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UK Bodily Injury Claims Settlement Framework

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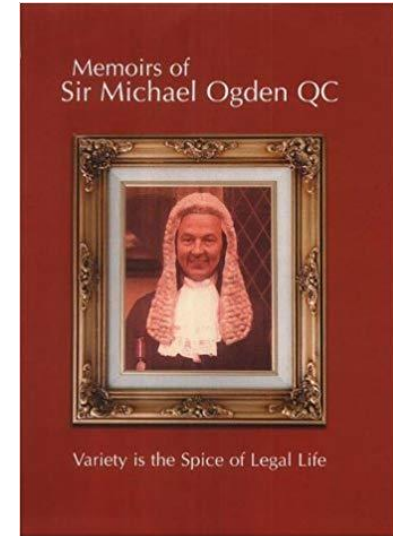
A History of the Ogden Discount Rate

25 April 2019

A brief history of the Ogden discount rate

Sir Michael Ogden QC, 1926-2003

- Highly successful barrister with a wide range of clients including Robert Maxwell and Bernie Corfield;
- He gained his knighthood by chairing and raising the profile of the Criminal Injuries Compensation Board (1975-89), a government department of 600;
- In 1982 headed a working party that developed the actuarial tables to quantify damages in fatal accident and personal injuries cases – “the Ogden tables”.



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The Ogden Tables, 7th edition, supplementary tables

Table 1 Multipliers for pecuniary loss for life (males)

Age at date of trial	Multiplier calculated with allowance for projected mortality from the 2008-based population projections and rate of return of												Age at date of trial
	-2.0%	-1.5%	-1.0%	-0.75%	-0.5%	0.0%	0.5%	1.0%	1.5%	2.0%	2.5%	3.0%	
0	264.76	195.32	147.14	128.73	113.22	88.96	71.35	58.34	48.60	41.17	35.41	30.89	0
1	259.11	191.95	145.15	127.21	112.06	88.31	71.00	58.18	48.54	41.18	35.46	30.96	1
2	252.28	187.68	142.46	125.07	110.35	87.22	70.30	57.73	48.24	40.98	35.33	30.87	2
3	245.58	183.46	139.78	122.92	108.64	86.12	69.58	57.26	47.94	40.78	35.19	30.78	3
4	239.02	179.29	137.12	120.79	106.93	85.01	68.86	56.78	47.62	40.56	35.05	30.68	4
5	232.59	175.19	134.48	118.67	105.22	83.89	68.12	56.30	47.29	40.34	34.90	30.58	5
6	226.29	171.15	131.87	116.57	103.52	82.78	67.39	55.80	46.96	40.12	34.75	30.47	6
7	220.14	167.18	129.29	114.49	101.83	81.66	66.65	55.31	46.63	39.89	34.59	30.36	7
8	214.13	163.28	126.74	112.42	100.15	80.55	65.90	54.80	46.28	39.65	34.42	30.24	8
9	208.23	159.43	124.21	110.36	98.48	79.43	65.15	54.29	45.93	39.41	34.25	30.13	9



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The 1990s – The Damages Act and Wells v Wells

The Damages Act, 1996

An Act to make new provision in relation to damages for personal injury, including injury resulting in death;

- Public sector settlements as well as insurance settlements;
- Amended to include provision for PPOs (next slide), and the Civil Liability Act 2018 for setting the discount rate.

Wells v Wells, 1998, Appeal to the House of Lords

- Road traffic accident with serious brain injury;
- Court of appeal had used a discount rate of 4.5% (original court used 2.5%);
- The House of Lords appeal was successful – the injured plain.



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The Noughties, including the introduction of PPOs

Discount rate change, 2001

- In 2001 Lord Chancellor Lord Irving of Lairg set the discount rate to 2.5% (from 3%), based on a 3-year average of real yields on index linked gilts;

The first Periodic Payment Orders (PPOs)

- Prior to 2003 structured settlements were (occasionally) used to protect claimants from financial uncertainties around future life expectancy;
- Courts Act 2003 gave the power for the courts to impose a PPO. Prior to Courts Act 2003 a claim could only be settled via a structured settlement if both parties agreed;
- *Thompstone v Thameside NHS trust*, appeal December 2008 – Appropriate to link escalation to ASHE 6115 (care assistants and home carers' salaries) rather than RPI.



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Discount rate change from 2.5% to -0.75%

First change since 2001!

February 27th 2017 - Lord Chancellor and Justice Secretary Liz Truss said:

- The law is absolutely clear – as Lord Chancellor, I must make sure the right rate is set to compensate claimants;
- I am clear this is the only legally acceptable rate I can set.

Four key pledges made to the London Stock Exchange:

- Ensuring the NHS Litigation Authority has appropriate funding to cover changes to hospitals' clinical negligence costs;
- DoH to work closely with GPs to ensure appropriate funding;
- Consultation within weeks whether there is a fairer or better framework;
- Chancellor Philip Hammond to meet with insurance representatives.



Liz Truss – Secretary of State for Justice and Lord High Chancellor July 2016 – June 2017.
Photo by Chris McAndrew



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Consultation - How the discount rate should be set

Consultation ran from 30 March 2017 to 11 May 2017 (135 responses received)

- What principles should guide how the rate is set?;
- How often should the rate be set?;
- Who should set the discount rate?

Follow-up analysis and discussion (will the discount rate be between 0% and 1%?):

- July 2017 – Personal Injury Discount Rate Analysis by GAD (requested by the MoJ);
 - Considered two investment strategies at -0.75% discount rate and both gave over-compensation at the median;
- The Justice Select Committee asked about an Impact Assessment based on the Government’s “assessment” that the discount rate would be between “0% and 1%”. The Government replied it did not consider it to be appropriate to speculate on the outcome of the first review of the rate under the new law



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The Civil Liability Act, 2018

Changes under the Civil Liability Act (which received Royal Assent on 20th December 2018)

- Discount rate set by reference to a low risk diversified portfolio of investments rather than very low risk investments as at present;
- to be reviewed promptly after the legislation comes into force (i.e. by 5 August 2019) and, thereafter, at least every five years;
- to be set by the Lord Chancellor following consultation on the first review with the Government Actuary and HM Treasury; and, on the second and subsequent reviews, with an independent expert panel chaired by the Government Actuary, and, as at present, HM Treasury.



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Announcement of the first review of the personal injury discount rate, March 2019

Announcement by Lord Chancellor David Gauke MP

- Highly successful barrister with a wide range of clients including Robert Maxwell and Bernie Corfield;
- He gained his knighthood by chairing and raising the profile of the Criminal Injuries Compensation Board (1975-89), a government department of 600;
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Wells v Wells, 1998, Appeal to the House of Lords

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David Gauke – Secretary of State for Justice and Lord High Chancellor.
Photo by Chris McAndrew



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GAD Technical Memorandum, January 2019

Technical Memorandum by the Government Actuary's Department (GAD)

- Prepared in advance of the discount rate review announcement to set out the method and assumptions that will be used;

Method, Assumptions, Outputs and Sensitivities

- Method – Stochastic modelling of claimant outcomes (are funds sufficient?)
- Assumptions – 3 main sets of assumptions that vary within the model:
 - How the investment portfolios are constructed;
 - The claimant and the profile of damages that they receive; and
 - Economic and financial assumptions.
- Distributions of claimant outcomes on various bases + sensitivity tests;
- Adjusted for tax and expenses in the light of Call for Evidence responses



Martin Clarke –
Government Actuary



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GAD Technical Memorandum, Asset Returns

Median asset class return simulations (in excess of RPI) – currently 2017 ESG

Median money weighted real return	5 years	10 years	15 years	20 years	30 years	50 years
Nominal gilts	-2.1%	-2.1%	-1.7%	-1.4%	-1.0%	-0.4%
Index-linked gilts	-4.2%	-5.8%	-5.2%	-4.4%	-3.3%	-2.1%
Investment grade credit	-1.3%	-1.0%	-0.7%	-0.4%	0.1%	0.6%
UK equities	1.0%	1.9%	2.3%	2.4%	2.5%	2.5%
Overseas equities	1.5%	2.3%	2.7%	2.4%	2.5%	2.5%
Cash	-1.9%	-1.6%	-1.4%	-1.3%	-1.0%	-0.6%

Legislation assumes damages are invested using an approach that involves:

- i) More risk than a very low level of risk, but
- ii) Less risk than would ordinarily be accepted by a prudent and properly advised individual who has different financial aims



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Call for Evidence, 6 Dec 2018 – 30 Jan 2019

Invites consultees to provide evidence on the following:

- Investments available to claimants;
- Investment advice provided to claimants;
- Investments made by claimants;
- Taxation;
- Inflation
- Investment management costs;
- Model investment portfolios;
- Other considerations.

Asset class	Portfolio (i)	Portfolio (ii)	Portfolio (iii)
Cash or equivalents	12.5%	10%	5%
Gilts (conventional)	37.5%	20%	7.5%
UK equities	10%	12.5%	30%
Overseas equities	20%	15%	22.5%
Corporate bonds	7.5%	20%	17.5%
Property	0%	5%	5%
Other types	12.5%	17.5%	12.5%

Above: Illustrative low-risk investment portfolios for comment



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What does this mean for PPOs?

PPO Propensity trend

- **To be completed** – Awaiting confirmation on consistency with others in PPO working party (who are speaking at the afternoon workshop);

Survey at GIRO 2018



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Questions

Comments

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