

Personal Injury Claims



FUNDAMENTAL CHANGES

Following the outcome of the appeal in the *Helmut v Simon* damages claim, published on 14 September 2010, there are some fundamental and wide-reaching changes to the calculation of damages in Guernsey.

As well as setting a record for damages claims, the judgement sets out clearly how the discount rate should be determined for personal injury claims in Guernsey going forward. This landmark judgement is also expected to have implications for cases in the Jersey courts.

The new approach is expected to increase damages substantially. The impact will depend on the age of the claimant, but claims could well be of the order of three times larger than previously for the youngest claimants.

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WHAT THIS MEANS IN PRACTICE

The Ogden Tables are generally used by courts to determine the multiplicands to place a value on a future loss. The Ogden tables will continue to be able to be used. However, in some cases, it will be necessary to calculate multiplicands on discount rates which fall outside of the range of 0% to 5.0% currently available in the published Ogden Tables.

For example, in the *Helmut v Simon* case, the Court of Appeal ruled that a discount rate of -1.5% should be used to value earnings-related losses.

NEW APPROACH

The judgement clarifies that the 2.5% discount rate, set by the UK Lord Chancellor, is not appropriate in a Guernsey context.

The fundamental principles set by the Court of Appeal are:

- The discount rate should be set on a case by case basis, reflecting financial conditions over the year prior to the trial
- Guernsey inflation should be assumed to be, on average, 0.5% pa higher than UK inflation
- Guernsey earnings inflation should be assumed to increase, on average, by 2% pa in excess of the rate of Guernsey inflation.

BWCI Services

- Advice on discount rate
- Ogden Table calculations
- Sensitivity analysis

HOW CAN BWCI ASSIST?

BWCI is able to calculate the multiplicands for all of the Ogden Tables on the full range of discount rates that may be required.

The discount rate will now need to be determined on a case by case basis and will be dependent upon the expected date of the trial. BWCI can also advise on the appropriate discount rate to use, as well as illustrate the sensitivity of the claim size to changes in the discount rate.

FURTHER INFORMATION

If you would like further advice about the use of the Ogden Tables in personal injury claims locally, please contact

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