments, the evolution of the Periodic Payments Order (PPO) used in clinical negligence claims and the practicalities of resolving a clinical negligence claim using PPs.

Since its creation in 1995 NHSR has operated the Clinical Negligence Scheme for Trusts (CNST). This membership based risk pooling scheme handles all clinical negligence claims against member NHS bodies in England. Membership is voluntary but all NHS Trusts (including Foundation Trusts) in England currently belong to the scheme. The scheme provides an indemnity for damages and claimant costs and arranges Defendant legal representation through a panel of law firms. Over the last 25 years it has become routine for high value obstetric and other catastrophic injury claims to be resolved through the combination of a lump sum and periodic payments. David's talk will include:

- Introduction – who we are, what we do and the structure of our presentation
- Brief overview of NHS Resolution its history, role and use of PPOs
- The interplay between liability and quantum
- Common heads of loss sought
- Investigating and resolving quantum
- The role of and issues around pre settlement interim payments
- The split between capital and PPs
- The conventional lump sum and assessment of life expectancy
- Uplifts and steps
- Indexation arrangements
- Security of payments
- Preparation and role of the PPO
- Statistics on the use of PPOs by NHS Resolution

John Mead (NHS Resolution)

- *Educated at London University*
- *Fellow of the Chartered Insurance Institute*
- *Initially worked in the insurance industry, moving to a Head Office position where he managed numerous high-profile liability claims against local authorities, including Murphy v. Brentwood District Council (House of Lords)*
- *Joined NHS Litigation Authority in 1999*
- *Currently Technical Claims Director at NHS Resolution, responsible for the largest and most complex cases*
- *Accredited mediator*
- *Case reports editor for the Journal of Patient Safety and Risk Management*

David Roberts (DAC Beachcroft LLP)

Throughout his career David has specialised in Clinical Dispute Resolution on behalf of the NHS. David is the Client Relationship Partner for NHS Resolution at DAC Beachcroft. David advises NHS Resolution on behalf of NHS Trusts on all aspects of clinical negligence claims and risk management. David also has expertise in helping NHS organisations coordinate the multiple legal and other processes which flow from serious incidents. In this role David has extensive experience of handling complex and lengthy inquests. David was awarded a PhD following research on the medicolegal issues arising from the process of prenatal screening, diagnostic testing and the termination of pregnancy for fetal abnormality.

Victoria Wass (Professor Emerita Cardiff Business School)

The Crisis in Social Care: Does it matter for ASHE 6115?

Periodical payments offer claimants protection against investment and life expectancy risk but retain some risk in relation to inflation. It is often assumed that the inflation risk is removed through indexation to a closely matched measure of inflation but a measure of escalation which does not exactly match the escalation in the target expenditure gives rise to an inflation risk, or 'indexation' risk.

The most common head of damages to be awarded as a Periodical Payments Order (PPO) is care and case-management. From Thompstone (2007), the escalation has been at a percentile of the Annual Survey of Hours and Earnings) (ASHE) earnings distribution for the Standard Occupational Classification (2000) 6115. In terms of the Mackay J criteria, established to guide the selection of an indexation measure, ASHE 6115, though imperfect, is and remains the best measure. It is best in the sense that it provides a reliable and workable statistic which minimises indexation risk.

This presentation examines the indexation risk involved in linking an annual payment for care to this 'best' measure. The potential for growing imperfection revolves around an ever-deepening crisis in the funding and provision of social care. Wages in care, as reflected in ASHE 6115, are below the level which clears the market. This is reflected in 131,000 vacant posts, a vacancy rate of 8.3% compared to 2.5% nationally. To the extent that claimants face wage rates imposed by Local Authority funding constraints for their carers, ASHE 6115 remains a close match and indexation risk is minimal. To the extent that care is becoming privatised and private sector providers look and behave differently from those in the public sector within a two-tier system in which providers specialise in private or public care, the evolution of ASHE 6115 may not provide such a close match to inflation in the claimant's care costs. ASHE 6115 remains the best measure but the indexation risk is greater than it used to be.

Victoria Wass (Cardiff Business School)

Victoria Wass is Professor Emerita at Cardiff Business School. Her teaching and research is at the intersection of labour economics and HRM and her publications span journals in both disciplines. She has a particular and continuing interest in measuring disability disadvantage in the workplace. She has a private practice working as an expert witness specialising in valuing claims and covering loss of future earnings, indexation and the personal injury discount rate. In addition to advising in the context of litigation, she provides advice to

government departments, parliamentary committees and organisations in the areas of disability inclusion, with particular emphasis on measuring outcomes and progress, and on the setting of the personal injury discount rate. For more information see <https://www.victoriawass.co.uk/>.
