

Institution: Cardiff University
Unit of Assessment: 19 – Business and Management Studies
Title of case study: Ensuring fair compensation for accident victims in court
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Every year many thousands of people make claims for damages following an accident, with the Department for Work and Pensions Compensation Recovery Unit recording just over 1 million in 2011-12. Cardiff researchers developed an improved method of calculating compensation involving future loss of earnings and in doing so demonstrated that claimants had previously been undercompensated. The new approach achieves greater consistency, accuracy and equity in awards and, as of the Sixth Edition, has been incorporated into the Government Actuary Department's <i>Actuarial Tables for Personal Injury and Fatal Accident Cases</i> (the 'Ogden Tables'). In England and Wales, these tables are used by lawyers and the courts as a starting point in the determination of compensation awards for <u>all</u> future losses and expenditure in cases of personal injury. They also provide guidance in other jurisdictions where the law is based on English common law (former colonies) and which rely upon scheduled damages. Dr Victoria Wass of Cardiff Business School (CBS) was central to the research and to the subsequent training of legal practitioners in the application of the new methodology.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>In an Economic and Social Research Council (ESRC)-funded study undertaken by Robert McNabb (Prof 98-12), Richard Lewis (Prof 98-present, Cardiff Law School), Helen Robinson (Research Associate 98-00, Lecturer 00-05, Senior Lecturer 05-07) and Victoria Wass (Senior Research Associate 98-02, Lecturer 02-05, Senior Lecturer 05-10, Reader 10-present) in 1998-9 (worth £47,000), details of awards of damages for loss of future earnings in 100 adjudicated cases were collected from solicitors' files across the country^{3.1}. An alternative US-style increment-decrement model for the calculation of earnings over a life time was developed using data from the UK <i>Labour Force Survey</i>, with the adjudicated awards being re-calculated using this alternative approach. Comparison of awards revealed a substantial level of under-compensation (on average 37 per cent) for injured claimants who suffered impairment but who were able to return to work^{3.1-3.3}. It had been the courts' conventional practice to apply pre-injury employment risks to the predicted post-injury earnings and then to award 6-24 months' post-injury earnings in compensation for the increased risk of non-employment. However, empirical estimates of a work life expectancy, adjusted for the effects of disability, indicated that the impact is much greater than this and that consequently the conventional award was of insufficient value to provide full compensation for the predicted loss.</p> <p>A team of actuaries from Cass Business School (City University London), conducted a separate ESRC-funded study to update the pre-injury (i.e. without reference to disability) employment risks published in the fifth edition of the Ogden Tables, using improved data and more sophisticated techniques. This project afforded the opportunity to integrate CBS researchers' findings on the employment effects of disability within the context of the revised employment risks. As such, Wass worked closely with the Cass team and with the Ogden Working Party during 2005 and 2006 to develop the new methodology, which included the explicit calculation of the adverse effects of disability on employment in the form of a disability-adjusted work life expectancy^{3.4} & ^{3.5}. This adapted multiplier methodology was incorporated into the Sixth Edition of the Ogden Tables.</p> <p>An academic paper was prepared by the combined team and was accepted for publication and presentation at an ordinary meeting of the Royal Statistical Society (RSS) on the 8 Jan 2008. The formal discussion following the paper included comments from four leading practitioner professionals, Robin de Wilde QC Chair of the Ogden Working Party, Chris Daykin, the Government Actuary, Grahame Codd, a leading claimant Solicitor and member of the Ogden Working Party and Anthony Carus, a Consulting Actuary and member of the Ogden Working Party. The paper and discussion were published in the RSS's journal in October 2008^{3.4}.</p>
<p>3. References to the research (indicative maximum of six references)</p> <p>1. Lewis, R., McNabb, R., Robinson, H. and Wass, V. (2002) Court awards of damages for loss of future earnings: An empirical study and an alternative method of calculation. <i>Journal of Law</i></p>

and Society 29 (3): 406-435. [10.1111/1467-6478.00226](https://doi.org/10.1111/1467-6478.00226)

2. **Lewis, R., McNabb, R., Robinson, H. and Wass, V.** (2003) Loss of earnings following personal injury: Do the courts adequately compensate injured parties. *Economic Journal* 113 (491): 568–584. [10.1046/j.0013-0133.2003.00169.x](https://doi.org/10.1046/j.0013-0133.2003.00169.x)
3. **Wass, V. and McNabb, R.** (2009) 'Accounting for the effects of disablement on future employment in Britain' in Personal Injury and Wrongful Death Damages Calculations: A Trans-Atlantic Dialogue, R.J. Thornton and J. Ward (eds) *Contemporary Studies in Economic and Financial Analysis*, Volume 91, pp. 73-102, Emerald Group Publishing Limited. ISBN 978-1-84855-302-6. Copy available from HEI on request.
4. Butt, Z., Haberman, S., Verrall, R. and **Wass, V.** (2008) Calculating compensation for loss of future earnings: Estimating and using work life expectancy. *Journal of the Royal Statistical Society, Series A*. 171 (4): 763-805. [10.1111/j.1467-985X.2007.00539.x](https://doi.org/10.1111/j.1467-985X.2007.00539.x)
5. Butt, Z., Haberman, S., Verrall, R. and **Wass, V.** (2009) 'Estimating and using work life expectancy in the UK' in Personal Injury and Wrongful Death Damages Calculations: A Trans-Atlantic Dialogue, R.J. Thornton and J. Ward (eds) *Contemporary Studies in Economic and Financial Analysis*, Volume 91, pp. 103-134, Emerald Group Publishing Limited. ISBN 978-1-84855-302-6. Copy available from HEI on request.

Grant: **McNabb, R., Wass, V. and Lewis, R.** (02/98-07/99) A comparison of alternative methods for assessing the value of loss of earnings following personal injury, Economic and Social Research Council, Ref. R000237393, £47,000.

4. Details of the impact (indicative maximum 750 words)

Based on data from the Department for Work and Pensions' Compensation Recovery Unit which recorded 1,041,150 claims for damages in 2011-12, there is the potential for a huge number of people to be affected by issues relating to the amount of compensation offered by the courts. Many of these claims will include a future loss (earnings) or expenditure (care and accommodation) which are unknown at the time of trial or settlement and must be estimated.

Calculating future losses

The measuring of partial loss of earnings has been described by Robin de Wilde (QC and Chairman of the Ogden Working Party), as being the "*most intractable of problems*"^{5.1}. A set of discounted life expectancies and employment risks comprise the basic parameters for the loss of earnings estimation and are contained within the *Actuarial Tables with Explanatory Notes for Use in Personal Injury and Fatal Accident Cases*. These tables, first published in 1984, are simply called 'The Ogden Tables' and were formally endorsed by the House of Lords in 1999, "*the actuarial multipliers published in the Ogden Tables should form the starting point of any settlement and that any departure would require compelling evidence pointing to another figure*" (*Wells v Wells [1999] 1 AC 345*). As a result, these tables are used by lawyers and the courts as a starting point in all future loss claims in personal injury in England and Wales and every legal practice, if not every personal injury lawyer, owns a copy of these tables.

A new calculation

The impact presented here is a result of the introduction of a radically new methodology and set of estimates for the calculation of loss of future earnings, based on CBS research. A key departure from previous practice is the explicit calculation of the impact of disablement on future earnings. Previously, compensation paid to disabled claimants in respect of their future disadvantage on the labour market had been arbitrary in its determination and insufficient in its value. The application of the new approach provides injured claimants, principal beneficiaries of the research, with a more consistent, accurate and equitable award of damages for their injury-induced employment-based future financial losses^{5.2}. Whilst the change was first introduced^{5.3} in The [Sixth Edition](#) of the Ogden Tables (2007) (set out in paragraphs 26 to 44)^{5.3}, pre-dating the REF impact period, the impact of its application has been from 2008 onwards, with Wass taking the lead role in the dissemination of the new methodology and the delivery of training to practitioners.

Convincing the professionals

In statements made during the discussion of the RSS paper in which the new methodology was explained (published in 2008)^{5.1}, Grahame Codd (Partner Irwin Mitchell Solicitors) acknowledged that the new methodology would lead to "*a significant improvement in the ability of legal representatives more accurately to calculate future loss of earnings*", Chris Daykin (Government Actuary) praised researchers for "*the combination of rigorous methodology and practical*

explanation of the application of the work” and Robin de Wilde QC concluded that, “*There will be many injured people who will now achieve proper compensation for their future losses.*” The underlying research and publications have been widely cited in claimants’ evidence in support of a claim for loss of future earnings and also in judgments^{5.4} & ^{5.5}. Wass has also provided expert evidence on behalf of numerous claimants in furtherance of the correct application of the new methodology. In 2009, in view of her contribution to personal injury law, Wass was awarded “Expert of the Year” in the Eclipse Proclaim Personal Injury Awards, an award series designed to highlight the excellence of individuals and organisations across the personal injury sector.

Converting the practitioners

The new methodology has raised compensation which is not in the interests of those who must pay the damages, normally an insurance company, leading to considerable debate surrounding its use.

- Defendant insurance companies have contested the application of the new methodology, often arguing for lower compensation payments. In the first case to be adjudicated following its publication, *Conner v Bradman* [2007], the defendants were successful in their objective.
- In response to this decision, in June 2008, Wass published a review of the judgment, highlighting the judge’s misunderstanding of the meaning of the new disability-adjusted work life expectancies. While the judgment has been widely used in subsequent cases by defendant lawyers, it has been countered by claimant lawyers using Wass’ review.
- Wass’ review is highlighted as an important reference in the current ([Seventh](#)) Edition of the Ogden Tables^{5.6} in which it is stated in paragraph 18: “*The Working Party notes that there have been a number of cases in which judges have made significant adjustments to the suggested discount factors. In particular the approach of the trial judges to the calculation of future loss of earnings in Conner v Bradman [2007] EWHC 2789 (QB) and Clarke v Maltby [2010] EWHC 1201 (QB) has generated some debate ... practitioners performing such calculations are referred to the helpful article by Dr Wass, “Discretion in the Application of the New Ogden Six Multipliers: The Case of Conner v Bradman and Company”, published in JPIL Issue 2/2008 ...*”
- At the invitation of the Journal of Personal Injury Law, Wass gave the keynote presentation at their 2012 annual conference reviewing judicial decisions following *Conner v Bradman*; this presentation was rated “*excellent*” or “*very good*” by 75% of respondents surveyed. Wass was also invited by this journal to write a review of cases which used the new methodology (published 2012) and a question and answer style article dealing with some of the more complex issues arising out of their application (published 2013). These articles were both produced in response to demand from practitioners and related to questions which they themselves had raised. [5.7]
- Wass’ contributions to both the new methodology^{5.8 (para. 5,7,8,&11)} and subsequent debates around its use^{5.8 (para. 22&23)} have been recognised directly by practitioners. In an article^{5.8}, barristers Lemmy and Snarr, make reference to the change in approach taken by the courts since the introduction of the new method, making the observation that “*In practice, although slowly, the Courts have tended to lean towards adopting a multiplier/multiplicand approach...*”^{5.8 (para. 15&16)}

Consolidating the impact

In recognition of the important intellectual and practical contribution of the revised methodology and the task ahead in educating lawyers in the correct use of the new approach, Wass was invited to join the Ogden Working Party in May 2009 by its Chairman, Robin de Wilde QC (see Introduction, paragraphs 17 and 18 of the Seventh Edition)^{5.6}. The Ogden Working Party is an advisory committee of leading lawyers, accountants and actuaries, responsible for devising and publishing the Ogden Tables. They meet monthly prior to publication of a new edition to consider the implications of new law, to include the updated life-expectancy estimates, and to develop improved guidance notes. Wass’ membership of this group provides a vital contribution to the valuation of damages for loss of future earnings and an important opportunity for her to act as an intermediary between academics and the application of their research in the practice of the law^{5.2} & ^{5.4}. It has been predicted by practitioners that Wass’ membership of the Party will lead to “*significant revisions and/or guidance ... on the calculation of future loss of earnings.*”^{5.8 (43)}

Training the practitioners

As predicted by Chris Daykin who said “*it will probably take the courts some time to get to grips*

with thinking in this way^{5.1}, the training of practitioners - principally solicitors, barristers, insurance claims managers and the judiciary, in the application of the new methodology is proving to be vital. Wass has taken a leading role in this, delivering training through a range of media. She has presented material to members of professional associations at conferences including the Association of Personal Injury Lawyers in 2009^{5.9}, and the [Personal Injury Bar Association](#) and Professional Negligence Bar Association in 2011. She has also provided training to barristers in Chambers, for example at Hardwicke Building in 2009^{5.10}, and to practitioners of leading personal injury firms, such as Berryman Lacey Mawer Solicitors in 2009 and Stewarts Law in 2012^{5.7}. These events have directly reached an estimated 50-70 practitioners per event. A wider audience has been targeted through both the provision of online material dedicated to providing background and explanation to practitioners (www.victoriawass-laboureconomics.co.uk), and the delivery of a Webinar for the APIL which has had 145 registrations to view to date (with 1 to 20 individuals viewing per registration). The RSS seminar is also publicly available online and has had over 1,000 views to date (<https://talk.city.ac.uk/ogdenlecture>).

5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Formal discussion on Butt, Z., Haberman, S., Verrall, R. and **Wass, V.** (2008) "Calculating compensation for loss of future earnings: Estimating and using work life expectancy" *Journal of the Royal Statistical Society, Series A.* 171:4, pp. 800-805. The text on pages 801 and 802 in particular emphasise the importance of the new methodology and Wass' contribution to it. Abstract available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-985X.2007.00539.x/abstract>. Full article (with a Wiley subscription) available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-985X.2007.00539.x/pdf>.
2. Contact: Chair of Ogden Working Party and a PI barrister. To corroborate the contribution of Wass to the new methodology in the Ogden Tables from a legal perspective and as a member of the Ogden Working Party.
3. Actuarial Tables with Explanatory Notes for use in Personal Injury and Fatal Accident Cases (2007), 6th ed., Government Actuary's Department, TSO. Available at: http://www.gad.gov.uk/Documents/Other%20Services/Ogden%20Tables/Ogden_Tables_6th_edition.pdf. Paragraphs 26 to 44 set out the new methodology.
4. Contact: Former Government Actuary (1995-2009) and CBE. To corroborate the contribution of Wass to the new methodology in the Ogden Tables from an actuarial perspective.
5. Higgs v Pickles [2011] PIQR P15 Lawtel Transcript. To corroborate the contribution of the new methodology to court judgments. In particular, see para. 32-36. Available with subscription from Westlaw UK or at: http://www.oldsquare.co.uk/pdf_cases/1200642.pdf.
6. Actuarial Tables with Explanatory Notes for use in Personal Injury and Fatal Accident Cases (2011), 7th ed., Government Actuary's Department, TSO. Available at: http://www.gad.gov.uk/Documents/Other%20Services/Ogden%20Tables/Ogden_Tables_7th_edition.pdf. Paragraph 18 advises practitioners to use an article written by Wass and published in JPIL in 2008.
7. Contact: Partner and Head of Negligence, Stewarts Law LLP, and Editor of the *Journal of Personal Injury Law*. To corroborate Wass' training of practitioners and her contributions to the *Journal of Personal Injury Law* and its annual conference in 2012.
8. Lemmy, M. and Snarr, M. (2012) We need to talk about Katie, 9 St John Street Chambers, Manchester. This article demonstrates practitioner recognition of Wass' contribution to the new methodology, to the debate surrounding its use and to subsequent changes in rulings. In particular, see paragraphs 5, 7, 8, 11, 15, 16, 22, 23, & 43. Available at: <http://www.9sjs.com/assets/files/katie.pdf>
9. Practitioner training: **Wass, V.** (Apr. 2009) "What's new in damages? The New Ogden Six Multipliers" Association of Personal Injury Lawyers Annual Conference, Newport. Profile of Wass provided to members at: <http://www.apil.org.uk/speaker-details.aspx?ID=5464>
10. Practitioner training: **Wass, V.** and Verrall, R. (Apr. 2009) "The Application of the New Ogden Six Multipliers" Hardwicke Building, Barristers Chambers, London. Event announcement available at: <http://www.hardwicke.co.uk/insights/events/past-events/richard-verrall-and-victoria-wass-to-speak-at-hardwicke-seminar-on-disabled-claimants>

All documents and web pages were saved as pdf on or before 11.10.13 and are available on request from the HEI.