

Compass Chambers

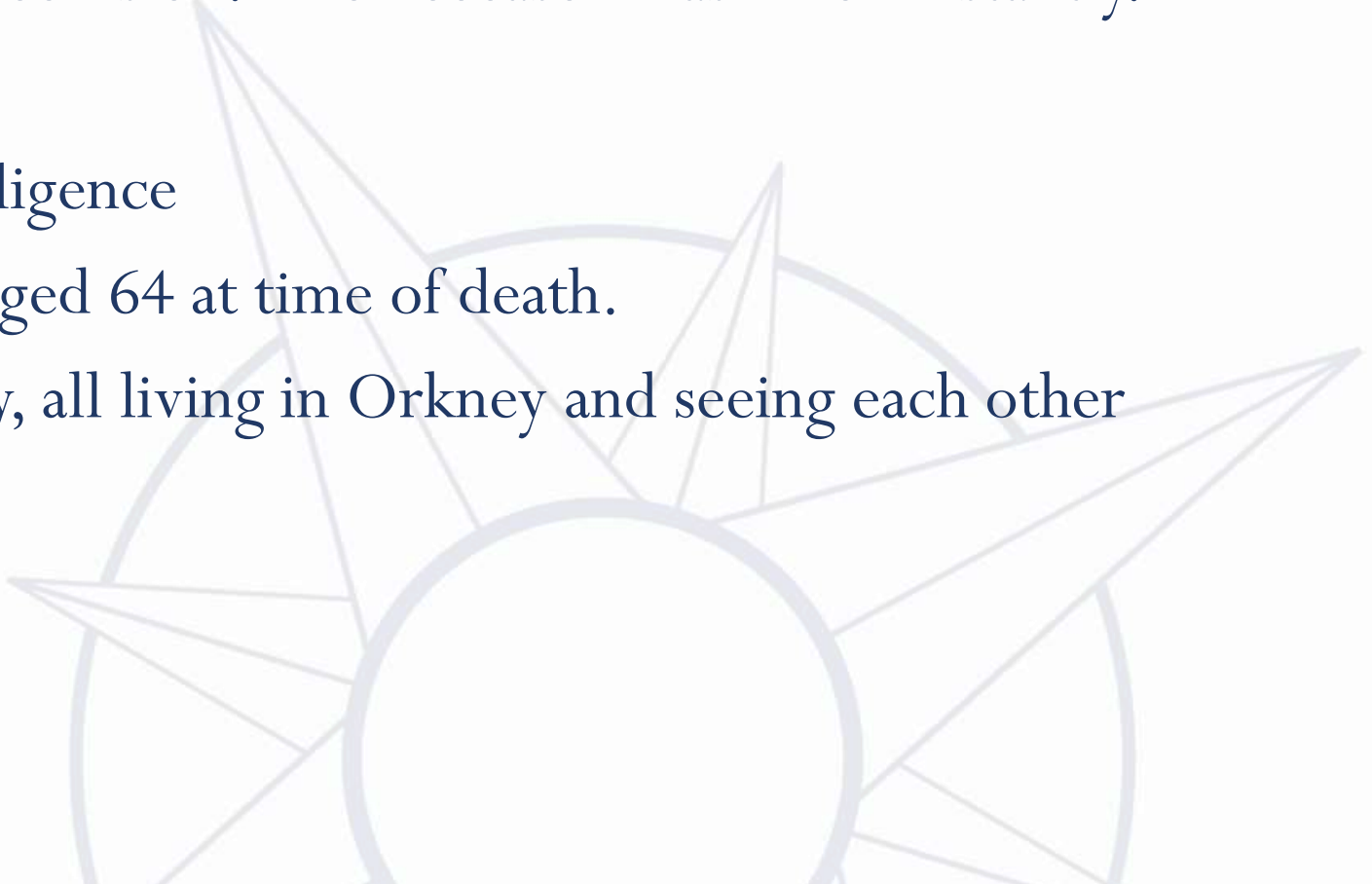


Fatal claims and civil jury trials

Robert Milligan KC

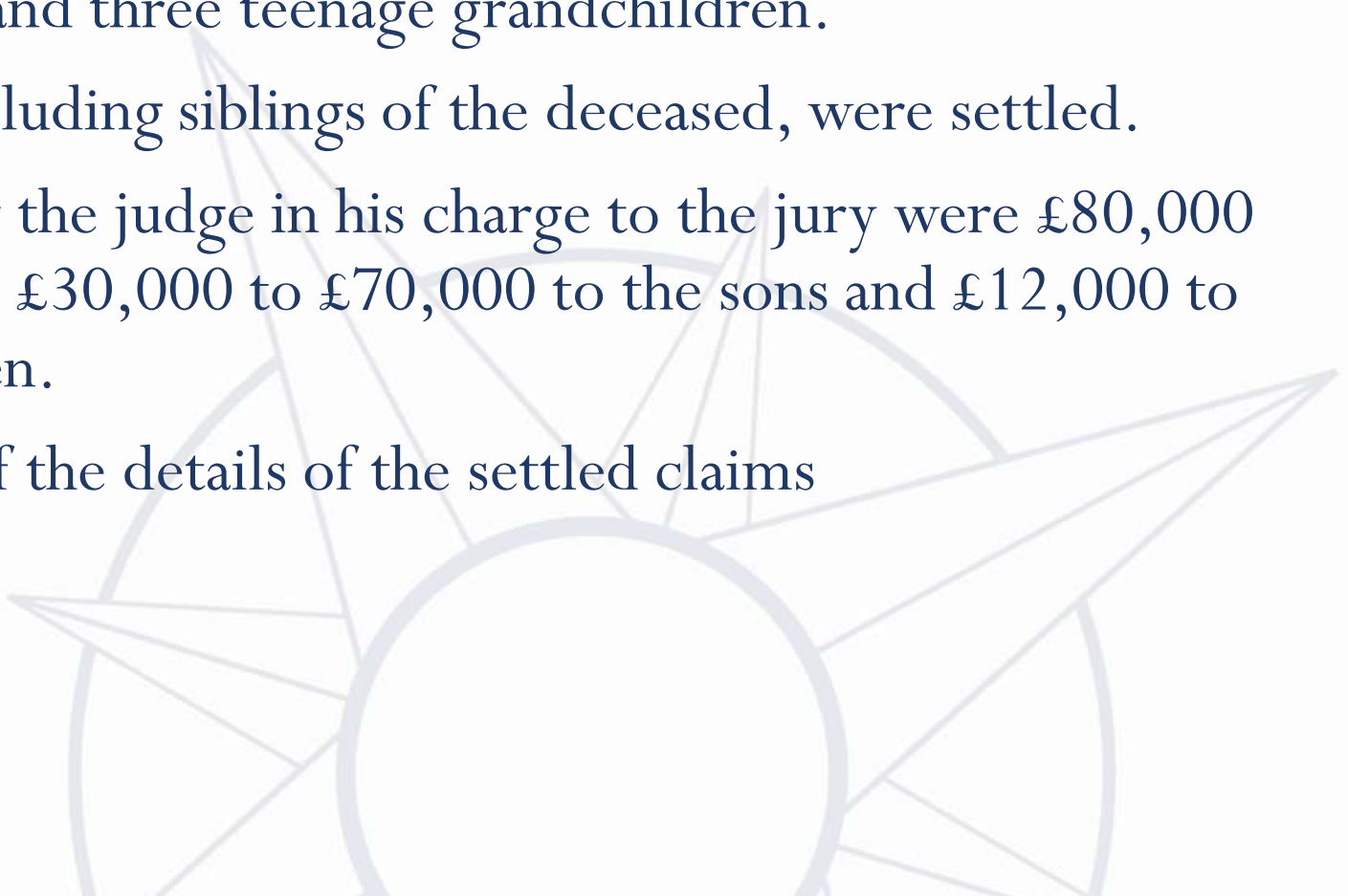


Stanger v Flaws (17/6/16)

- The pursuers were the family of the deceased, who was the passenger in a vehicle involved in a head on collision. The deceased was killed instantly.
 - Liability was not disputed.
 - No issue of contributory negligence
 - The deceased was a woman aged 64 at time of death.
 - They were a very close family, all living in Orkney and seeing each other regularly
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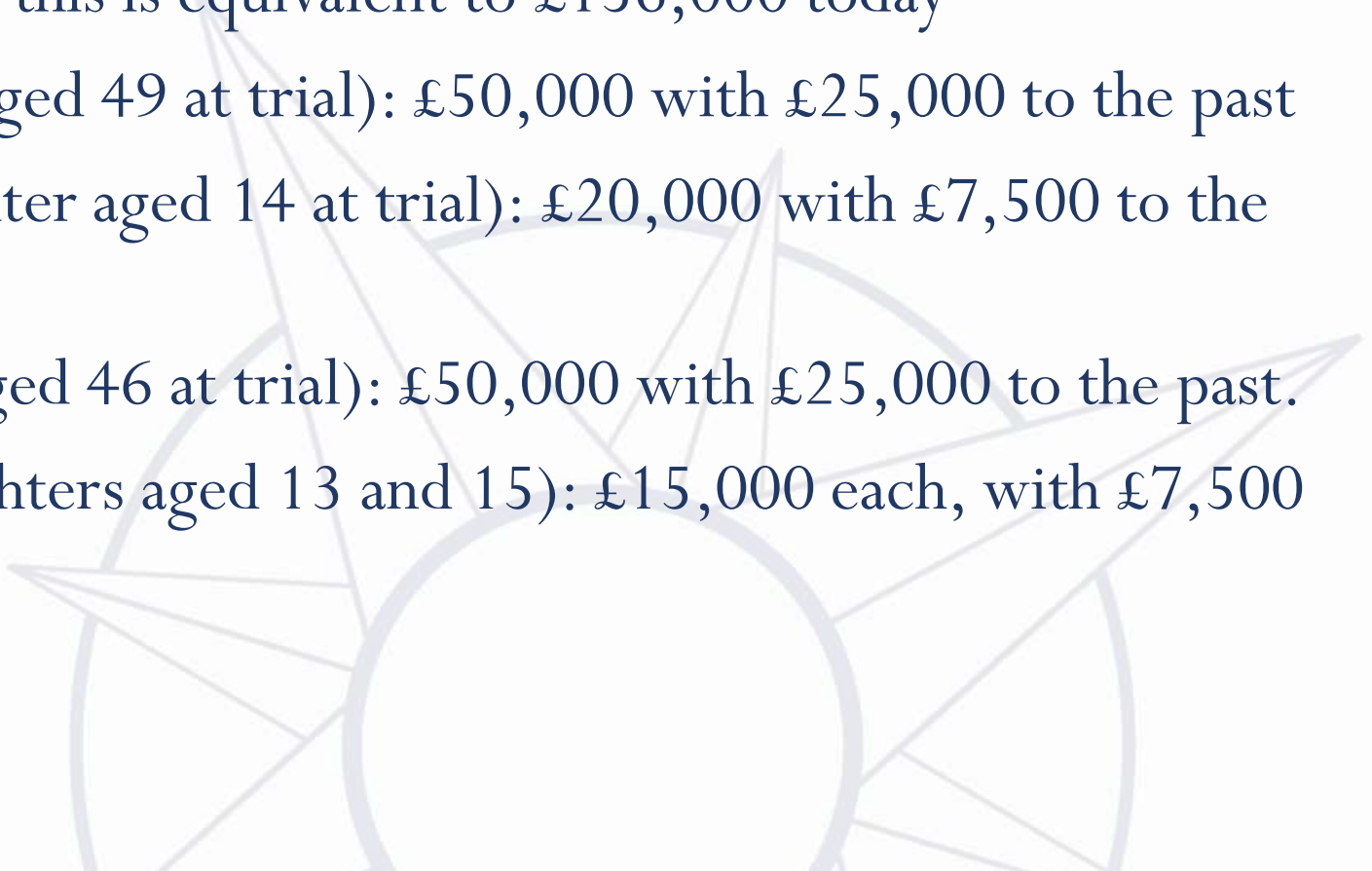


The claims for “loss of society”

- Claims were made by the widower (68 at the date of death and 72 at date of trial); two sons in their 40s; and three teenage grandchildren.
 - Claims by other relatives, including siblings of the deceased, were settled.
 - The range of awards given by the judge in his charge to the jury were £80,000 to £120,000 to the widower; £30,000 to £70,000 to the sons and £12,000 to £28,000 for the grandchildren.
 - The jury were not told any of the details of the settled claims
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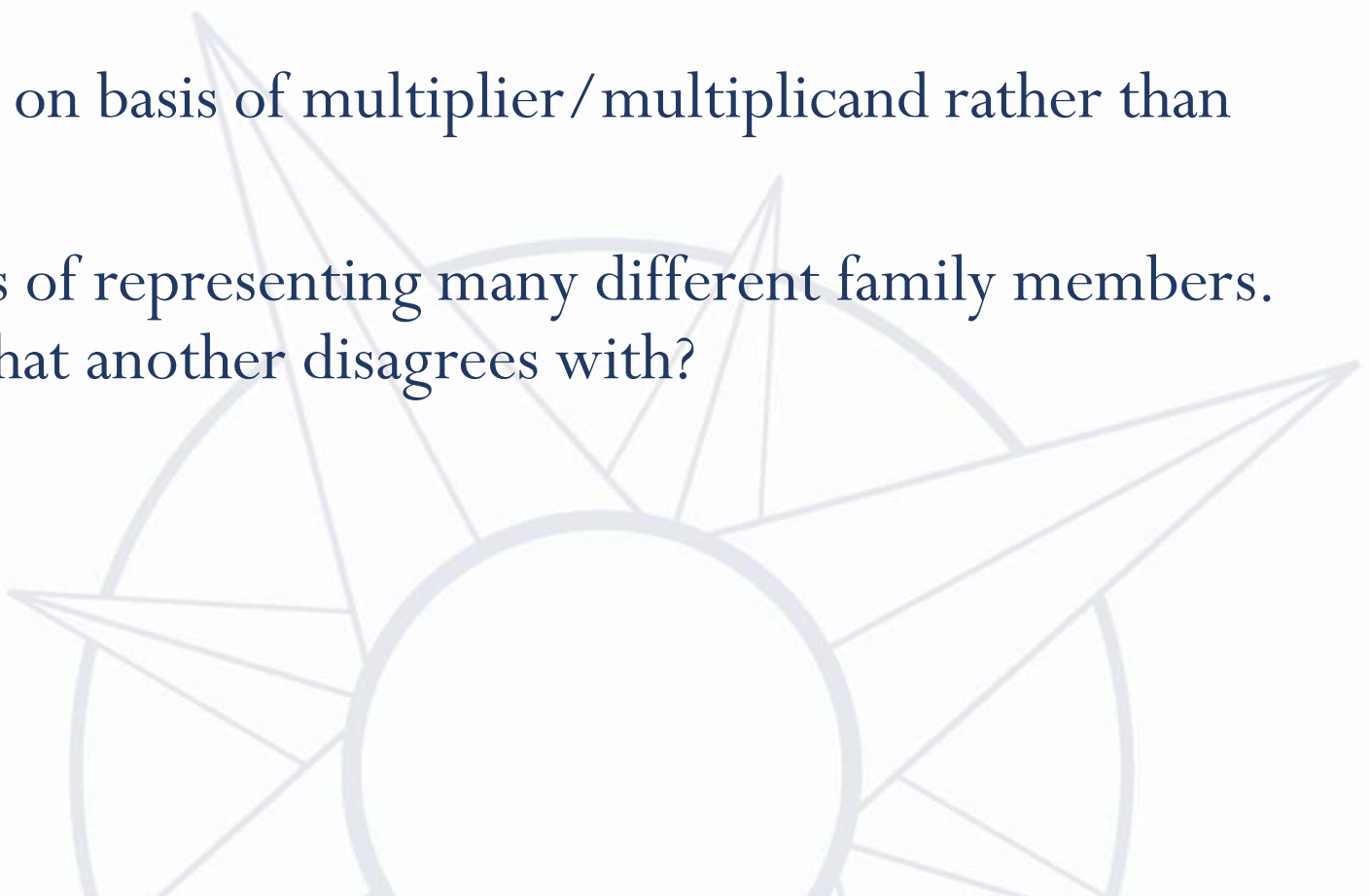


Awards for “loss of society”

- To the first pursuer (the widower): £120,000 with £60,000 to the past.
 - After allowance for inflation, this is equivalent to £156,000 today
 - To the second pursuer (son aged 49 at trial): £50,000 with £25,000 to the past
 - To his daughter (grand daughter aged 14 at trial): £20,000 with £7,500 to the past.
 - To the fourth pursuer (son aged 46 at trial): £50,000 with £25,000 to the past.
 - To his daughters (grand daughters aged 13 and 15): £15,000 each, with £7,500 to the past.
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Practice points

- Expert evidence in relation to the fairly minor care claims led to significantly higher awards
 - Jury apparently made awards on basis of multiplier/multiplicand rather than lump sum
 - Conflict of interest – dangers of representing many different family members. What if one says something that another disagrees with?
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Ronald v
Perth and
Kinross
Council
3/8/23



Facts of the case

- Sunny morning in May
- Collision entering a blind bend between a bin lorry and a cyclist
- Bin lorry travelling at slow speed
- Speed of cyclist in dispute, but probably around 15-20mph
- Cyclist was experienced and knew the route
- Bin lorry also familiar with the road, which was little used
- Lorry was in the middle of the road with about 1m on either side



The competing cases

- For the pursuers
 - 1) The lorry should have pulled further over to the left, to leave more passing room
 - 2) The lorry should have sounded its horn to warn oncoming traffic that the road was blocked
- For the defenders
 - 1) The cyclist was travelling too fast for the conditions
 - 2) There was sufficient room down the right hand side of the lorry for the cyclist




Charge to the jury in relation to liability

- Fairly clear that trial judge would have assoilzied the defenders
- Reminders to jury that if they answered the first question in the negative, no need to consider other questions
- Emphasised that contributory negligence could be 100%
- Is this correct?
- *Pitts v Hunt* (CA) [1991] 2 QB 24 at 48F-H; 51E-52A; *Wynbergen v Hoyts Corp Pty Ltd* (1997) 149 A.L.J.R. 25
- Cf *Jayes v IMI (Kynoch) Ltd* [1985] ICR 155
- Culpability and causative potency (cyclist v lorry)
- No note of exceptions taken



Findings in relation to liability

- The lorry driver was at fault
 - Majority verdict 7:5
 - The cyclist was also at fault
 - Unanimous verdict
 - Contributory negligence 58%
 - $7/12 = 58\%$. Coincidence?!
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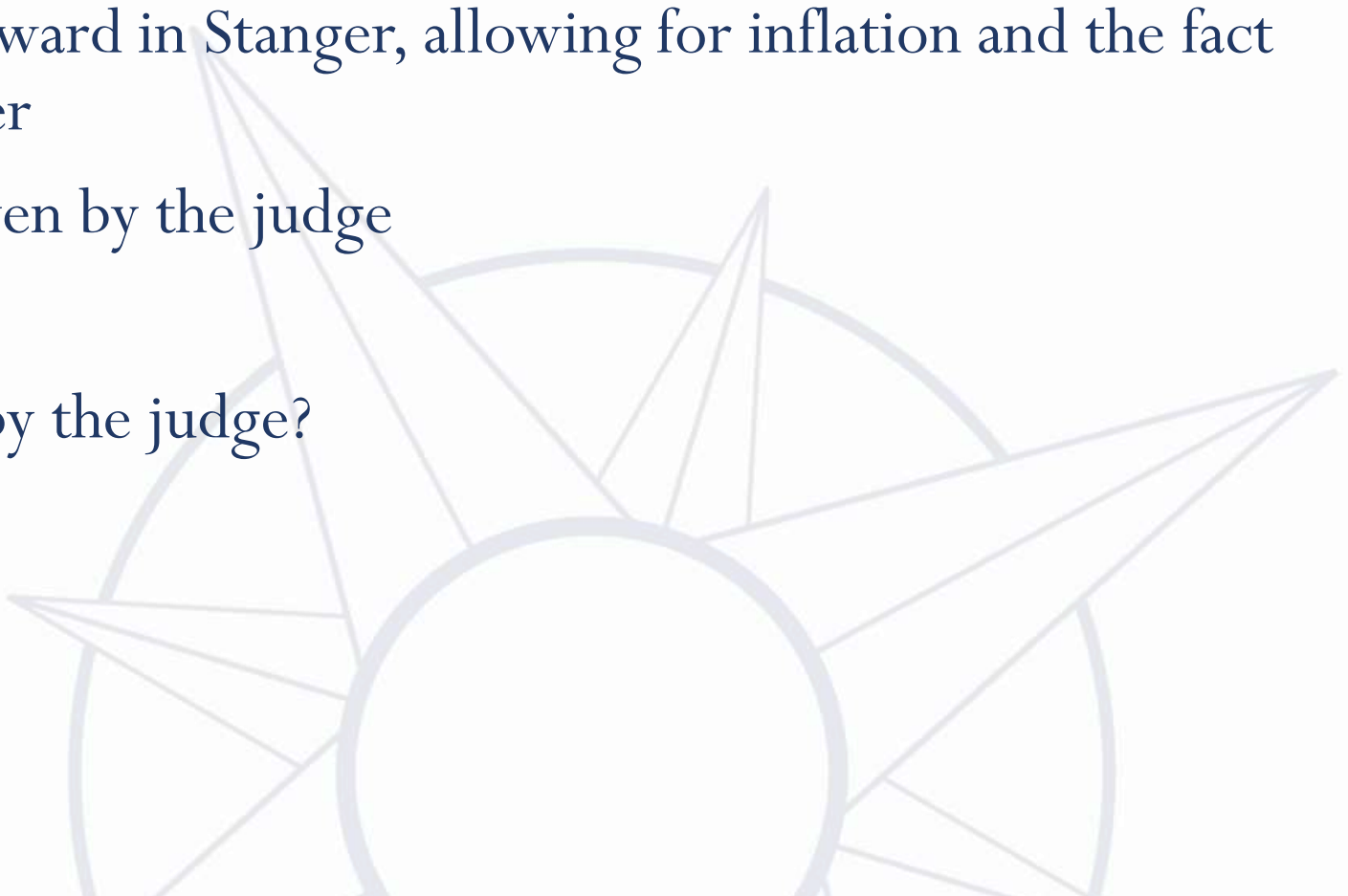


Charge to jury re quantum

- Range for loss of society awards:
- To the widow, P sought £155,000 - £185,000 and D suggested £100,000 - £125,000
- To the young daughter, P sought £90-£100,000 and D suggested £75,000 to £80,000
- Judge gave the jury a range of £120,000 - £170,000 for the widow and £80,000 to £100,000 for the daughter
- Jury told about substantial, agreed awards for financial losses to the widow (around £1.3M)

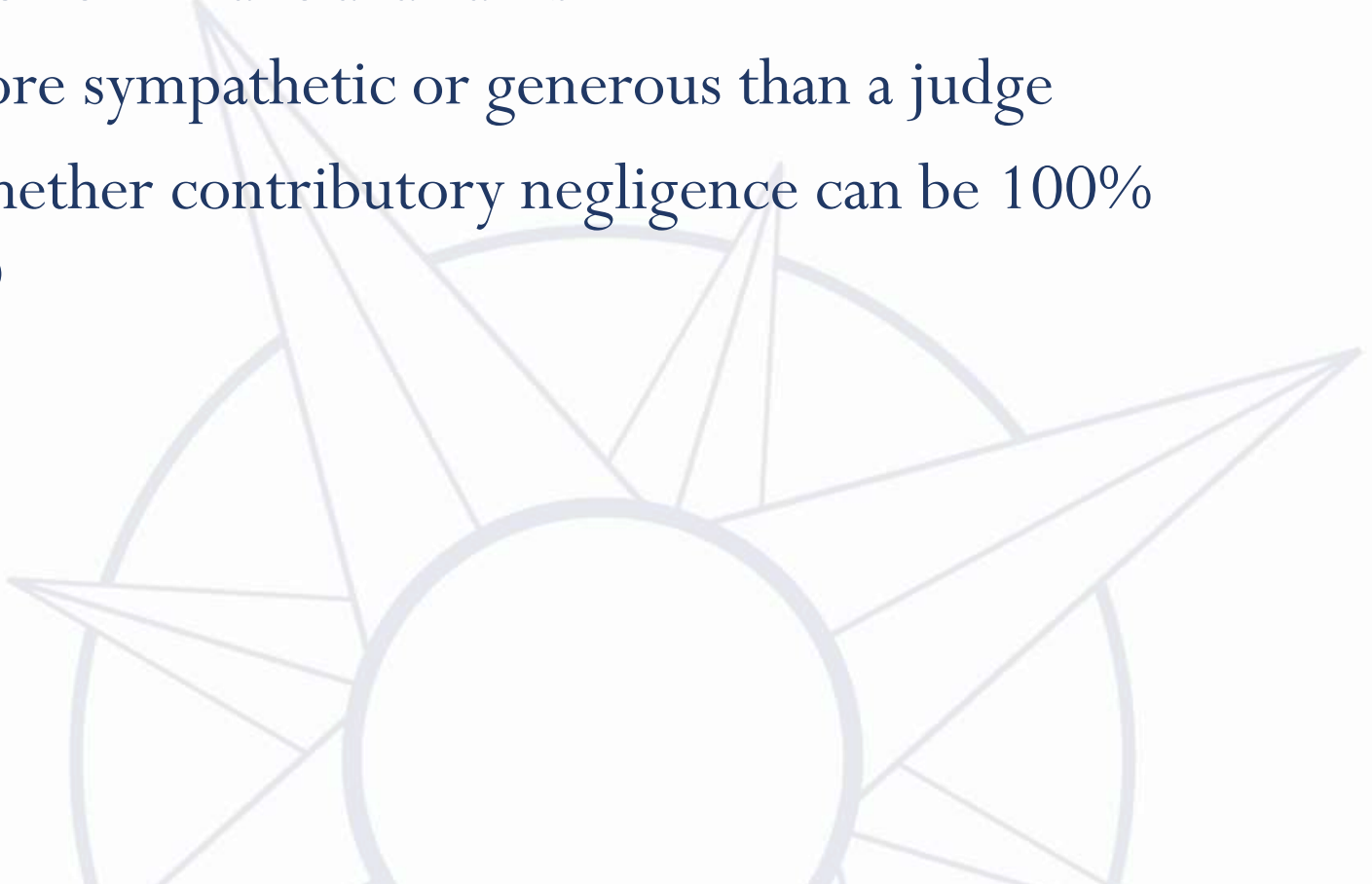


Jury awards

- £125,000 to the widow, with £25,000 to the past
 - Significantly lower than the award in Stanger, allowing for inflation and the fact that the deceased was younger
 - Near bottom of the range given by the judge
 - £95,000 to the daughter
 - Near top of the range given by the judge?
 - Why the discrepancy?
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Practice points

- Probably in the defenders' interests to let jury know there are substantial pecuniary losses as well as the non-financial awards
 - No guarantee jury will be more sympathetic or generous than a judge
 - Be prepared to argue over whether contributory negligence can be 100% (whether proof or jury trial!)
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