



Personal Injury and Medical Law Teams Practice and Procedure Note

OGDEN TABLES 6th EDITION

Ogden Table

The 6th Edition of the Ogden Tables was published at the end of April¹. The 3 major areas of change are:

- **Mortality projections**
- **New methodology for assessment of appropriate deductions to be made to the working life multiplier to allow for contingencies other than mortality.**
- **Guidance for dealing with variable future losses or expenses**

These are set out in the Explanatory Notes:

SECTION A: GENERAL (pages 7 to 11)

SECTION B: CONTINGENCIES OTHER THAN MORTALITY (pages 13 to 18)

SECTION C: SUMMARY OF PERSONAL INJURY APPLICATIONS (pages 18 to 21)

SECTION D: APPLICATION OF TABLES TO FATAL ACCIDENT CASES (pages 22 to 29
(including comparison with the alternative 5th edition approach to multipliers)

SECTION E: CONCLUDING REMARKS (if in doubt, use an actuary)

SECTION A: GENERAL

Mortality

- now assessed on 2004 based population projections supplied by the Government actuary being the latest set of national projections for the United Kingdom² providing "*a more appropriate estimate of the value of future income streams than tables based on historic mortality*"³

¹ and briefly reviewed in the April 2007 PIMLU

² *National Population Projections, 2004-based*. PP2 No. 25 Office of National Statistics Series PP2 No. 25, The Stationery Office

³ paragraph 6 of the Explanatory Notes at Section A, page 7 of the Tables

- the calculations of future mortality are those for average members of the population. It has been observed that the 'average' in England is in fact clinically obese⁴; this average also includes smokers, drinkers and roués.
- A further decrease/increase in respect of mortality alone will only be permitted where there is "clear evidence in an individual case to support the view that the individual is atypical and will enjoy longer or short expectation of life"⁵.
- There is guidance to assessment in cases of impaired lives at paragraph 20 of the Explanatory Notes, Section A, starting with the 0% table in order not to fall into the trap of using Table 28 which being a mathematical as opposed to actuarial table, does not allow for the distribution of deaths around the expected length of life.

Future loss of earnings

- precise assessment of multipliers for future loss of earnings is now possible instead of being reliant upon the application of judicial discount adjustment to reflect contingencies other than mortality
- this new methodology is based upon the results of recent research by City University, London and Cardiff University
- the tables drawn up by the Government Actuary's Department (Chris Daykin) now make allowance for factors tailored to the individual including
 - personal disabilities of the Claimant
 - whether or not the Claimant was un/employed at the date of the accident or thereafter

Variable future loss or expenses

- Guidance is given where an annual future loss or expense may change at a point or points in the future such as:
 - An increase in loss of earnings on a sliding scale or owing to promotion
 - A change in care needs such as where the family care gives way to professional care⁶

The proposed calculations are similar to those that have been adopted for some time by many practitioners in high value claims

Spouses Pensions

- This calculation can be complex and frequently it is sensible to take actuarial advice. Suggestions for an appropriate approach are set out at paragraph 25 of the Explanatory Notes, Section A

⁴ Professor Barnes: *Life Expectancy for People with Disabilities*, Revised version 9, May 2007, page 10: The mean Body Mass Index in males and females in the general population of England "is in the overweight range"

⁵ paragraph 5 of the Explanatory Notes, Section A, page 7 of the Tables

⁶ paragraphs 22 to 24 of the Explanatory Notes Section A, pages 10 to 12 with worked examples

SECTION B: CONTINGENCIES OTHER THAN MORTALITY

- Previous editions of the Ogden tables have provided subsidiary tables principally in respect of future loss of earning claims to reflect additional contingencies such as geographical location; occupational risks inherent in the employment (eg carpentry); regional unemployment figures etc. These contingencies are now considered to be a less reliable guide to future loss of earnings and the tables incorporating them are now considered to be inaccurate and should be disregarded⁷.
- The quoted research demonstrated that people without disabilities spend more time out of employment than previously thought which is likely to result in claims for loss of earnings coming down (paragraph 9, page 5 of the Introduction)
- Section B sets out an empirical methodology providing a 'ready reckoner' permitting an initial adjustment to the multipliers according to employment status, disability status and educational achievement of the claimant⁸ which have been identified by the University research to be the key issues affecting a person's work life⁹
- Multipliers for loss of earnings obtained from Ogden Tables 3 to 14 are multiplied by factors to allow for the risk of periods of non-employment and absence from the workforce because of sickness.
- Factors for assessment of 'adjusted table multiplier'¹⁰: In addition to age and gender, the relevant factors are:
 - Employment status at the time of the accident and at the time of settlement/trial
 - Disability status at the time of the accident and the time of the settlement/trial
 - Educational attainment at the time of the accident and at the time of the settlement/trial
- Definitions are given of 'employment' and 'disability' with examples of:
 - Mobility
 - Manual dexterity
 - Physical co-ordination
 - Problems with bowel/bladder control
 - Ability to lift, carry out or otherwise move everyday objects
 - Speech
 - Hearing
 - Eyesight
 - Memory or ability to concentrate, learn or understand
 - Perception of physical danger¹¹
- The most important factor is considered to be that of educational attainment which rendered the effect of other adjustment factors such as geographical

⁷ paragraph 31 of the Explanatory Notes, Section B, page 13

⁸ paragraph 32 of the Explanatory Notes, Section B, page 13

⁹ paragraph 34 of the Explanatory Notes, Section B, page 14

¹⁰ paragraph 35 of the Explanatory Notes, Section B, page 14

¹¹ paragraph 35, pages 14 to 15

region and types of occupation “relatively small”¹². Categories of highest educational achievement are given including grades achieved at O, GE-A and Degree level¹³.

- For claimants aged under 16 at the date of the accident, the relevant factor from the tables would be chosen on the basis of the level of education the child would have been expected to have attained had the accident not occurred together with an assessment of whether the child would have become employed or not¹⁴
- **NOTE:** the methodology does not take into account:
 - pre-accident employment history
 - reduction factors post age-54 where it is considered that the use of factors based on averages would not be appropriate¹⁵
 - all circumstances and thus can only be regarded as a framework for consideration of a range of possible figures¹⁶

Calculation methodology of ‘adjusted table multiplier’

- A full loss of future earnings is calculated using the multiplier/multiplicand based upon pre-injury prospects (Tables A and C for those not disabled at the time of the accident and Tables B and D for those with a pre-existing disability; separate figures are given for those who are employed and those who are not¹⁷).
- Tables A to D also allow for the interruption of employment for those bringing up children or caring for other dependents.
- A residual earning capacity is calculated using a multiplier/multiplicand based upon actual post accident earnings and future potential, depending on the educational attainment and the employment and disability of the status of the Claimant at the time of the accident and the date of settlement/trial
- The actual loss is then measured¹⁸

The Blamire approach

- In many cases this will result in the replacement of the lump sum Blamire approach for future loss of earnings where the uncertainties were too many to allow a conventional multiplicand/multiplier approach
- The impact of these figures is greatest in terms of claims by young Claimants for loss of pension

Smith v Manchester claims

- Whilst a somewhat ‘broad brush’ approach is taken to the factors outlined in paragraph 10 of the Introductory Notes, the proposed methodology avoids the need for lump sum compensation of loss of earning capacity by adopting a two stage calculation that factors in:
 - (a) the effect of the disability

¹² paragraph 36, page 15

¹³ page 15

¹⁴ paragraph 41

¹⁵ paragraph 42

¹⁶ for a example of this in practice, see the decision in **Sarwar v Ali and Motor Insurers Bureau** [2007] EWHC 1255 (QB), Lloyd Jones J digested and commented upon at pages 8 and 9 of the 13 KBW May 2007 PIMLU

¹⁷ paragraphs 38 and 42

¹⁸ see worked examples at page 6 below

(b) educational attainment

- In this way multipliers can be separated from pre-accident and residual earning capacity
- In circumstances where the Claimant was employed at the time of the accident, the proposed methodology will provide compensation greater than achieved by the conventional Smith v Manchester approach although there will still be cases incapable of a mathematical approach in which a Smith v Manchester approach remains applicable¹⁹.

Loss of a Chance

- In circumstances where the Claimant is yet to enter into employment, a 'career model' can be devised whereby the loss of earnings claim is calculated on a multiplicand/multiplier basis with no further discount being applied for future contingencies, as was the situation in Herring v MOD [2003] EWCA Civ 528
- Guidance is given for the 'career model' splitting the multiplier into segments in respect of which a different multiplicand might be applied. This has been the approach of many practitioners hitherto but it is hoped that the Ogden Tables model will allow this to be of more widespread application and, more importantly, accepted by the lower tiers of the judiciary. This reflects the view expressed (somewhat more subtly) by the Court of Appeal in Brown v Ministry of Defence [2006] PIQR Q9 which reiterated that the multiplicand/multiplier basis is to be applied in most cases where a career model can reasonably be chosen as a basis for assessment with the prospects of enhanced or reduced earnings resulting from the ordinary chances of life being allowed for by adjustments to the multiplier and multiplicand as appropriate. Only for career changes resulting in a significant reduction in earning potential should a court entertain a percentage discount to represent the speculative nature of an assumption by the court of such a career course absent any injury.

SECTION C: SUMMARY OF PERSONAL INJURY APPLICATIONS

- This section provides specific guidance on the selection of Tables for:
 - Loss of earnings
 - Lifetime losses
 - Variable annual losses
 - Fixed period and deferred losses

Worked examples are given of which a couple are summarised below.

Many of the proposed changes are those that claimant practitioners have been urging for some time and incorporating into Schedules of Loss. Understandably these have met with resistance from defendants who fear an inevitable increase in the levels of award made. This is in fact an erroneous perception since the adjustments of multipliers for future loss of earnings proposed under the Tables' detailed methodology is likely in many cases to result in a more modest awards than hitherto, particularly since educational

¹⁹ for example, those involving young children whose likely educational achievements have not crystallised and thus any projection of likely career path is inherently speculative

achievements pre-trial will now become more significant in the empirical assessment of the adjusted multiplier. This is illustrated by Example 3 at paragraph 47, Section B, Explanatory Notes, pages 19 to 20. This concerns a 35 year old woman who pre-accident was earning £25,000 net and post-accident £5,000 net p.a.; she has 3 A-levels but no degree:

	Multiplicand	Ogden	Discount factors	Multiplier	Total
a	£25,000	Table 8	No discount	18.39 (non-disabled) (mortality only)	£459,759
b	£25,000	Table C	0.86	15.82 (non-disabled) (contingencies other than mortality)	£395,500
c	£ 5,000	Table 8	No discount	18.39 (non-disabled) (mortality only)	£ 55,170
d	£ 5,000	Table D (LH cols)	0.48	8.83 (disabled) (contingencies other than mortality)	£ 44,150
Future loss (including Smith v Manchester claim) = £395,500 - £44,140 (b - d)					£351,350

This approach is also useful for a Claimant who is out of work at the time of settlement/trial but is considered to have a residual working capacity; taking a 48 year old male with no educational qualifications and a residual earning capacity of £5,000 p.a. (Example 4 at paragraph 48 Explanatory Notes, page 20):

	Multiplicand	Ogden	Discount factors	Multiplier	Total
a	£20,000	Table 9	No discount	13.35 (non-disabled) (mortality only)	£273,000
b	£20,000	Table A	0.86	11.48 (non-disabled) (contingencies other than mortality)	£229,600
c	£ 5,000	Table 9	No discount	13.35 (non-disabled) (mortality only)	£ 66,750
d	£ 5,000	Table B (RH cols)	0.11	1.47 (disabled) (contingencies other than mortality)	£ 7,350
Future loss (including Smith v Manchester claim) = £229,600 - £7,350 (b - d)					£222,250

Other given examples can be worked through in a similar way

SECTION D: APPLICATION OF TABLES TO FATAL ACCIDENT CASES

- The period taken for future dependency is the shorter of:
 - (i) the period from the date of death in which the deceased would have been capable of providing the dependency

- (ii) the period from the date of death in which the dependant would have been able to receive the dependency²⁰
- Contingencies other than mortality include²¹:
 - Factors relating to the deceased such as health and educational achievement: Tables A to D should be used
 - Factors relating to the dependant such as a reduced life expectancy
 - Factors relating to the relationship of the deceased and the dependant such as an unmarried couple on the point of separation
- In respect of loss between the date of death and the date of trial, allowance is made in Table E to reflect the risk that the deceased might have died anyway between the date of the fatal accident and the date of trial²²
- Similarly in respect of the claim for post-trial dependency, allowance is made in Table F for the fact that the deceased might not have lived to the date of trial²³
- In respect of damages after retirement age, the multiplier should be taken from the date of trial and then the multiplier up to retirement age deducted²⁴
- In cases where the dependency is not related to employment, a similar approach should be taken as for the assessment up to retirement age but with the initial period being taken as the whole of life expectancy (Ogden Tables 1 and 2)²⁵
- Worked examples are given at paragraph 82 to 84 (pages 26 to 27)
- With the debate continuing as to whether future dependency multipliers should be calculated from the date of death or the date of trial, a compromise is proposed at paragraphs 85 to 87 with examples at paragraphs 88 and 90):
 - multipliers calculated from the date of death
 - selection of multipliers to be from the 0% discount column
 - thereafter applying a discount for early receipt following the trial/settlement, no unnecessary discount being made for the loss already suffered between death and that date since this loss is capable of precise calculation: hence the 0% table

This latter is a simple and efficacious solution although whether the appellate courts will consider that this does not contravene the rule established by the House of Lords in Cookson v Knowles [1979] A C 556) remains to be seen.

Comment:

Where the advantage will be felt is in respect of those heads of loss previously compensated by way of lump sums including Blamire; Smith v Manchester and some 'loss of a chance' cases. Although considered by some to be a somewhat blunt instrument save in the most simple of cases, this new approach is likely to result in a higher level of awards for these heads of loss. This is because the Court of Appeal has consistently declined to set a tariff in these cases with the result that 'conventional' lump sum awards

²⁰ paragraph 61, page 22

²¹ paragraph 62, page 22

²² paragraphs 67 to 69

²³ paragraphs 70 to 75

²⁴ paragraphs 76 to 80

²⁵ paragraphs 81 and 82

have tended not keep apace of inflation where judicial emphasis has been upon the need to reflect the speculative nature of such losses in modest awards²⁶

The court will now be able to use the tables as a starting point from which to consider the totality of the evidence for these hitherto 'lump sum' awards

The 'one size fits all' approach is likely to cause problems in practice. A recent example is **Sarwar v Ali and Motor Insurers Bureau** [2007] EWHC 1255 (QB), Lloyd Jones J digested and commented upon at pages 8 and 9 of the 13 KBW May 2007 PIMLU. In that case the claimant's educational achievement was unremarkable with unpromising grades having been achieved at GCSE. However separate neuropsychological assessment supported the C's own view that he had significantly underperformed in these examinations and this was confirmed by his form tutor who considered that the C had ability and determination which if properly channelled would allow him to succeed. The court took due account of these extraneous factors and it was upon these that the likely career path as a professional was predicated.

This analysis anticipated the significant change in the 6th edition of the Ogden Tables where educational achievement is considered to be the principal determinant of future earnings. Adopting this methodology, however, would not permit the additional implications of underperformance to be taken into account in the discount factors within Tables A to D of the 6th edition of Ogden. Thus **Sarwar** demonstrates the shortcomings of these universal tables which lack the flexibility to tease out the factors relevant to the individual. Whilst SECTION D: CONCLUDING REMARKS emphasises the need to obtain tailored actuarial evidence in complex or unusual cases, the concern must be that at the CMC stage such applications will be refused, particularly in the current climate where accurate assessment of damages is increasingly taking second place to costs considerations.

The writer's real concern however is that in many respects this new 'methodology' is extremely and (arguably) unnecessarily complicated; it is likely to make many practitioners look back with nostalgia to the 'bad old days' when modest judicial 'broad brush' discounting of multipliers for future loss tended on the whole to reflect the justice of the claim. [DG]

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Please note that this Practice and Procedure Note is intended to provide a summary and comment of the subject matter covered. It is not intended to be comprehensive or to provide legal or other professional advice.

²⁶ : see **Evans v Tarmac Central Ltd** [2005] EWCA Civ 1820 [Tuckey, Laws LJ] (12 Dec 2005) digested in the April 2006 PIMLU, page 8; **Woolley v Essex County Council** [2006] EWCA [Pill, Dyson, Hallett LJ] (17 May 2006) digested in May 2006 PIMLU, page 17 and **Ronan v Sainsbury PLC** [2006] EWCA [Hooper, Hughes LJ] 6 July 06, digested in the July 2006 PIMLU at pages 14 and 15 where the Court defined the separate approaches in Blamire and Smith v Manchester: Blamire awards are distinct from those made under Smith v Manchester, and therefore such awards had to be assessed separately. Blamire was appropriate where there were too many uncertainties to adopt the multiplier/multiplicand approach to quantifying future loss of earnings; Smith was an award for a contingent future loss in the event that the claimant lost his current job and suffered handicap on the labour market.