

PI Awards - Cash or Income?

by Kent Pattinson



Until recently the Courts could only award damages in personal injury and clinical negligence cases by way of a lump sum. This meant that a severely injured party then had to invest those damages in such a way to produce sufficient return to meet future needs and requirements, with the cost of employing nurses or carers invariably being the largest item of expenditure.

However, the Damages Act 1996 came into force on 1st April 2005 and gave the Courts power to award damages by way of a periodical payments order.

Where damages are awarded in a lump sum, the Court is required to decide what the Claimant's life expectancy is likely to be in order to calculate the award. This is a highly speculative exercise and could lead to an injustice where the actual date of death is either much later or much sooner than the expected life expectancy determined by the Court.

A periodical payments order requires the Defendant to pay an annual sum to the Claimant for life and therefore, removes the need for the Court to speculate on the Claimant's life expectancy.

In order to remain inflation proof, a periodical payments order must be varied each year by reference to an index such as the Retail Prices Index (RPI).

However in the case of *Thompstone -v- Tameside & Glossop Acute Services NHS Trust*, the High Court recently had to decide whether RPI was an appropriate index to which to link periodical payments. (*cont. page 2*)

Smoke-Free England

by Nina Gurney

Legislation prohibiting smoking in enclosed or substantially enclosed public places and workplaces in England came into force at 6am on 1 July 2007. Employers who fail to comply with the legislation could face fines and possible criminal charges.

If you have not yet put in place a proper policy aimed at complying with this legislation or if you are having problems enforcing your non-smoking policy please contact Nina Gurney ngurney@hclaw.co.uk for further information.



Lawrence Cartier Becomes Partner

After several years of association with Harris Cartier, Lawrence has now become a Partner. He wishes to see the London office become more involved in international and multi-jurisdictional matters and will actively develop this area. He will also continue to act in the areas of complex dispute resolution and litigation that have been his hallmark in recent years.



Promotions and New starters



Congratulations to Elaine Gates (above right) on becoming a Partner. Sean O'Connor (above left) has been promoted to senior associate. A warm welcome to Sarita Ghare (above centre) and Kelvin Hing (right), who have joined our Residential and Commercial Property teams respectively.



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PI Awards - Cash or Income? (cont.)

The Court considered a number of alternative indices. These are as follows:

Retail Prices Index (RPI)

This index measures average growth of prices of a basket of goods and services intended to reflect typical consumer expenditure. The cost of home carers does feature as one item of domestic services within the RPI basket but the evidence in the case was that the weighting attached to home carers meant this cost represented less than 1% of the component parts of the RPI.

Average Earnings Index (AEI)

This index measures average growth in earnings based on a survey of 8,500 employers covering 9 million employees.

ASHE Aggregate and Median

The Annual Survey of Hours and Earnings (ASHE) measures levels of earnings in a wide range of occupations. ASHE Median represents the level of earnings at which the same number of individuals will earn more as will earn less than the median level. The ASHE median is therefore lower than the ASHE mean (average).



ASHE 6115

In addition to ASHE Aggregate which covers a wide range of occupations, there is also an occupational earnings series and ASHE 6115 consists of care assistants and home carers.

The fundamental issue is that over the past 40 years, earnings have increased at a faster rate than prices. As the largest item of expenditure for a severely injured Claimant is always the cost of employing nurses or carers, it follows that linking periodical payments to RPI would

lead, over a period of years, to a substantial shortfall between the periodical payments and the real cost of care.

The High Court concluded that RPI has not been an accurate or reliable indicator of growth in earnings in the past, nor is it likely to be so in the future. Past data establishes that RPI has not kept pace with growth in average carer's earnings. The strong probability is that the earnings levels of the types of carers employed by Claimants will grow at a significantly faster rate than RPI. If payment for future care costs is linked to RPI, then the purpose of indexation, which is to ensure that the real value of the payments is retained, will not be met. Indexation of payments for care costs to RPI will not meet the Claimant's needs and therefore cannot be described as fair, reasonable or appropriate. Not surprisingly, the Court concluded that of the three available earnings indices the most appropriate indicator of the growth of earnings of the type of carers employed by Claimants was ASHE 6115 and that would fulfil the purpose of indexation which is to maintain the real value of the periodical payments.

The Defendants have appealed to the Court of Appeal and the appeal will be heard later this year.

Property Boom Hides Tax Timebomb

by Ron Kerlake

Inheritance tax (IHT) is now likely to affect more than two million homes in the UK according to a survey by the Halifax.

Property prices have been rising faster than the threshold for inheritance tax for a number of years and the trend is likely to continue – bringing more and more homes within the IHT bracket.



Since 2001 the number of postcode

areas where the average property price is above that level has more than doubled.

The IHT threshold for 2007–8 is set at £300,000. This is set to rise each year, reaching £325,000 by April 2009.

Forward planning and expert advice are essential if you are to avoid excessive IHT liabilities. Our solicitors are available to help, and will explain the best way forward in your particular circumstances and how you can best protect your assets for your estate.

Forty Not Out

by Chris Gooderidge

It so happens that I have been a Practising Solicitor for 40 years this year and incidentally have been married for the same length of time.

I trained with a small firm of Solicitors in Bond Street in the West End of London and had excellent training there. The firm dealt with the whole range of legal matters from acting for the British office of Germany's third largest steel company through property work, both residential and commercial, some high profile divorce cases, one in the House of Lords, contract cases and acting for a bouncer employed by a West End night club, so it was extremely varied.

We also dealt with some interesting personal injury cases. My Principal was on the panel for accident cases for the Ministry of Defence, then called the War Office, and I remember that one case involved a Sergeant Major who was catastrophically injured when he fell from a Land Rover whilst on active duty.

I well remember accompanying my Principal to see a Barrister in Paper Buildings in the Temple, who subsequently became a well known Judge.

This was also a personal injury case and I recollect the Barrister's Clerk putting extra coal on the fire in the Barrister's room and making sure that the fire threw out a good heat.

The nearest we came to a clinical negligence case was acting for a client who was a patient in a nursing home when a hot water bottle in her bed burst and our client was badly scalded.

There were many less clinical negligence cases in the early 1960's.

However it has to be said that 10 years before I qualified as a Solicitor was one of the most important clinical negligence cases that have ever been decided. Bolam -v- Friern Hospital Management Committee was decided by a Judge in the Queens Bench Division of the High Court in The Strand, London, the Court where most of our clinical negligence cases are dealt with today.

That case decided that the standard of care required in such a case is that of a reasonably competent practitioner exercising or professing to have that skill. In other words if there is a responsible body of medical opinion that says that the doctor was not negligent, then the case fails.

That is an extremely difficult test to satisfy and that is why clinical negligence cases are so taxing.

It is interesting to look at an important case that was decided in 1967 when I qualified.

For example the case of Chin Kaow -v- Government of Malaysia was decided by the Privy Council in 1967 and reinforced the decision in the Bolam case. The Privy Council was particularly important in those days because it dealt with appeals from most of the Commonwealth countries and it is the equivalent of the House of Lords, the highest Court in the UK.

In 1977 I joined Harris Cartier as a Partner, then of course called Harris & Cartwright. So 2007 is yet another anniversary. In 1977, we had a small Litigation Department out of which grew today's Personal Injury and Clinical Negligence Department, which specialises in catastrophic injury cases, with offices in Slough and London.



A further coincidence is that 2007 marks the 25th anniversary of AvMA (Action Against Medical Accidents). That organisation, of which I have been a member for over 20 years, has revolutionised the practice of clinical negligence in this country. I, and my team of clinical negligence Lawyers regularly attend conferences organised by AvMA and I am a member of the AvMA Specialist Solicitors' Panel.

Some may argue that the so called "compensation culture" has gone too far and there are too many clinical negligence cases going through at any given time. However, if one has been injured by a medical error then things look very different and I am proud to represent Claimants, including many children, in clinical negligence cases who have recovered substantial compensation for their injuries.

Who knows what the next 40 years will throw up in terms of developments in clinical negligence?

The full version of this article appears on our website at www.hclaw.co.uk.

Please contact Chris Gooderidge on 01753 734821, or email: cgooderidge@hclaw.co.uk.

And Finally.....

If you received an email saying you have won a lottery you never entered, you would quite rightly dismiss it as a scam, and delete the offending message. So what if someone called you up – claiming to be a solicitor – and said you had inherited a fortune from someone you had never heard of? You would probably be suspicious.

And what if you were then told your name had been selected at random from the phone book? You would probably think the caller was mad.

Yet this is exactly what happened in Portugal. Eccentric aristocrat Luis Carlos de Noronha Cabral da Camara bequeathed his fortune to 70 strangers chosen at random from the Lisbon telephone directory. The selection had been made in front of two witnesses at a registry office 13 years before.

Luis Carlos was a childless bachelor when he died aged 42. His estate included a 12-room apartment in central Lisbon, a house in the north of Portugal, a car and 25,000 euros.

In fact, the bequest was doubly surprising, as in Portugal, people don't normally make Wills.

In the UK it is essential to make a good, properly worded Will. Not doing so is almost as bad as the Portuguese aristocrat's approach. Unfortunately too many people either don't have a Will or haven't updated it recently.

If you would like to talk to someone about your Will or to make a Will, then our expert solicitors would be happy to help.



Upcoming Events

How's That?

On July 12th we will be playing a cricket match against the Frost Partnership in Amersham.

"Easy Oar!"

Nina Gurney will be rowing on 1st September, on behalf of the East Berkshire Women's Aid, at the Reading Corporate 8's.

Dragon Boat Racing

On 6th September, we will be entering a team, raising money for the Back-Up Trust.

We value our Clients' opinions, so tell us what you think of Legal-i.

Please send your comments, opinions or suggestions to:

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