Cost of Living Crisis in Personal Injury Claims

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The last 12 months have seen political and economic changes which would have been hard to imagine even a few years ago. Everyone will have their own views of how we have got into this position but this short blog focuses on how this turmoil might affect presentation and resolution of personal injury claims.

Interest

When I concluded pupillage in 1993 the Special Account Rate (SAR) which is used to compute interest on past loss stood at 8% pa and so interest on past losses was often worth arguing about.

The SAR gradually fell and by 2009 stood at 0.5% pa where it remained for over a decade until June 2020. Conventionally, interest on ongoing past losses is claimed at half of this rate and so for many years this was just 0.25% pa so that for every £1,000 per year interest added just £2.50. Such fractional amounts would get lost in the wash, even more so when the rate dropped further to just 0.1% pa in June 2020.

However, the tide has turned with global and UK interest rates and as a result we have seen no fewer than 4 SAR increases since May 2022 as follows:

- 5 May 2022 increase to 0.645% pa;
- 5 July 2022 increase to 1.25% pa;
- 2 September 2022 increase to 1.75% pa; and
- 25 October 2022 increase to 2.25% pa.

If we believe the forecasts, the Bank of England base rate will continue to rise and peak at something like 5% around the middle of next year. If so, the SAR will likely rise also and practitioners will need to keep abreast of further rises and ensure that interest on past losses is properly calculated.

The higher those rates rise the greater the need to ensure that the detail of these calculations is properly presented and adjudicated on by the Court if necessary.

Inflation & General Damages

If the increase in interest rates is substantial, the increase in inflation is historic. The latest Government figures shows that in the year to October 2022 the Retail Price Index (RPI) has stood at 14.2% and the Consumer Price Index (CPI) at 9.6%.

These historically high rates should have a substantial impact on awards of general damages. The guidance in *Facts & Figures 2022/23* remains that RPI which is indexed at Table E1 should be used when updating comparable cases.

Perhaps more importantly, the introduction to the *Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases* (16th ed.) states expressly that the figures in that edition reflect a publication date of September 2021 and the fact that total inflation since the previous edition has been 6.56%. As noted above, inflation in the year to October 2022 has been over 14% (measured by RPI and almost 10% by CPI) and there must be a strong argument that awards made by the Courts or agreed between parties now must reflected the historically high inflation since September 2021.

Wage Inflation

With prices rising so high, the pressure is on employers to match this with 'cost of living' pay increases. At the lower end of the labour market, the National Living Wage will be increasing by 9.7% from £9.50 ph to £10.42 ph as of April 2023. Significant pay increases must now be likely for all sectors of the economy particularly in lower paid work.

In this environment, it becomes ever more important when calculating past and future loss of earnings to ensure that pay increases are taken into account. When advancing a claim for future loss of earnings, regard must be had to future anticipated pay increases when calculating the multiplicand.

Earlier this year I blogged on the effect of the 'perfect storm' affecting recruitment in commercial care. Economic events since then seem to me to reinforce the view that there will now be more cases where a PPO will now be appropriate. The security afforded by an annual award which will increase with inflation in accordance with a suitable index is of particular value in times of historically high inflation.