

Compass Chambers



The cost of living (and dying) in the post-COVID world – a quantum update

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Friday 2 June 2023



Introduction

- Aims of the session are to provide:-
 - i. An update on recent fatal awards
 - ii. A more general update on quantum decisions;
 - iii. Conclude by thinking about how the current economic picture may impact personal injury practice; and,



iv. Finish before...





Cost of dying -

Series of fatal awards:-

McCulloch v Forth Valley Health Board [2020] CSOH 40

McArthur v Timberbush Tours Limited 2021 S.L.T. 1021

Heggerty-Garton & Others v Imperial Chemical Industries Limited [2021] EWHC 29 QB

Paterson & Others v Lanarkshire Health Board [2023] CSOH 1



McCulloch v Forth Valley Health Board [2020] CSOH 40

- Care should be taken when citing *McCulloch* as not all of the figures were awards. Most were reached by agreement.

Relationship	Loss of Society	RPI	CPI
Widow	£120,000.00	£153,110.62	£144,221.20
Son - 18 months (9 at proof)	£80,000.00	£102,067.08	£96,147.47
Daughter - 7 (15 at proof)	£80,000.00	£102,067.08	£96,147.47
Father	£30,000.00	£38,275.15	£36,055.30
Mother	£30,000.00	£38,275.15	£36,055.30
Twin Brother	£40,000.00	£51,033.54	£48,073.73
Sister	£25,000.00	£31,895.96	£30,045.08
Stepson - 13 (21 at proof)	£70,000.00	£89,308.69	£84,129.03



McArthur v Timberbush Tours Limited 2021

S.L.T. 1021

Relationship	Loss of Society	RPI	CPI
Mother	£100,000.00	£122,029.46	£117,160.83
Father	£100,000.00	£122,029.46	£117,160.83
Step-father	£70,000.00	£85,420.68	£82,012.58
Half-sister - 12 (15 at proof)	£45,000.00	£54,913.26	£52,722.37

- Award 22 July 2021
- Family described as having strong ties and being close with death causing a profound effect.
- Use of *McCulloch* as support for the proposition that the court shouldn't differentiate between blood and step siblings, but is that right? The figure for the step-child in *McCulloch* was agreed.
- Nonetheless, don't anticipate anyone would dispute that the court would, and should, look at the evidence of strength of relationships taking account of fact that a family is a family whether its blended or traditional.
- What makes a family have strong ties and be described as particularly close?

Heggerty-Garton & Others v Imperial Chemical Industries Limited [2021] EWHC 2924 QB

<u>Relationship</u>	<u>Loss of Society</u>	<u>RPI</u>	<u>CPI</u>	<u>Award?</u>
Widow	£115,000.00	£136,404.71	£130,969.43	Award
Son - 20 (22 at trial)	£40,000.00	£47,445.12	£45,554.59	Award
Son - 17 (19 at trial)	£40,000.00	£47,445.12	£45,554.59	Award
Son - 10 (12 at trial)	£35,000.00	£41,514.48	£39,860.26	Award
Daughter	£50,000.00	£59,306.40	£56,943.23	Agreement
Daughter	£50,000.00	£59,306.40	£56,943.23	Agreement
Sister	£28,000.00	£33,211.58	£31,888.21	Agreement
Sister	£28,000.00	£33,211.58	£31,888.21	Agreement
Granddaughter	£18,000.00	£21,350.30	£20,499.56	Agreement

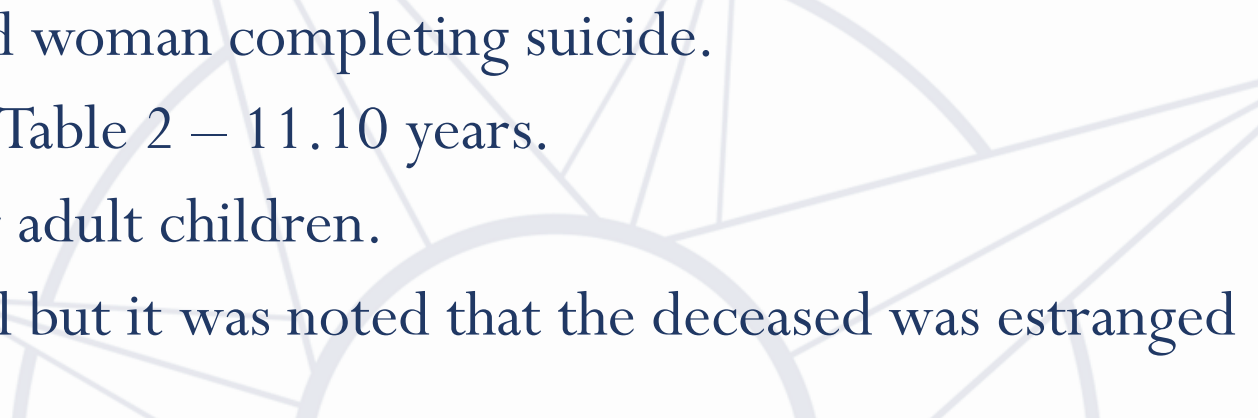
- English case concerning application of Scottish quantum of damages.
- Better case than *McCulloch* for blended families? Sons were a product of previous relationship.

[74] As for the boys, the evidence in relation to them is sufficient in my judgment to bring them within what would be regarded as normal awards for children, by which I include step-children, cared for by the deceased.



Paterson & Others v Lanarkshire Health Board [2023] CSOH 1

<u>Relationship</u>	<u>Age</u>	<u>Loss of Society</u>
Mother	78	£100,000.00
Daughter	20	£70,000.00
Son	22	£70,000.00
Brother	Unknown	£5,000.00
Step-sister	Unknown	£5,000.00

- Tragic case concerning a 35 year old woman completing suicide.
 - Mother - 78 years. Life expectancy Table 2 – 11.10 years.
 - Thought to be highest award yet for adult children.
 - Relationships not described in detail but it was noted that the deceased was estranged from her brother and step-sister.
- 

Keeping up with the Juries...

Case	Relationship	Date	Award	Award (RPI)	Award (CPI)
Stranger v Flaws and Proctor	Spouse - 72	17/06/2016	£120,000.00	£170,034.21	£155,546.72
	Sons - 49/46	18/06/2016	£50,000.00	£70,847.59	£64,811.13
	Grandchildren - mid-teen	19/06/2016	£15,000.00	£21,254.28	£19,443.34
	Granddaughter - 13	20/06/2016	£20,000.00	£28,339.03	£25,924.45
Anderson v Brig Brae Garage Ltd	Partner - 35	25/06/2015	£140,000.00	£201,591.35	£182,195.61
	Daughter - 3	26/06/2015	£80,000.00	£115,195.06	£104,111.78
	Father - 56	27/06/2015	£80,000.00	£115,195.06	£104,111.78
Scott v Parks	Parent	23/05/2014	£86,000.00	£125,286.44	£112,144.00



Cost of Living – *AB v Christian Brothers* – Part 2, unreported, 4 Feb 2022

- Second instalment of Sheriff Dickson’s judgement following initial decision reported at [2022] SC EDIN 7.
- Further hearing was fixed to determine the question of interest, multiplier for future wage loss and CRU liabilities.
- Battleground was in relation to interest on past wage loss.
- Pursuer sought interest on past LOE at 4% from 26 April 1983 (date past wage loss began) to 31 January 2022 (date of hearing). Argued that past wage loss was assessed at the date it was incurred and did not take account of inflation (unlike solatium).



AB v Christian Brothers – Part 2, unreported, 4 Feb 2022

- Defender's position was that interest should run from the date of citation which failing the date the Limitation (Childhood Abuse)(Scotland) Act 2017 came into force.
- Defender's position was that applying interest at 4% resulted in a windfall. List of factors given in support of the position.
- Court held that *JM v Fife Council* was binding and the approach taken by the Inner House should also apply in relation to interest on past wage loss.
- Past wage loss = £395,354 – Interest on past wage loss = £613,583.
- Note – no actuarial evidence.



Riley v Salford Royal [2022] EWHC 2417

- Clinical negligence case resulting in a below the knee amputation.
- Helpful as the case analysis a number of different heads of claim not often seen in Scottish cases.
- Dispute on what basis future LOE should be awarded: *Ogden v Blamire*.
- Accommodation claim with an added complication of a failure to mitigate argument. Should be the claimant have sought a contribution towards various costs from partner.



Riley v Salford Royal [2022] EWHC 2417

- *Loss of earnings:-*

- Explanatory notes are helpful.
- Give guidance as to approach to be taken.
- Uncertainties aren't enough to justify departing from the tables.
- Claimants particular circumstances may justify departure.

- *Failure to mitigate accommodation claim:-*

- No authority to support the proposition that a claimant should seek a contribution from a parent or partner.
- Noted that the criticism wasn't put to the pursuer which it should have been if it was to be seriously pursued.



Murphy v Dunbia (UK) t/a Highland Meats [2022] CSOH 65

- Motion for £30,000 interim damages.
- Pursuer had previously had a voluntary payment of £40,000 from the defenders and an award of £10,000 had been made previously.
- Two issues arose:—
 1. Was the sum sought more than a reasonable proportion of the damages?
 2. Whether there had been a change of circumstance since the date of the previous award giving rise to an entitlement for the pursuer to make a further motion.
- Rule 43.11(6) (OCR 36.09(6)) —

“Notwithstanding the grant or refusal of a motion for an interim payment, a subsequent motion may be made where there has been a change of circumstances.”



Murphy v Dunbia (UK) t/a Highland Meats [2022] CSOH 65

- Pursuer sought to argue that there was a change of circumstance for two reasons:-
 - Requirement of CBT
 - X Not a change in circumstance
 - Transfer of the case to Chapter 42A from Chapter 43 — no proof fixed.
 - X Delay in final decree not relevant factor. Rule requires consideration of quantum of damages not when the proof might take place.
- Noted by the Court that hardship not a factor to be considered in the motion.
- Motion refused.
- Obiter comments re CRU liability being offset.



Compass Chambers

Practical considerations of
current economic picture
in Personal Injuries claims

Economic crisis

Inflation

Fuel bills



Debt



Cost of living

Recession

Poverty

In case of emergency



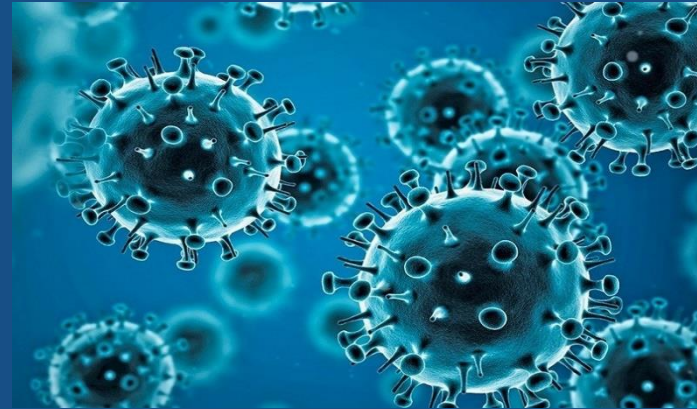
The Four Horsemen of the Apocalypse?



The Four Horsemen of the Apocalypse?



The Four Horsemen of the Apocalypse?



The Four Horsemen of the Apocalypse?



Plus

The Four Horsemen of the Apocalypse?







Effect on orthopaedic injuries?

As at end of March 2023,

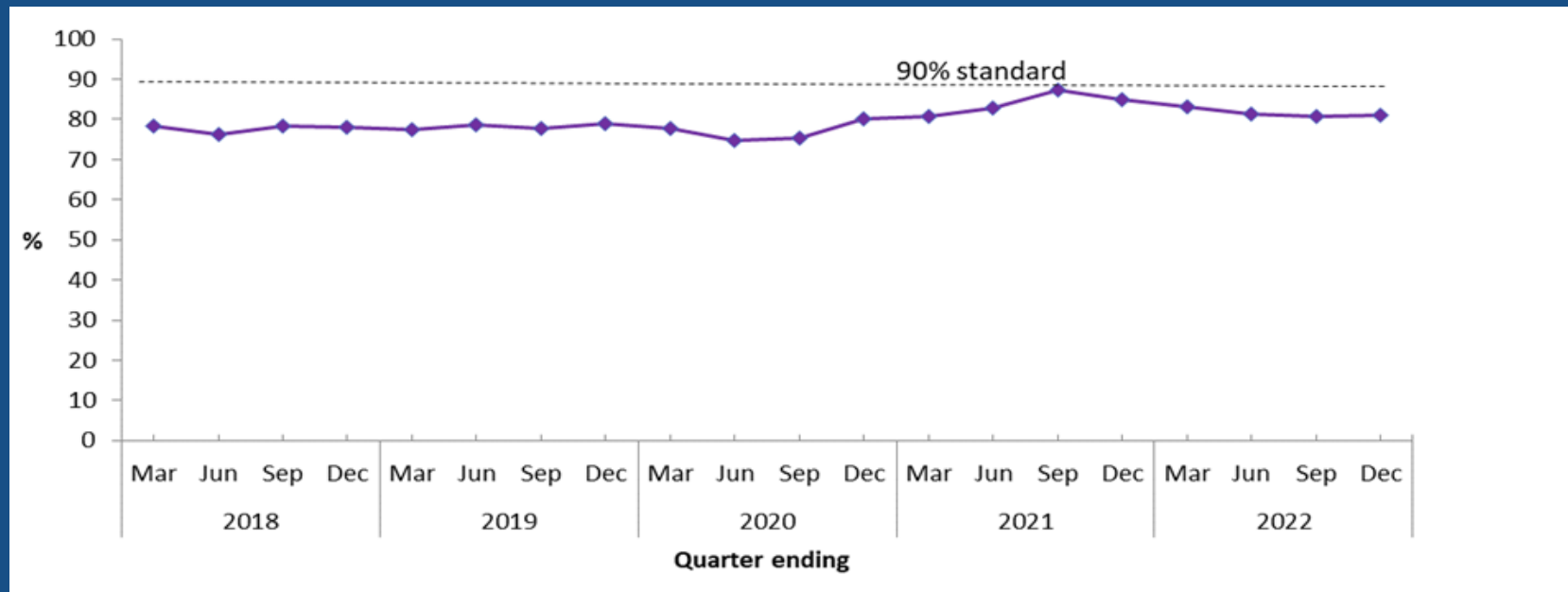
- *479,725 on NHS Scotland waiting list for outpatient treatment (87% higher than March 2020)*
- *31,498 patients waiting over 12 months for outpatient treatment*
- *147,241 on NHS waiting list for inpatient or day case treatment (89.8% higher than December 2019, pre-COVID)*
- *6,985 patients waited longer than 2 years for inpatient or day case treatment*



(Public Health Scotland, May 2023)

Effect on psychiatric injuries?

At end of Dec 2022, 81.1% of patients who started NHS psychological therapy within 18 weeks of referral
(Public Health Scotland)



General Practitioner attendances

In 2021/22, 46% of patients reported facing difficulties making an appointment with their GP

(Scottish Govt & Scottish Centre for Social Research)
(Nov 2022)

In 2022,

- decrease in numbers of fully-qualified GPs by 23 to 4,515
- decrease in “Whole Time Equivalent” to 3,494 (down 3% from 2021)

(Public Health Scotland)



General Practitioner attendances



*Is the Pursuer not attending
GP frequently because
their injuries are not as severe
as asserted*

or

*not worth the hassle for
something not considered by
them to be that beneficial?*

Increased desire for private medical treatment?

Self-funded private in-patient admissions in Scotland increased by 73% between 2019 and 2023

Visits for private healthcare increased by 17% over same period (UK average 5%)

(Private Healthcare Information Network, May 2023)



In both parties interests?

*Better prospect of success
if get surgery quicker?*

Back to work quicker?

Effects of lockdown and “Working From Home”



Effects of lockdown and “Working From Home”



Causation of psychiatric injuries?



*Population mental health worsened
during the pandemic
(especially at times of higher
restrictions)*

*Worsening sustained with increased
depressive and anxiety symptoms*

Increased prevalence of self-harm

(Public Health Scotland, Feb & July 2022)

Causation of psychiatric injuries?



Alcohol sales 9% lower in 2020 and 16% lower in 2021 than 2017-19 average

Restrictions to on-trade premises contributed to decrease

Rates of alcohol-specific deaths increased

Harmful drinking increased for some groups despite consumption reducing at population level

(Public Health Scotland, February 2022)

Causation of psychiatric injuries?

Working from home



- *Increased anxiety, stress and fatigue*
- *Heightened fear of job insecurity*
 - *Reduced motivation*
- *Increased physical pain (such as neck pain) from working at sofas and kitchen tables*

(Stirling University study, May 2021)

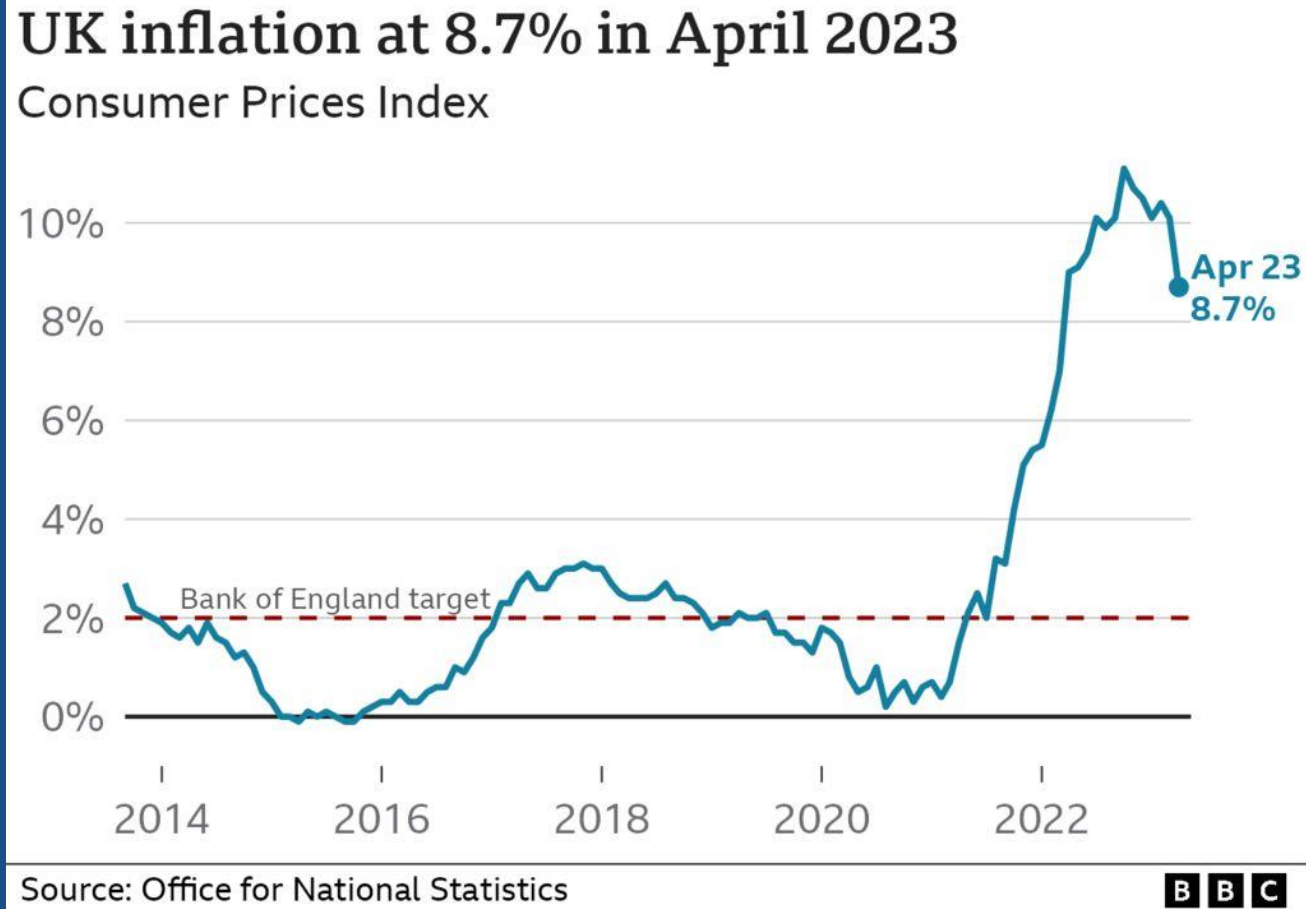
Section 4(3)(b) loss of society awards

“Distress and anxiety
endured
by the relative in the
contemplation of the suffering
of [the deceased] before
[their] death”

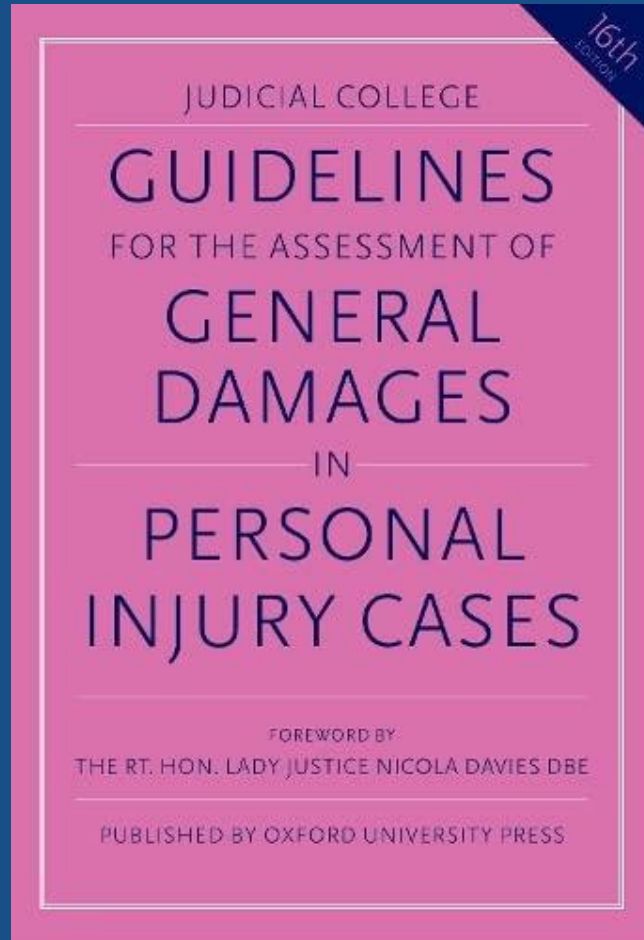


“grief and sorrow of
the relative”

Solatum and inflation



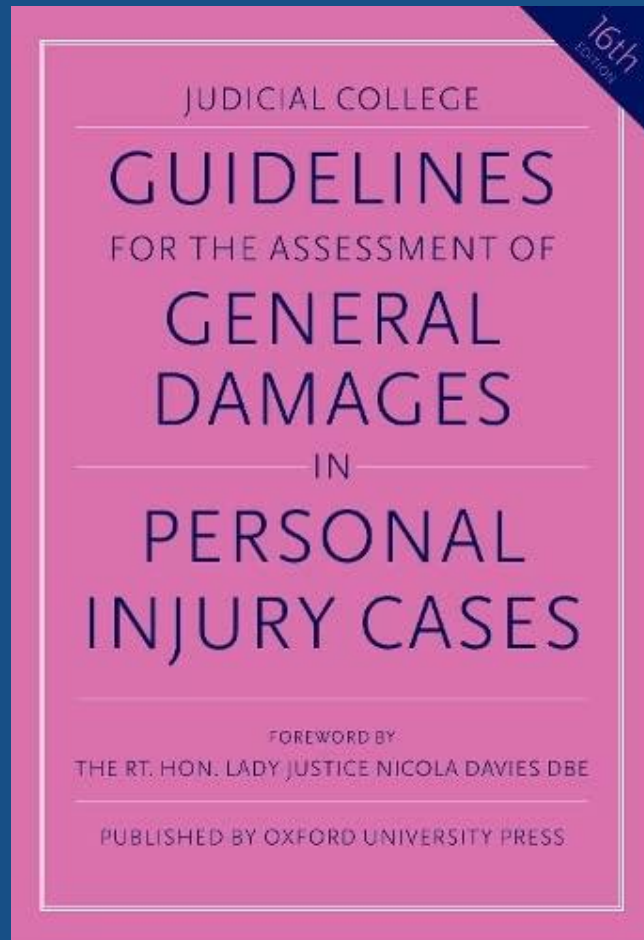
Solatium and inflation



*16th Edition (Apr 2022)
took into account general
increase in RPI over period
since 15th edition (Nov 2019)
of 6.56%*

*May 2022 to May 2023
Increase in RPI of 11.7%
(Office of National Statistics)*

Solatium and inflation

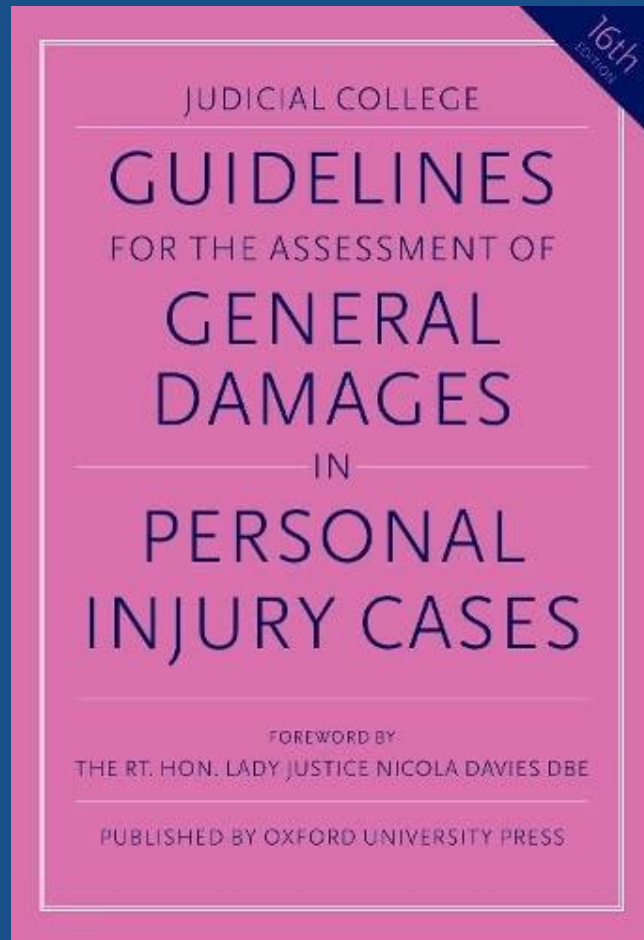


JC Guidelines *16th Edition (Apr 2022)*

Tetraplegia
(pre-uplift)
£295,061 to £367,227

Increase in RPI of 11.7%
£329,584 to £410,193

Solatium and inflation

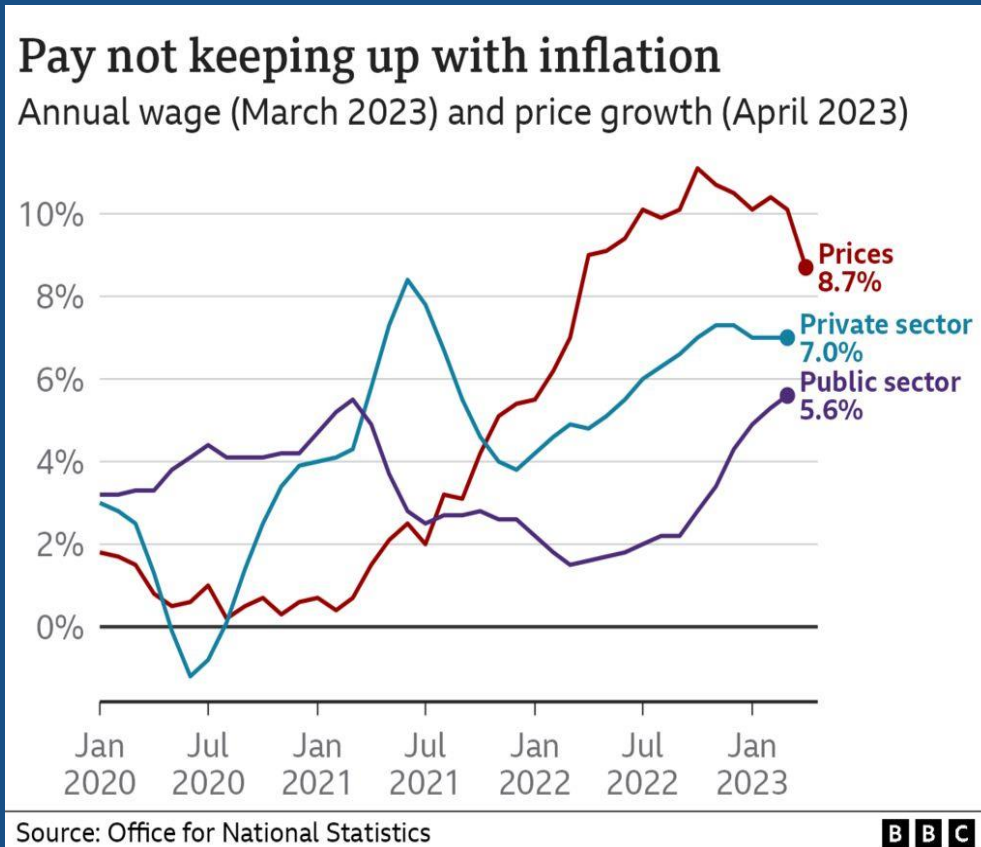


JC Guidelines
16th Edition (Apr 2022)

Severe PTSD
(pre-uplift)
£54,413 to £91,509

Increase in RPI of 11.7%
£60,779 to £102,216

Wage loss & loss of financial support claims



*Recent increases
in earnings*

*revisiting
vocational and
pension loss
reports?*

Wage loss & loss of financial support claims - The “but for” question

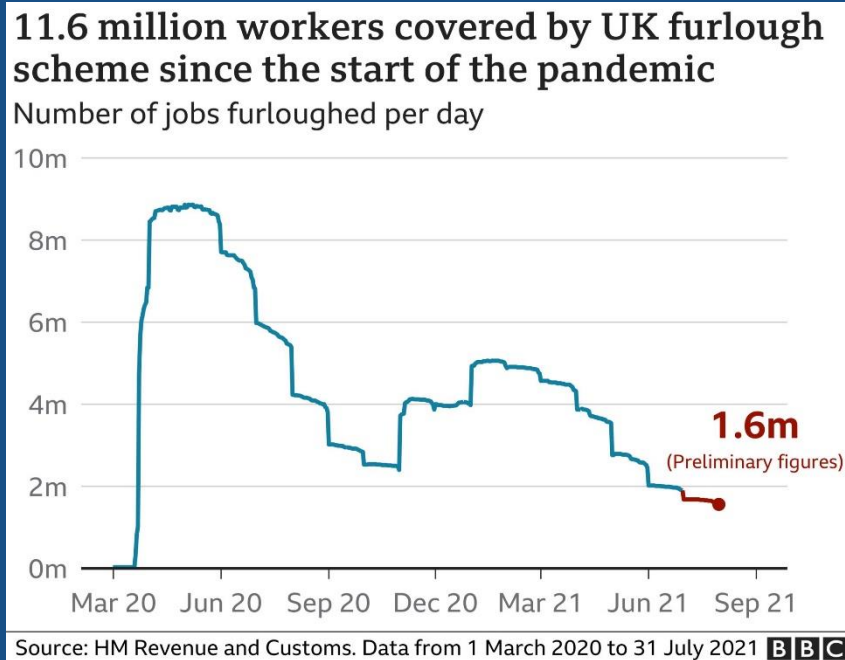


*Unemployment in Scotland increased
from 107,000 in March 2020
to 312,000 in July 2020*

*Number of business in Scotland
reduced by 5.4% between March 2020
and March 2021
(Smaller businesses not registered for
VAT or PAYE reduced by 10.3%)*

*(National Statistics for Scotland,
Nov 2021)*

Wage loss & loss of financial support claims



Earnings details adversely affected by furlough payments??

*11.6 million workers in UK benefitted from scheme
Peaked at 5.1 million in January 2021*

(HMRC)

Wage loss & loss of financial support claims

Or would the Pursuer/deceased have changed career and earned more?



Wage loss & loss of financial support claims

Or would the Pursuer/deceased have changed career and earned more?



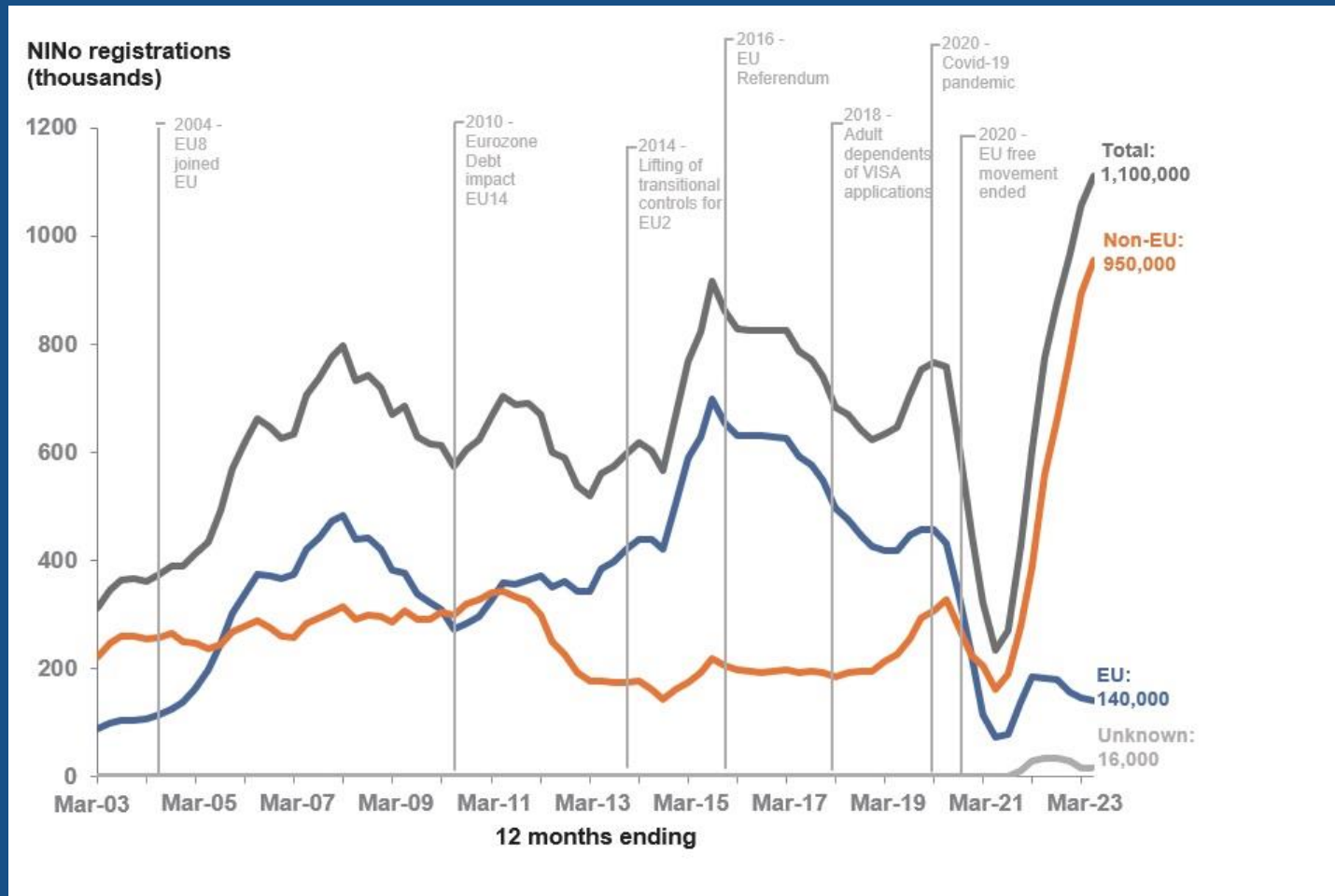
Care costs
Aids and equipment costs



*Wage increases
affecting costs of care*

*Inflation affecting
costs
of aids and equipment*

Availability of carers?



Accommodation claims

- Increase in costs of buying houses



- In 2022, average house price increased by 10.9% to £242,213
 - Edinburgh 12.9%
 - Glasgow 13.6%
 - Kirkcaldy 29%
- (Bank of Scotland, Jan 2023)

Accommodation claims

- Increased cost of building materials
 - for new builds and alterations



Increase in costs in last year

- Concrete reinforcing bars 37.9%
- Fabricated structural steel 26.7% (also increased by 52.6% in 2021)
- Ready mixed concrete 18.5%
- Metal doors and windows 14.4%
- Screws, etc 19%

(Statista, May 2023)

The Ogden Discount Rate – the future? Scotland

Rate is RPI -0.75%

- Since March 2017
- Govt Actuary kept it at that rate in Sept 2019
- Notional portfolio of typical Pursuer's investment choices
- Reviewed every 5 years



The Ogden Discount Rate – the future? Northern Ireland

Rate is RPI – 1.5%

- Since March 2022
- In May 2021, changed from RPI + 2.5% to RPI -0.75% on interim basis



The Ogden Discount Rate – the future? England

Rate is RPI – 0.25%

- Since Nov 2019
- Ministry of Justice consultation ended in April 2023
- Possibility of dual discount rates?



The Ogden Discount Rate – the future?

Dual discount rates

Jersey

Two single rates based on duration

- Plus 0.5% if future claim not exceed 20 years
- Plus 1.8% if future claim exceeds 20 years



The Ogden Discount Rate – the future? Dual discount rates

Republic of Ireland

Two different rates based on head of claim

- Plus 1% for future care costs
- Plus 1.5% for all other future pecuniary losses



Ask your client and experts!!!
Don't Assume





Be Curious

Not Judgemental

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