Institution: City University London

Unit of Assessment: 19 Business and Management Studies

Title of case study: A fairer approach to compensation for personal injury and fatal accident cases

1. Summary of the impact

Financial compensation by the UK courts for injuries or fatalities caused by the fault of another is provided as a lump sum that represents a revenue stream of lost future earnings over the claimant's lifetime. Calculating this revenue stream requires an assessment of potential future worklife activity. The Ogden Tables are recognised by the UK courts for this purpose. Research by City University London academics identified a new and more accurate approach to the calculation of compensation, focusing on the key factors of age, gender, employment state, educational attainment and prior disability. The Ogden Tables have incorporated these improved calculations and methods since the 6th Edition in 2007 (and they were retained in the current 7th Edition, published in 2011). The revised Tables were used in most court cases involving personal injury claims between 2008 and 2013 so this research has impacted on the judiciary and other legal professionals who advise claimants in compensation cases, the claimants who benefit from fairer levels of support to meet their needs, particularly where disability is involved and the families and carers of the claimants who also benefit from the support provided.

2. Underpinning research

At present, legal compensation cases arising as a result of permanent injury or wrongful death are based on a calculation of the loss of future earnings that would be the amount that the claimant might have earned had the injury or death not occurred. In simple terms, the calculation of the loss of future earnings depends, among other factors, on the employment status and salary of the claimant at the time of the accident; and on the actual length of time that he or she might otherwise have worked until final retirement. This length of time is shorter than the remaining number of years until retirement, as any individual faces the possibility of being out of employment for short or long periods of time due to sickness, unemployment or early retirement. This research was based on the premise that in a fair and correct compensation system, the courts have to deduct from an individual's total future earnings an amount that is based on the length of time the claimant is likely to be out of employment based on statistical averages observed across the working age population (Butt et al., 2008).

The research team at City's Cass Business School comprised Butt (at City since 1998, now Lecturer), Haberman (at City since 1974, now Professor) and Verrall (at City since 1987, now Professor) in collaboration with Wass (Cardiff Business School). Prior to the 2008 findings, actuarial assessments of work time lost due to involuntary non-participation (such as sickness, unemployment or early retirement) were primarily based on the 5th Edition of the Ogden Tables. They were estimated from labour force data more than 15 years old and were based on the original investigation carried out by Haberman in 1990. The traditional methodology was very rigid and did not allow for the precise employment or disability status of the claimant at the time of the injury or death: the resulting calculation of appropriate compensation might be misleading or inaccurate. In addition, it was not possible to estimate reductions for labour market contingencies for those claimants who possessed earnings potential after their injury.

The Cass team addressed the above deficiencies and used a dynamic modelling technique to investigate the effect on the value of compensations of the labour market risks and other main factors (e.g., gender, education, etc.) (Butt et al., 2006). In particular, the researchers reassessed the estimates of the expected length of time employed (and unemployed) up to retirement, called the 'worklife expectancy values'. They formulated a three-state model of the labour force, which classified individuals by their economic activity as employed, unemployed and out-of-the-labour force (i.e., inactive); and they made predictions based on the observed transitions in and out of these states. The application of this model made use of recent advances in the design of the UK Labour Force Survey that allowed for the creation of panel data sets which contained five consecutive observations collected over one year intervals from participants of different ages.

Using these data, the researchers were able to estimate an individual's worklife expectancy, based on their current economic state and age (Butt et al., 2008). The team later simplified the three-state modelling approach by grouping the unemployed and out-of-the-labour-force participants into a single category of non-employed (Butt et al., 2009). This simplification was particularly useful when implementing the results of the research into the 6th Edition of the Ogden Tables and it was retained in the current, 7th Edition. These changes to the Ogden Tables represented a significant departure from earlier methodologies and generated much discussion in the legal profession, as exemplified in de Wilde et al. (2008).

An important aspect of this research is the quantification of the effects of additional factors on worklife expectancy, such as region, industrial sector, educational attainment and disability. The results demonstrated that the last two factors are the most critical in terms of future earnings potential. These factors were not included in the earlier Ogden Tables recommendations. In the context of damages for personal injury, it is particularly important to differentiate by disability for the results to be interpreted in terms of future earnings in the circumstances before and after the injury. By allowing for educational attainment and disability, the new approach leads to a fairer and more accurate system for the calculation of the loss of future earnings.

3. References to the research

Butt Z., Haberman S., & Verrall R. (2006). *The impact of dynamic multi-state measurement of work life expectancy on the loss of earnings multipliers in England and Wales* (*ESRC Research Summary* RES-000-22-0883). Swindon: ESRC. (precursor to Butt et al., 2008).

Butt Z., Haberman S., Verrall R., & Wass V. (2008). Calculating compensation for loss of future earnings: estimating and using work life expectancy, *Journal of Royal Statistical Society: Series A*, 171(4), 763-805.

Butt Z., Haberman S., Verrall R., & Wass V. (2009). *Estimating and using work life expectancy in the United Kingdom.* In: J. O. Ward & R. J. Thornton (Eds.), *Personal Injury and Wrongful Death Damages Calculations: Transatlantic Dialogue* (Vol. 91, pp. 103-134). Bingley: Emerald Press.

de Wilde R., Wass V., Verrall R., Haberman S., & Butt Z. (2008). Applying the sixth edition of the Ogden Tables: a response from the Ogden Working Party and the tables' authors. *Association of Personal Injury Lawyers – PI Focus*, 18(3), 14-17.

The *Journal of Royal Statistical Society: Series A* latest Impact Factor: 1.361; and has an ISI Journal Citation Reports © Ranking for 2012: 14/44 (Social Sciences Mathematical Methods); 33/117 (Statistics & Probability). Research was supported by the Economic and Social Research Council [grant number RES-000-22-0883]. 'Quantifying Involuntary Non-participation in the England and Wales Labour Market'. The end of award report was graded 'Outstanding'.

4. Details of the impact

The methodological framework proposed in this research provided a simple and robust estimation process for worklife expectancy which had not previously been explored in earlier approaches using labour market studies. It yielded results that are directly applicable to the assessment of damages in courts and which are presented in a usable form in the latest editions of the Ogden Tables.

The research fed directly into the 6th and 7th Editions of the Ogden Tables, the actuarial tables recognised by the UK courts for the calculation of compensation for the loss of future earnings in cases of personal injury or fatality [1], [2]. The tables are prepared for the Government Actuary's Department by a multi-disciplinary group of actuaries (including the Government Actuary), lawyers, accountants and insurers, chaired by Robin de Wilde, QC. The impact of the research team's work has benefited claimants who were disabled by an injury as their compensation was fairer and more accurate. Legal professionals had previously argued that the Smith v. Manchester awards (applied to compensate for the disadvantages faced by the plaintiffs in the labour market following injury) were inadequate. The Cass research provided empirical evidence to show that the effect of a disability was greater than had been allowed for, especially if it occurred as the result of an accident rather than from birth. The effect is also greater for people of lower educational attainment. The application of the new approach therefore results in higher awards for people in

these categories. Robin de Wilde, QC, said: "*[t]he contribution of Professor Haberman and his team has obviously been of importance in the preparation of the Ogden Tables. It is clear that the Tables have a wide circulation amongst those who do the work, which they affect, which is attempting to make sense in the calculation of future financial losses. They are accepted as being the best that can be done for calculating such future losses*" [3].

This new approach to calculating future loss of earnings when a claimant still has earning capacity post-injury was incorporated into the 6th Edition of the Ogden Tables. The following research insights featured in these changes to the tables: (i) events other than death during working life must be considered; and (ii) the factors which have the most effect on the claimants' future employment status must be considered, i.e., whether the individual was employed at the time of the accident, whether the individual is disabled and the educational attainment of the individual. Chris Daykin, the UK Chief Government Actuary from 1989 to 2007, was responsible for preparing the 2nd to 6th Editions of the Ogden Tables. He is now an independent actuarial expert to the UK courts for personal injury damages cases and his view of the research impact is that:

"*The 'contingencies other than mortality' section of the Ogden Tables is much used in practice both in cases of damages for personal injury that come to Court and in many cases which are settled before they reach the Courts. This section was completely revised for the 6th edition of the Ogden Tables on the basis of the results of ground-breaking research work from Cass. It was a really significant contribution to that edition of the Ogden Tables, and the factors and methodology proposed immediately achieved wide recognition and application by lawyers in settling personal injury damages cases.*". Since the vast majority of personal injury cases are settled outside of the courts, the full monetary impact of the improvements in calculating future losses cannot be evaluated. Nonetheless, these settlements would also normally use the current Ogden Tables as a starting point [4].

The case of Higgs v. Pickles was one of the first cases to be adjudicated on the basis of the new 'Ogden 6' approach and estimates. On 18th January 2011, Judge Ellis in Croydon County Court decided that the Ogden 6 deductions should be applied without adjustment [5]. Application of the tables without discount increased the claimant's future loss of earnings claim substantially from that being proposed by the defendants. The case was the first to provide judicial guidance on the application of Ogden 6 without adjustment to the tables and it was of considerable benefit to claimants. The approach of the court followed the intentions of the Cass researchers in the amendment of the Ogden tables. These changes have enabled the courts to estimate employment outcomes in a dynamic framework that incorporates the effects of disability and educational attainment in an efficient and transparent manner.

The current edition of the Ogden Tables, 'Ogden 7', was released in October 2011 and took into account further issues highlighted by the researchers [2]. Key points include: (i) the use of updated mortality tables to incorporate increases in life expectancies for both men and women; (ii) corresponding increases in life multipliers for all ages; (iii) significant increases in pension multipliers; and (iv) changes in the definition of 'disabled'. One recent high-profile case that deployed the Ogden 7 calculations was Simon v. Helmot. Helmot sustained very serious injuries when struck by a car while riding a bicycle. He was 28 years old at the time of the accident and was awarded £9.3M by the Royal Court in 2010. The case went through the Court of Appeal and ultimately to the Privy Council, which in 2012 upheld the original court's decision to award a higher level of compensation for loss of earnings [6].

Grahame Codd, regional Managing Partner for the legal firm Irwin Mitchell LLP and a long-established member of the Ogden Working Party, noted that: "*The Cass Business School team has made a major contribution to the way in which compensation is calculated in legal claims for damages for people who have suffered serious injuries from accidents or from clinical negligence… A detailed analysis of an enormous amount of labour market data was carried out and presented to the Ogden Working Party. The conclusions contained proposals that the multipliers for the mitigation of loss part of the equation should be reduced and these conclusions were accepted, and simplified tables containing reduction factors were created. Those tables were incorporated into the Ogden Tables, and for the past few years these have enabled lawyers and insurers to make adjustments to multipliers to ensure they arrived at more accurate figures. The net effect has been to increase the awards of damages for loss of earnings for disabled people.*

The team is to be commended not only for the very high quality of their work, which has proved to be extremely robust, but also for the very positive impact their work has had in relation to the outcome of compensation claims for those victims of accidents or clinical negligence who have suffered serious injury or disability" [7].

The Ogden Tables are also used by the UK motor insurance industry in relation to personal injury claims. The Association of British Insurers estimates that about 15% of the average UK motor insurance premium deals with personal injury claims for under £500k [8]. Thus, the revised Ogden Tables, based on this research, also impact to a considerable degree on the UK motor insurance industry and policyholders.

The impact of the research is wide-ranging since the Ogden Tables are in routine use in the civil courts of all four constituent countries of the UK and each year thousands of people make claims for damages following an accident in which someone else is to blame. While not law, the Tables have been recognised by the UK courts since the Civil Evidence Act of 1995. Their use has had a positive effect on legal practice by providing defendants, claimants, their representatives and judges with a solid scientific foundation for making judgements, thereby offering a common ground to parties in civil dispute resolution [9]. The use of the Ogden Tables has improved the delivery of legal services to the wider public by providing the legal professionals who advise claimants in compensation cases with some actuarial input from the outset without having to pay for expensive advice from an actuary. This means that claimants are better informed earlier in their case and legal representation is less expensive because parties have an agreed framework and a more accurate starting point, for compensation. This is true even if the courts later deviate from the starting point, subject to the particular characteristics and circumstances of individual cases. Finally, the direct impact of the research conducted at Cass on revisions in the 6th and 7th Editions of the Ogden Tables has benefited claimants who receive fairer (and in many cases increased) levels of financial support to meet their needs and the families and carers of those affected by serious injury or disability whose lives are also affected by the outcome.

5. Sources to corroborate the impact

1. Government Actuary's Department (2007). Actuarial Tables with explanatory notes, for use in Personal Injury and Fatal Accident Cases (The Ogden Tables), Sixth edition, TSO: London [ISBN 978 0 11 560125 5], p. 5 and p. 13
2. Government Actuary's Department (2011). Actuarial Tables with explanatory notes, for use in Personal Injury and Fatal Accident Cases (The Ogden Tables), Seventh edition, TSO: London [ISBN 978 0 11 560146 0], p. 16
3. Mr Robin de Wilde QC, Chairman of the Ogden Working Party, Government Actuary's Department, user feedback and testimony, received 7th January 2013, available on request
4. Mr. Chris Daykin, former Chief Government Actuary, user feedback and testimony, received 17th January 2013, available on request
5. Clarke Willmott LLP (2011). Ogden Tables in the spotlight after key ruling: Higgs v. Pickles. This article was featured in *Personal Injury Weekly*, Issue 10
6. The Judicial Committee of the Privy Council Decisions: Simon v. Helmot (Guernsey, 2012) UKPC 5 (7th March 2012), paragraph 32
7. Mr Grahame Codd, Regional Managing Partner at Irwin Mitchell LLP, user feedback and testimony, received 26th April 2013, available on request
8. Ms Francesca Toffolo, Statistical Analyst, Association of British Insurers (the trade association for the United Kingdom's insurance industry) data and testimony, received 10th June 2013, available on request
9. Melton, Christopher (2009). Ogden Six – Adjustments to working life multipliers, *Journal of Personal Injury Law*, Volume 1, pp. 66-83.