

Compass Chambers



ASSESSING FUTURE LOSSES – CASE LAW UPDATE

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Compass Conference Glasgow 2026



Case Law Update

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- [F v Gordon Chalmers & Others \[2025\] CSOH 23](#)
 - [DBAK v Governors of the Fettes Trust \[2026\] CSOH 5](#)
 - [Brian Taylor v Forth Valley Health Board \[2025\] CSOH 103](#)
 - [CCC v Sheffield Teaching Hospitals \[2026\] UKSC 5](#)
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Multifactorial Causation – assessment of financial losses attributable ?

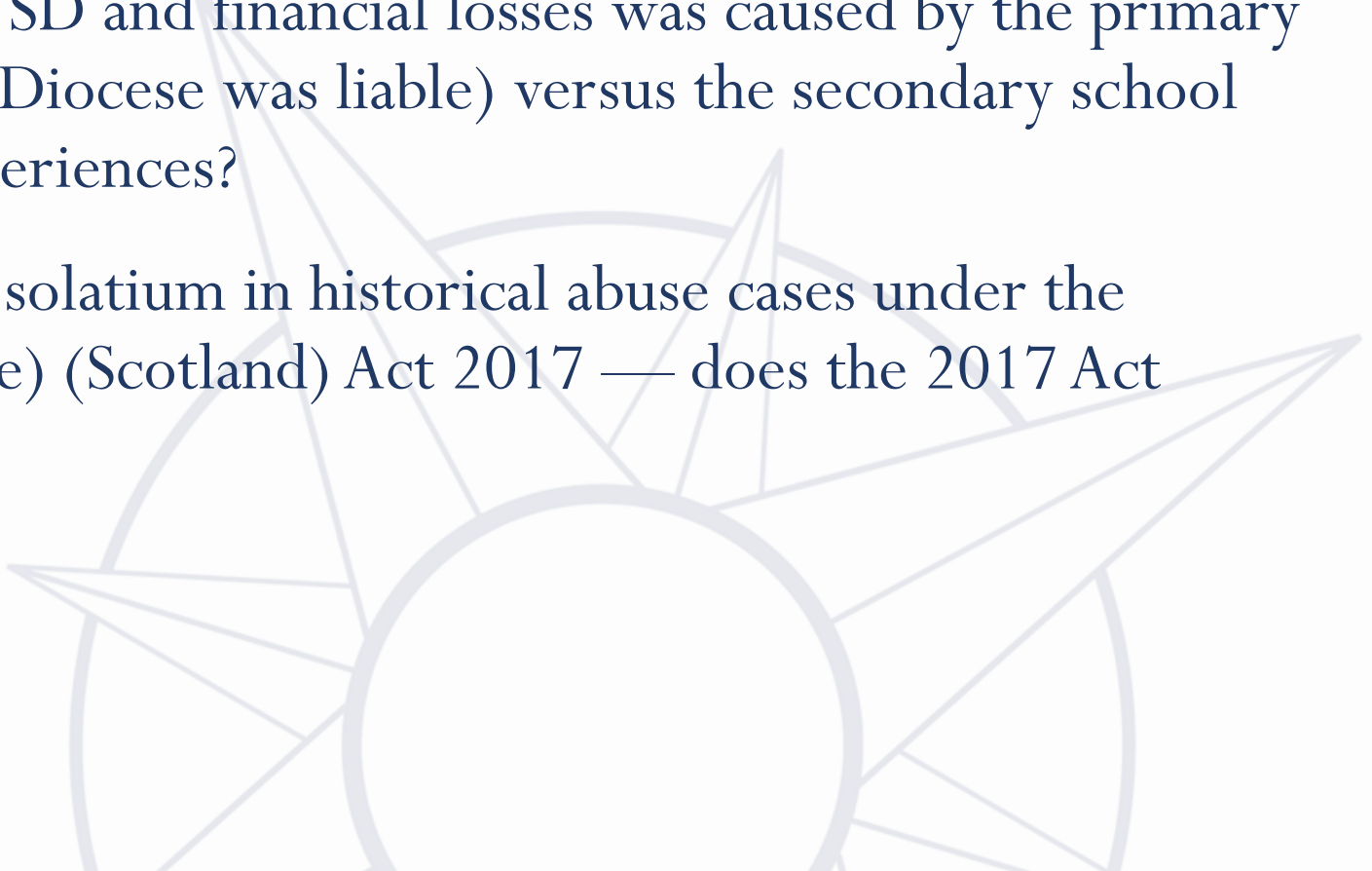
[F v Gordon Chalmers & Others \[2025\] CSOH 23](#)

- Pursuer (F) subjected to serious sexual abuse by an RC priest at primary school in Irvine, late 1970s (aged 5–6) — priest convicted of repeated sexual assault
- Further physical and sexual abuse at Fort Augustus Abbey secondary school, mid–late 1980s (aged 14–16)
- Developed Complex PTSD (diagnosed 2012); worked as a nurse but unable to continue from 2012. Other adverse life experiences throughout
- Action against five defenders; proceeded only against RC Diocese of Galloway — vicarious liability admitted. Proof: causation and quantum only



Questions to be determined

[F v Gordon Chalmers & Others \[2025\] CSOH 23](#)

- What proportion of F's CPTSD and financial losses was caused by the primary school abuse (for which the Diocese was liable) versus the secondary school abuse and other adverse experiences?
 - How should interest run on solatium in historical abuse cases under the Limitation (Childhood Abuse) (Scotland) Act 2017 — does the 2017 Act restrict the interest period?
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Issues for the court when assessing future losses

[F v Gordon Chalmers & Others \[2025\] CSOH 23](#)

- Primary school abuse was the single biggest contributor to CPTSD — repeated penetrative abuse at age 5–6, from which escape was impossible
- *Blamire v South Cumbria HA [1993]* — lump sum appropriate where imponderables make precise calculation impossible
- Primary and secondary school abuse contributed roughly equally (35–40% each); other adverse factors 20–30%
- Court determined quantification of future losses involves more than applying the percentage of contribution



Lord Clark, Outer House, February 2025

Award: £627,000 gross

55% apportionment to primary school abuse

[F v Gordon Chalmers & Others \[2025\] CSOH 23](#)

- Primary school abuse 55% causation; secondary school abuse 30%; other adverse factors 15% — but Blamire lump sum adopted due to evidential imponderables
- Loss of earnings: £350,000 lump sum (past and future); pension loss: £130,000; solatium: £135,000; treatment: £12,000 — gross total £627,000 less £153,749 prior payments
- 2017 Act does not restrict interest period — to limit interest to post-2017 would radically reduce awards in all historical abuse cases; court declined to interfere with established approach
- GILTS-rate challenge rejected: one-year GILTS is the lowest-returning investment option; other comparators (equities, property) would support the JM rates or higher — interest £125,000



Practical Considerations

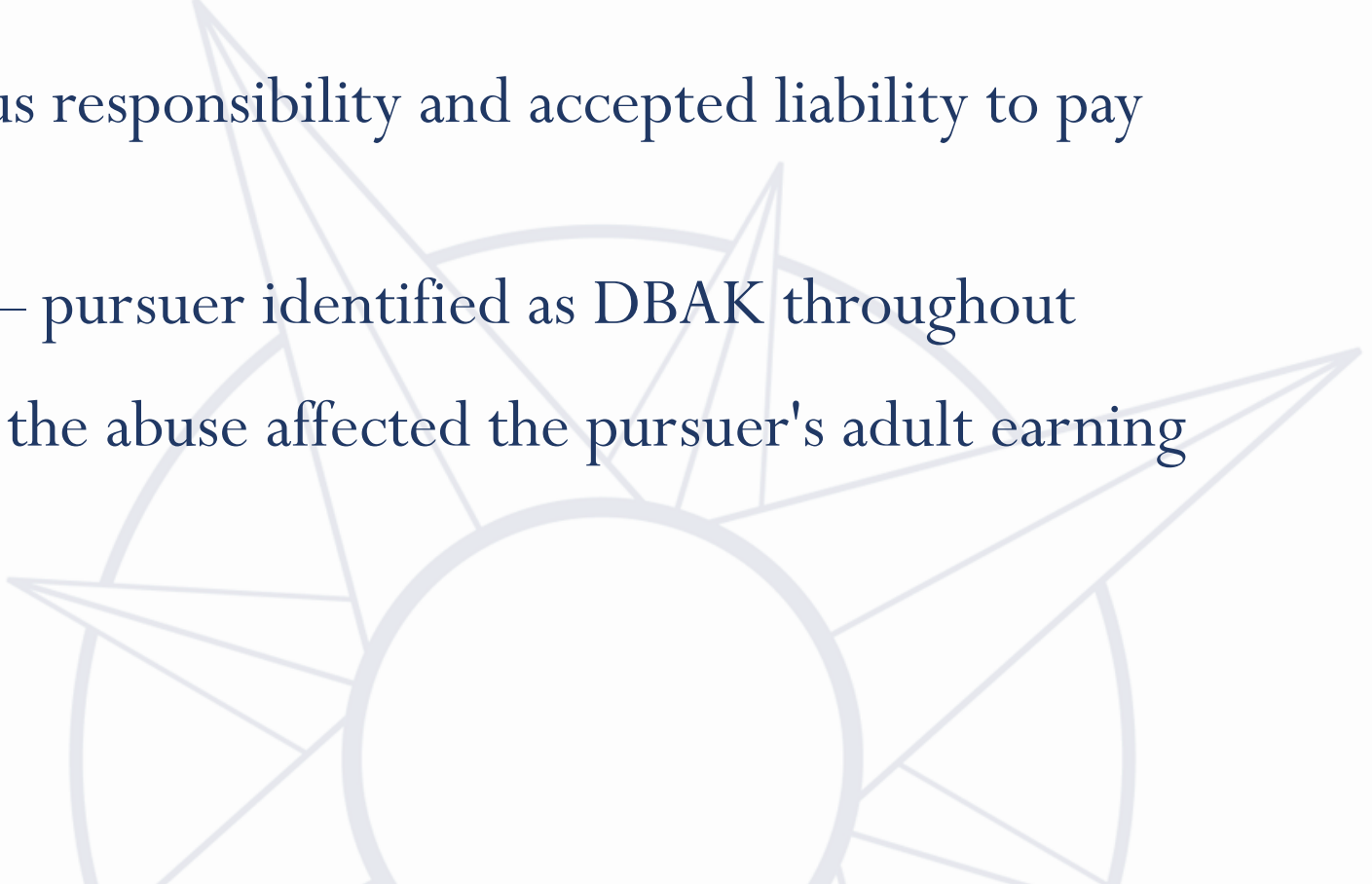
[F v Gordon Chalmers & Others \[2025\] CSOH 23](#)

- The 2017 Act does not limit the interest period — interest runs from the date of abuse; in cases from the 1970s or 1980s this can add approximately 50–100% to the solatium award
- In multifactorial CPTSD, identify and emphasise the primary causative event clearly; the Blamire lump sum is available where precise multiplier/multiplicand calculation is impossible
- Establish severity and duration of the primary abuse specifically — a criminal conviction is compelling evidence
- Focus apportionment argument on other serious contributing factors — secondary school abuse, other adverse life events — to identify the share attributable to each defender
- Blamire lump sum: what specific imponderables justify departure from the conventional approach?
- Test the actuary's pension loss assumptions: retirement age, career trajectory, multiplier, contingencies



Future Earnings – but for, career trajectory

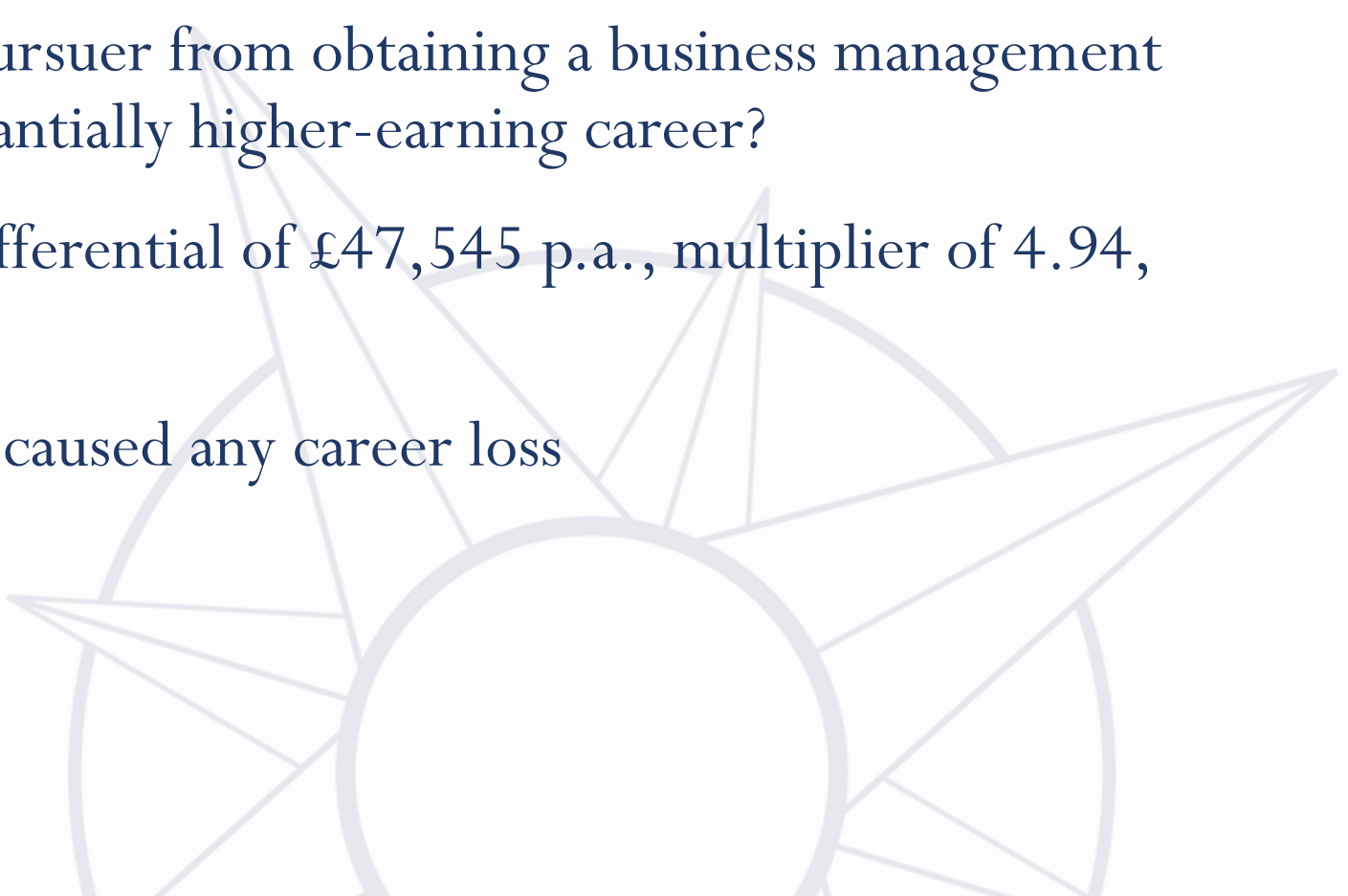
[DBAK v Governors of the Fettes Trust \[2026\] CSOH 5](#)

- Pursuer repeatedly sexually abused by a schoolteacher at Fettes College (Edinburgh) many years before the action
 - Defenders admitted vicarious responsibility and accepted liability to pay damages
 - Anonymity order in place — pursuer identified as DBAK throughout
 - Sole issue at proof: whether the abuse affected the pursuer's adult earning capacity
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Questions to be determined

[DBAK v Governors of the Fettes Trust \[2026\] CSOH 5](#)

- Did the abuse prevent the pursuer from obtaining a business management degree and pursuing a substantially higher-earning career?
 - Pursuer claimed earnings differential of £47,545 p.a., multiplier of 4.94, pension loss of £350,000
 - Defenders denied the abuse caused any career loss
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Expert Evidence

Pursuer

- Dr Lisa Reynolds (clinical psychologist) and Dr Jacqueline Scott (psychiatrist) — abuse caused PTSD during and after the abuse period
- Employment expert Keith Carter — 'but for' career in business management; earnings differential of £47,545 p.a.
- Actuary John Pollock — pension loss £350,000; multiplier 4.94; 25% discount

Defender

- Professor Mezey (forensic psychiatrist) — psychological effects minor; no causal link to career loss
- Lord Young rejected Prof Mezey's evidence: her experience focused on offenders and healthcare professionals, not general abuse victims; report contained factual errors throughout
- The claimed 'but for' career path was insufficiently established on the evidence



Lord Young, Outer House, January 2026

Award: £97,604

PTSD accepted, but for Career not established

- PTSD established: Dr Reynolds and Dr Scott's evidence preferred — abuse caused PTSD during and for some years after the abuse
- Career loss rejected: pursuer failed to prove the abuse caused him to miss out on a business management degree and higher-earning career
- Pension loss fell away: entirely dependent on the career claim — £350,000 rejected in full
- Proving psychological harm and proving financial loss are two distinct questions — both must be independently answered



Practical Considerations

- Psychological harm is necessary but not sufficient — separately prove the causal link to the specific financial loss claimed
- Build a rigorous 'but for' career narrative: school records, teacher statements, family background, any steps taken towards the claimed career
- Expert selection is critical — courts scrutinise the specific clinical focus of an expert, not just seniority
- Challenge the 'but for' career path rigorously — look for absence of steps taken: no university application, no relevant work experience, no contemporaneous ambition
- Ensure your psychiatric expert has specific experience with abuse victims in general clinical practice, not a specialist sub-population
- Even where PTSD is conceded, evaluate the causal gap between psychological harm and claimed financial loss
- Test actuarial assumptions: retirement age, multiplier, discount for contingencies



Wage loss where there is undeclared income

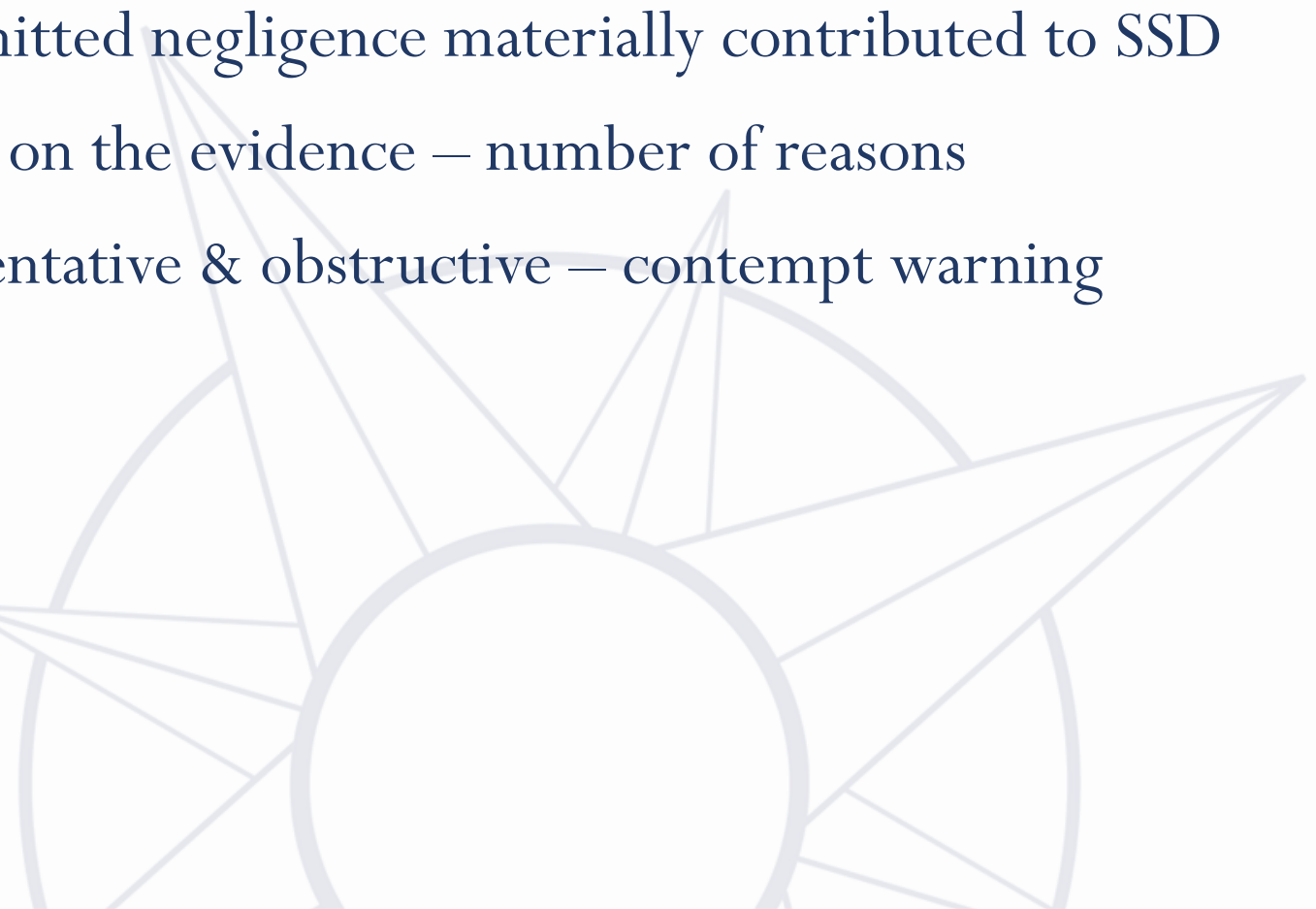
[Brian Taylor v Forth Valley Health Board \[2025\] CSOH 103](#)

- Kidney removed at Stirling Royal Infirmary (2005) - operation successful; Pursuer cancer-free
- Pursuer subsequently developed Somatic Symptom Disorder (SSD) - persistent unexplained physical symptoms - unable to work since 2011
- Def admitted negligence - informed consent could not properly have been obtained on the morning of surgery - operation should have been postponed
- Lord Ericht – Proof on causation of SSD and quantum



Questions to be determined

[Brian Taylor v Forth Valley Health Board \[2025\] CSOH 103](#)

- Re causation – Para [57] - admitted negligence materially contributed to SSD
 - Re quantum - interesting case on the evidence – number of reasons
 - Para [4] – P dogmatic, argumentative & obstructive – contempt warning
 - But – typical of SSD sufferers
 - Also :
 - difficulties assessing wage loss
 - interesting quirk re services
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Wage Loss Issues

- Para [34] – P not account for or pay tax to HMRC
- Defs :
 - failure to pay tax = fraud
 - not seek dismissal due to admitted negligence – P had a good claim
 - but – left it to Court to decide whether to dismiss
 - w/f - sought disallowance of loss of earnings due to dishonesty
- P :
 - no authority to support outright dismissal in these circs
 - Grubb v Findlay – only dismiss where dishonest invention of claim
 - no authority re loss of wage loss claim for failure to declare



Wage Loss Issues

- Lord Ericht :
- Para [38] :
 - not sort of dishonesty to justify dismissal or refusal of wage loss in England
 - had regard to C of A in Newman v Folkes and to Kemp & Kemp
- Para [39] :
 - nor would it justify dismissal or refusal in Scotland
 - liability conceded – good claim – not fundamentally dishonesty
- Para [40] – entitled to LOE – but, lack of accounting posed quantum challenges



Wage Loss Issues

- Para [68] – both Parties agreed that Court use “multiplier x multiplicand”
 - Odd? – lack of vouching = imponderables = lump sum?
 - Para [70] – business finances “chaotic”!
- But - Lord Erich referred to F v Chalmers
- Past :
 - groundworker
 - oral evidence of estimated pre-accident earnings
 - some limited HMRC figures
 - Para [80] – “How, then, should I deal with wage loss?”



Wage Loss Issues

- Para [84] – “these difficulties are not so severe that P has not proved his case”
- Court adopted P’s suggested approach
 - estimated lost earnings on basis of ASHE figures for relevant occupation
 - P used range of figures from Defs’ expert report
 - average = £25,000 x 19 years = £475,000
 - deduct 2 to 3 years for periods of unemployment = £400,000 to £425,000
 - deduct estimated post-surgery earnings - £50,000 broad brush
- Award - £400,000 less £50,000 = £350,000




Wage Loss Issues

- Future – Para [85]
- P – primary position “
 - “but for” – work to age 70 = multiplier of 4
 - estimated multiplicand = £30,000
 - award = £120,000
- P - secondary position :
 - award half i.e. £60,000
 - possibility that reduce hours or not work to 70
- Court went with secondary - subconscious justice in action...

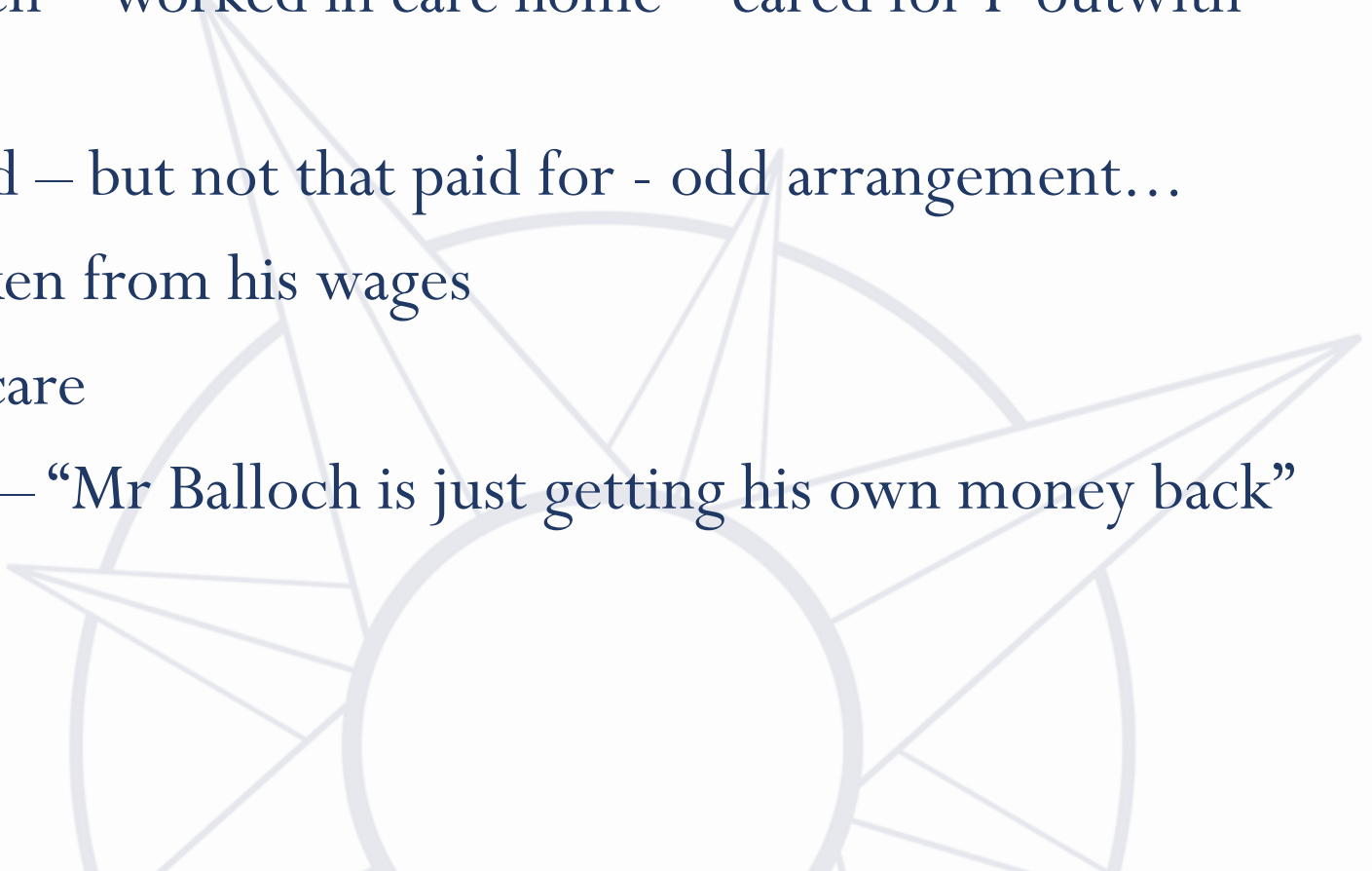


Services & Paid Care

- Section 8 services
 - Care provided by daughter
 - Meals and medication
 - Cleaning
 - Emotional support
 - Para [89] – no award made :
 - P incredible/unreliable
 - no supporting evidence from daughter
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Services & Paid Care

- Past paid care :
 - Care provided by a Mr Balloch – worked in care home – cared for P outwith work
 - Court accepted care provided – but not that paid for - odd arrangement...
 - Balloch lent P £500 pm – taken from his wages
 - P paid it back to him for his care
 - Para [95] – “makes no sense” – “Mr Balloch is just getting his own money back”
 - No award!
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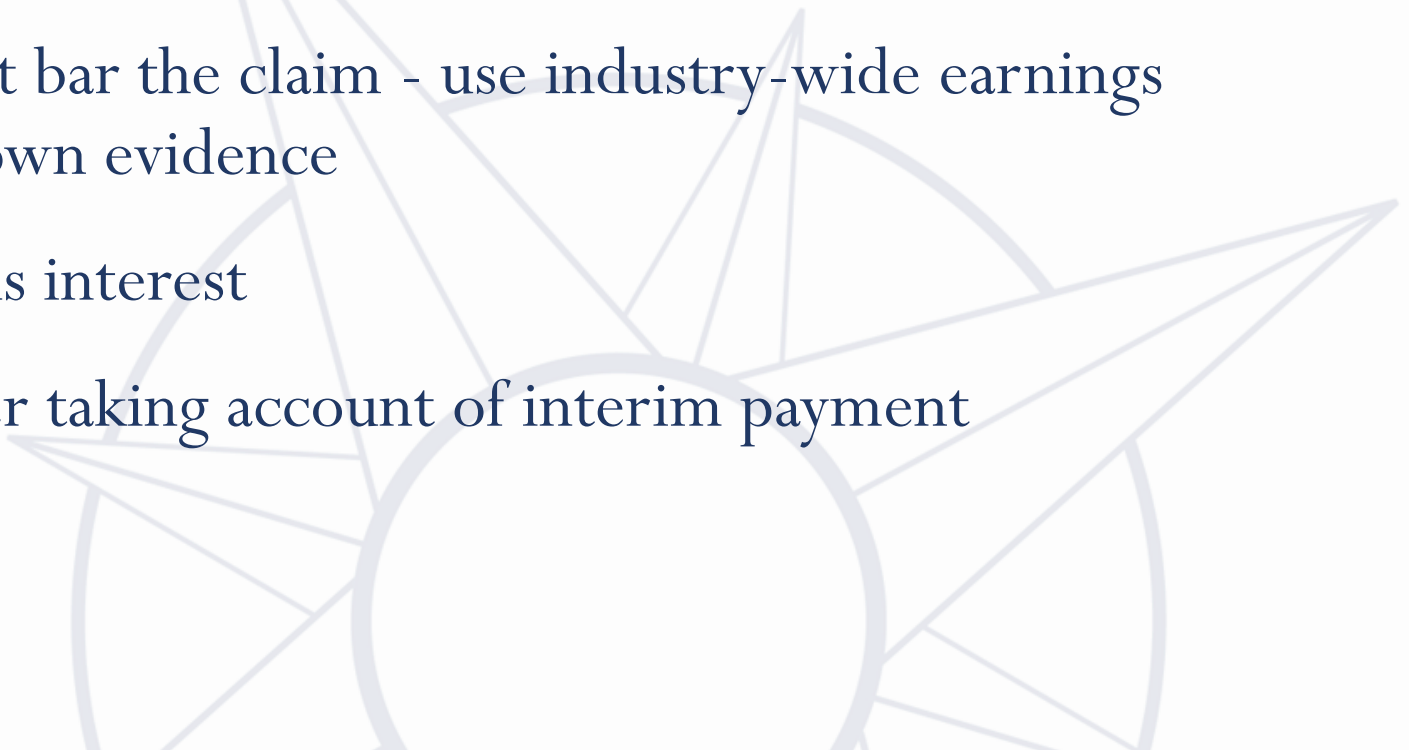


Services & Paid Care

- Future paid care :
- Multiplier per the care experts and agreed at £30,000 pa
- But - argument re multipliers
- P – while life = 19.08 – small reduction for some care “but for” = 17 years
- Defs – 17 years “not reflect what was required” – broad brush = 12.7 years
i.e. 2/3 of 19.1
- Court Para [99] – Defs’ figure preferred due “to need for care due to ageing”

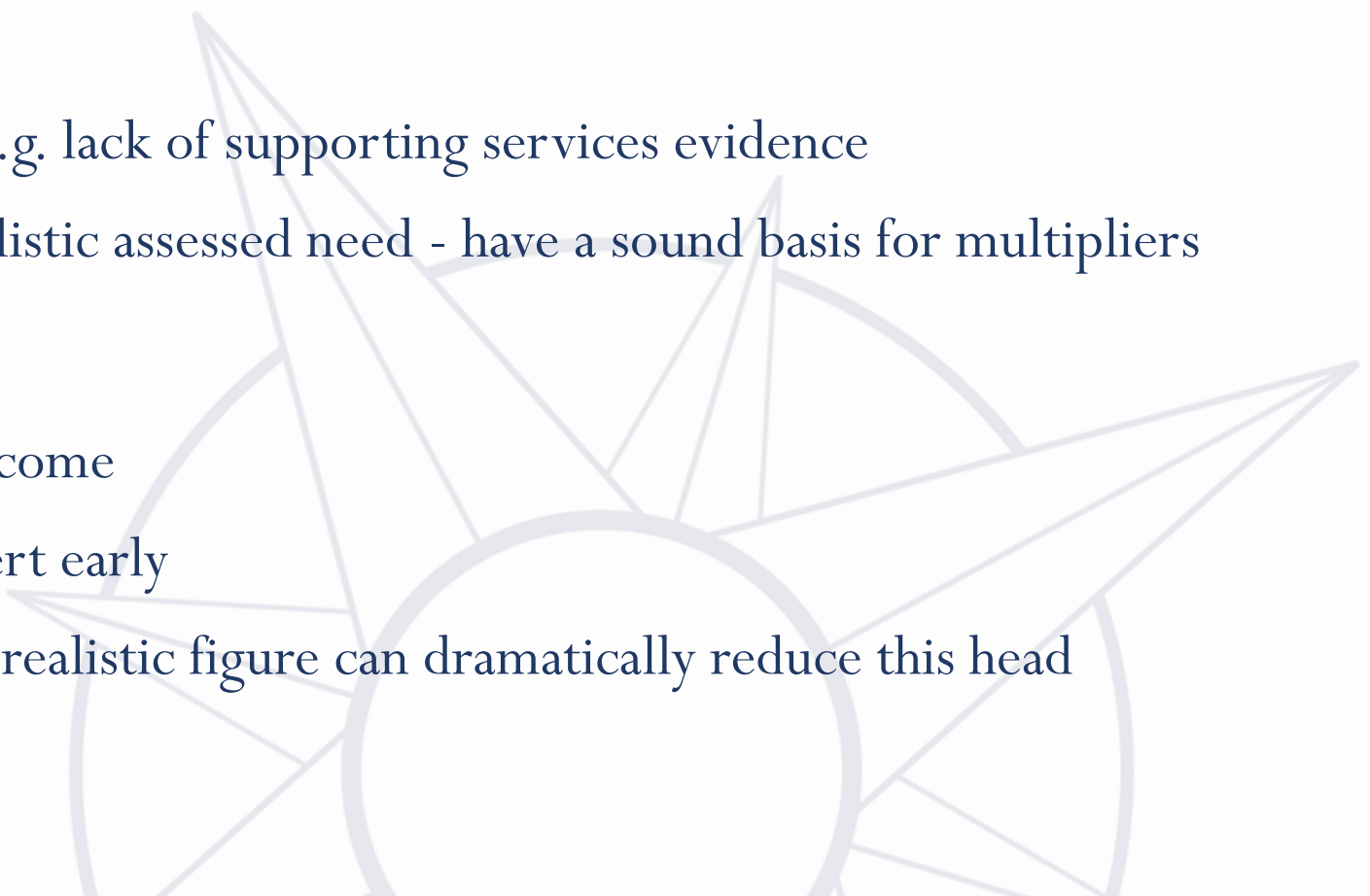


Takeaways...

- SSD = a genuine, compensatable psychiatric condition with real impact on earning capacity and daily life
 - Undeclared income does not bar the claim - use industry-wide earnings statistics in place of the P's own evidence
 - Total award = £904,000 plus interest
 - Interest to be calculated after taking account of interim payment
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Takeaways...

- Pursuers :
 - be aware of evidential gaps e.g. lack of supporting services evidence
 - build paid care claims on realistic assessed need - have a sound basis for multipliers
 - Defenders :
 - do not rely on undeclared income
 - consider your own care expert early
 - case shows a well-evidenced realistic figure can dramatically reduce this head
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Lost Years Damages for Young Children

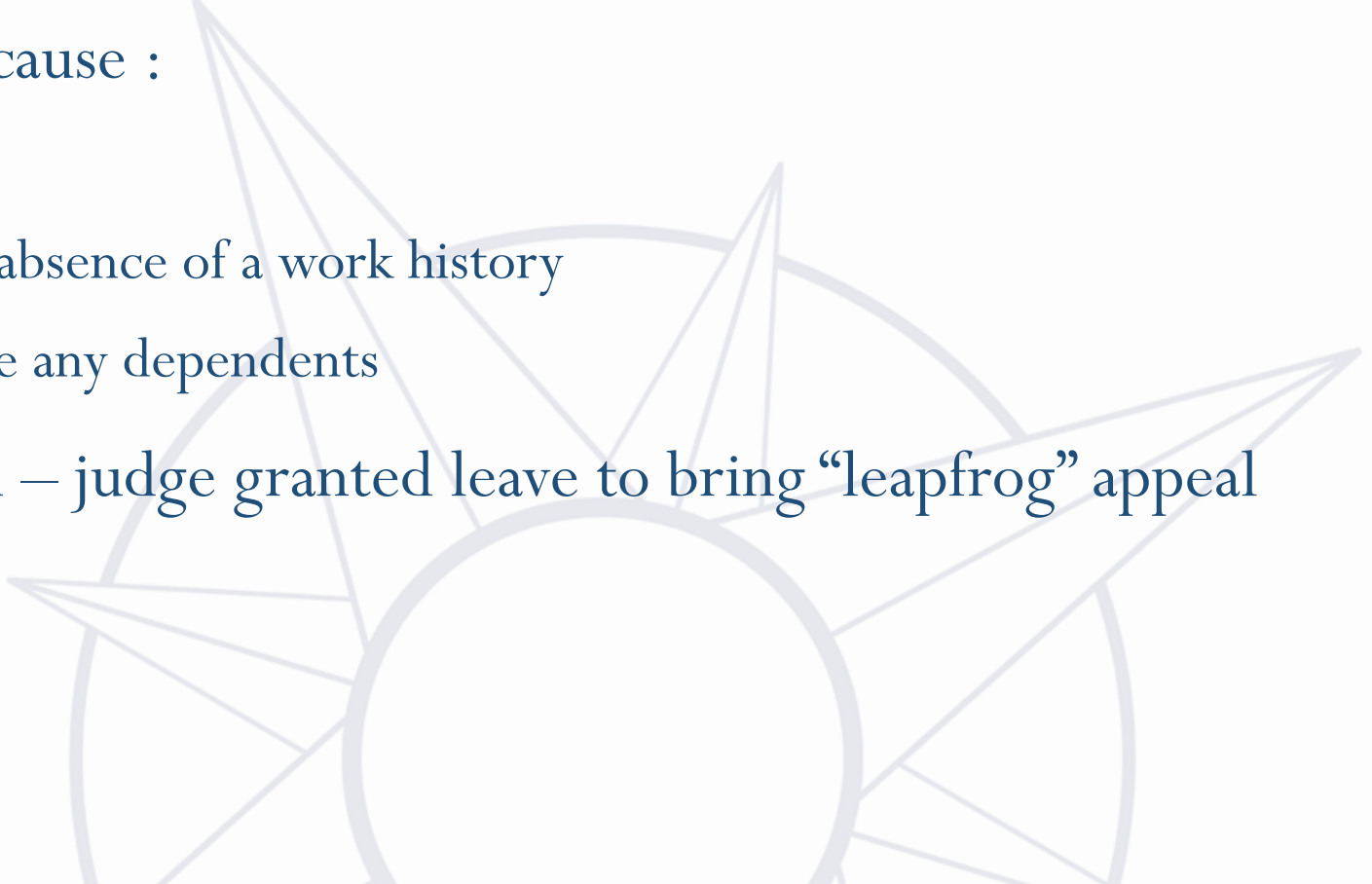
[CCC v Sheffield Teaching Hospitals \[2026\] UKSC 5](#)

- England is catching up.....!
- Child sustained a hypoxic brain injury at birth - severe cerebral palsy.
- Liability was admitted and Parties agreed a number of facts, including :
 - but for injury - had a normal life expectancy
 - would have attained GCSEs and gone into paid employment
 - would have retired at 68 and received a pension for the remainder of life
 - now - life expectancy reduced to 29
 - loss of earnings up to age 29 would have been £160,000



Diminished earning capacity for a child too speculative ?

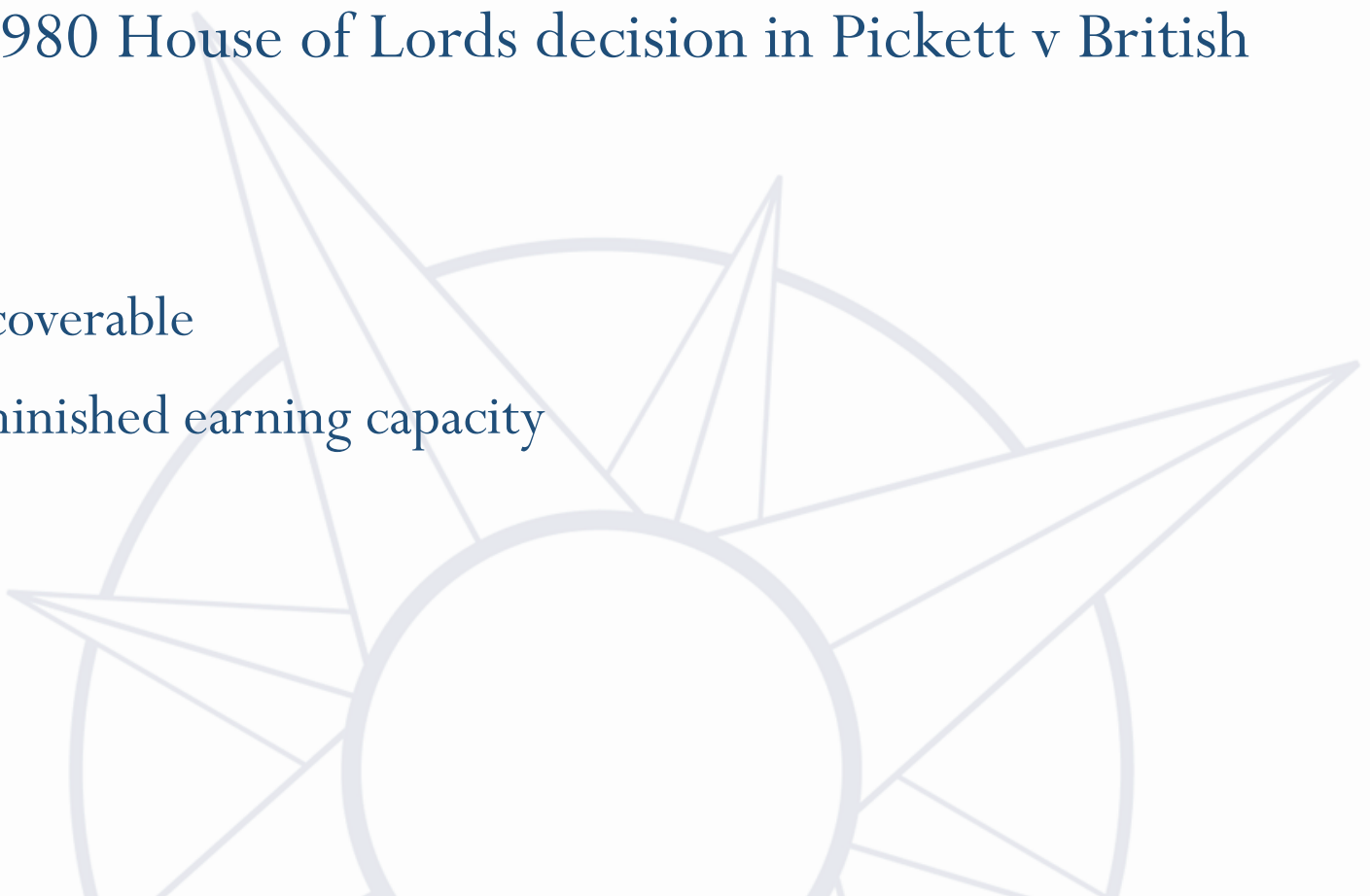
[CCC v Sheffield Teaching Hospitals \[2026\] UKSC 5](#)

- Trial judge awarded loss of earnings only to age 29 - on basis that bound by 1982 Court of Appeal decision in *Croke v Wiseman* – that claim for “lost years” earnings excluded because :
 - claimant was a young child
 - claim was too speculative in absence of a work history
 - cannot assume that child have any dependents
 - Parties agreed that so bound – judge granted leave to bring “leapfrog” appeal to Supreme Court
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Issues for the court

[CCC v Sheffield Teaching Hospitals \[2026\] UKSC 5](#)

- Claimants relied on earlier 1980 House of Lords decision in *Pickett v British Rail Engineering* :
 - claimant was an adult
 - damages for lost years are recoverable
 - loss being claimant's own diminished earning capacity
 - less living expenses
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The reasoning adopted by the court

[CCC v Sheffield Teaching Hospitals \[2026\] UKSC 5](#)

- SC (Lady Rose dissenting) :
 - no rule excluding “lost years” claim by children
 - cannot justify such a rule on basis that award depended on existence of dependents
 - the award was the child’s own award rather than anyone else’s
 - cannot justify rule on basis that too speculative
 - compensatory principle - *restitutio in integrum* - applies to all claimants regardless of age
 - where quantification is difficult - that alone cannot justify denying compensation
 - advances in actuarial and statistical methods substantially reduced the weight of any speculation argument



It's a result!

[CCC v Sheffield Teaching Hospitals \[2026\] UKSC 5](#)

- English common law now aligned with the Scottish statutory provisions in Damages (Sc) Act 2011.
- Section 1(5) – assume that P live until notional date of death – if not injured
- Section 1(6) – assess “lost period” between expected and notional dates of death :
 - estimate earnings and benefits
 - deduct 25% for living expenses
- Section 1(7) – can vary 25% (up or down) to avoid “manifestly and materially unfair result”



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