

"THE NEW OGDEN TABLES 6TH EDITION"

The latest Ogden Tables were published on 3rd May 2007.

The three major areas of change are:

- Mortality projections;
- New methodology for assessment of appropriate deductions to be made to the working life multiplier to allow for contingencies other than mortality;
- Guidance for dealing with variable future losses or expenses.

The changes are set out in the explanatory notes:

The Tables take effect immediately and are retrospective in their effect, i.e. they affect all current and future claims where recurring future losses are claimed.

The format of the Ogden tables stay the same. There are small increases in the multipliers [due to increased life expectations] but the increases are smaller than those in previous editions.

The Ogden Committee again express their view that the calculation in Fatal Accident damages needs to be changed to reflect actuarial principles. However, until the decision of *Cookson v. Knowles* [1979] A.C. 556 is reconsidered, the multiplier will continue to be calculated as at the date of death and simply deducting time elapsed between the date of death and dates of trial/settlement.

MORTALITY

- There have been modest increases in the multipliers
- Now assessed on 2004 based population projections supplied by the Government actuary being the latest set of national projections for the United

Kingdom provide “a more appropriate estimate of the value of future income streams than tables based on historic mortality”¹.

Section B: CONTINGENCIES OTHER THAN MORTALITY

- The previous editions of the Ogden Tables have provided subsidiary tables mainly relating to future loss of earning claims to reflect additional contingences such as geographical location; occupational risks relating to the employment; regional employment figures. The problem with the old approach included:
 - judges rarely wanted a debate about economic activity;
 - the tables failed to take into account that some occupations were more portable than others, e.g. a Minor would have difficulty to obtain work if moved to London but a solicitor’s job is rarely dependant upon location;
 - The new research showed that the economic activity/ geography/occupation risks are unreliable. These contingences are now considered less reliable and the tables incorporating them are now considered to be inaccurate and should be disregarded.
- The new research demonstrated that the key issues affecting a person’s future working life are employment status, disability status and educational attainment.
- The new approach looks at the amount of time that a particular Claimant would have been expected to spend in work if he had not been injured, and [if he still has an earning capacity] the amount of time he can now expect to spend in work.
- The multipliers for loss of earnings obtained from Ogden Tables 3-14 are multiplied by factors to take into account the new factors.
- Education is the greatest test, and the less well educated a worker is, the greater the discount.

¹ Paragraph 6 of the Explanatory Notes at Section A.

- Paragraph 35 sets out the factors for assessment of “adjusted table multiplier”. In addition to age and gender, the relevant factors are:
 - (1) Whether the Claimant was employed or unemployed at the date of the accident;
 - (2) Whether the person is disabled or not [whether both before or after the accident];
 - (3) The level of education attainment.

- The risks of illness, injury, disability and unemployment, which affect the expected future working lifetime, are dependant upon many factors including the factors that were previously taken into account [i.e. economic activity, occupation sector and geographic regions]. Thus, once the multiplier in Tables 3-14 have been adjusted to take into account employment, disability status and education, there is no need for any further adjustment to allow specifically for occupation, region or general level of economic activity unless the particular circumstances of the case suggest that it is required.

- There are 4 new tables [table A-D] depending upon whether male/female, disabled or not. The tables assume retirement age of 65 [male] or 60 [female]. It was not possible to calculate expected working life times using alternative retirement aged, the explanatory notes at [paragraph 43] and suggests that *“where the retirement age is different to 65 or 60 this should be ignored and the reduction factor and the adjustments should be taken from Table A-D for the age of the Claimant as at date of trial with no adjustment”*. i.e. assume that the retirement age is 65 or 60.

THE THREE NEW FACTORS

(1) EMPLOYED/UNEMPLOYED

The first consideration is self – explanatory. It includes those who are employed, self-employed or on a government training scheme. It also includes those who are an unpaid family worker. The methodology does not take into account pre-accident employment history.

(2) DISABILITY

- *“A person is classified as being disabled if all three of the following conditions in relation to ill health are met:*
 - (i) has either a progressive illness or an illness which has lasted or is expected to last for over a year;*
 - (ii) satisfies the Disability Discrimination Act 1995² definition that the impact of the disability substantially limits the person’s ability to carry out normal activities;*

and

 - (iii) their condition affects either the kind or the amount of paid work that they can do*
- The Ogden table explanatory notes provide examples of how a disability of health problem may affect day-to-day activities including mobility, physical coordination. It is interesting to note that whilst the list does not appear to be exhaustive the last example of perception of physical danger does not include “[significant] fear of heights to underestimating risk of dangerous hobbies”. A fear of heights can be a psychological element caused for example by a worked falling from a height and this definition may cause difficulties when D seeks to exclude such a disability.

EDUCATION

- This is the most important factor and perhaps the most radical departure from the previous rules. It is the most significant determinant of the multiplier. Three categories of “education attainment” are provided (i) degree level (ii) GCSE [grade A-C] up to A level; (iii) limited or no educational attainment. Further clarification is provided in respect of those workers who work as a professional such as an accountant, nurse or lawyer, but do not have a degree they fall into the “degree category”.
- If the CL is under 16 at the date of the accident, the relevant factor is the level of education that the child would have been expected to have attained, had

² 1(1) of the *Disability Discrimination Act 1995* “..a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day- to- day activities.
1(2) In this Act “disabled person” means a person who has a disability”.

the injury, not occurred, together with an assessment as to whether the child would have become employed or not.

THE CALCULATION

- This is a two-part calculation:
 - (i) Assess the value of the earnings the Claimant would have received based upon pre-injury prospects. The multipliers in Ogden Tables 3-14 [tables setting out the multipliers for loss of earnings] are reduced/discouted by using the multiplier set out in either Table A-D [Tables A and C for those not disabled at the time of the accident and Tables B and D for those with a pre-existing disability]; separate figures are give for those who are employed and those who are unemployed]. [£A]
 - (ii) Assess any residual earning capacity. This is calculated in the same way using the multiplier/multiplicand approach based upon actual/potential future earnings. That is to say that the appropriate multiplier in Tables 3-14 will be similarly reduced by Table A-D. [£B]
 - (iii) The actual loss is then measured by £A- £B

Where this methodology is used there will usually be no need for a separate Smith v. Manchester Corporation Award.

- The two multipliers may be significantly different, depending upon the educational attainment, the employment disability status of the Claimant at the time of the accident and time of trial.

Likely effect of the new methodology:

- * The explanatory notes consider that some loss of earnings claims will be reduced as a result of the new methodology. However, it seems to me that there will be a substantial increase in cases where the claimant has a residual earning capacity but meets the criteria of “disabled”. Previously the same multiplier would be used for both future loss of earnings and residual earning capacity, however the new methodology means that the multiplier for residual

earning capacity will be reduced significantly if the Claimant satisfies the definition of “disabled”.

- * Other than those types of cases it does appear that the new methodology will mean a reduction in the majority of awards.
- * The new methodology is unlikely to affect claims where the injury was so serious that the CI is unlikely to work again.
- * The advantage of the new methodology is to make cases easier where previously courts awarded a lump sum, for e.g. Blamire awards of Smith and Manchester awards.. The new approach is likely to result in higher level of awards for these heads of loss. A court, rather than plucking a figure from the air, will use the tables as a starting point.

Example as to why likely to receive less using the new methodology.

Female aged 22 at date of accident, who was not disabled before the accident, with no qualifications earning £15,000, per annum, until 60. Now aged 24 at trial, totally disabled and incapable of work,

5th Edition

multiplicand	Ogden 5 th edition	Discount factor	Multiplier	Total Loss of Earning Claim
£15,000	23.60 [table 8]	Medium discount [allowing for no other discount for occupation/geographical region of 0.95	22.42	£336,300

6th Edition

multiplicand	Ogden 6 th edition	Discount factor	Multiplier	Total
£15,000	23.60 [Table 8] [non disabled] Mortality only	0.68 [Table C] not disabled at time of accident.	16.048	£240,720

£95,580 less between 5th Edition methodology and 6th Edition methodology.

Example as to why receive more using the new methodology

Solicitor, aged 24 earning £40,000, per annum, and not disabled. As a result of her injuries, she is now “disabled” but able to work part time at a salary of £15,000 per annum.

5th Edition

multiplicand	Ogden 5 th edition	Discount factor	Multiplier	
£40,000	23.60 [table 8]	Medium discount [allowing for no other discount for occupation/geographical region of 0.95]	22.42	£896,800 [earnings but for accident]
£15,000	23.60	0.95	22.42	£336,600 [residual earning capacity]
Loss of Earnings = £896,800 - £336,600 = £560,200				

6th Edition

multiplicand	Ogden 6 th edition	Discount factor	Multiplier	Total
£40,000	23.60	0.89 [Table C, employed from column “D”]	21.004	£840,160 [earnings but for accident]
£15,000	23.60	0.64 [Table D, employed from column “D”]	15.104	£226,560 [residual earning capacity]
Loss of Earnings = £840,160 - £226,560 = £613,600				

£53,400 more

Example as to why education, pre trial, has now become an important factor in the 6th Edition.

Female aged 22 at date of accident, who was not disabled before the accident earning £15,000 PA until 60. Now aged 24 at trial, totally disabled and incapable of work.

6th Edition [No qualifications]

multiplicand	Ogden 6 th edition	Discount factor	Multiplier	Total
£15,000	23.60 [Table 8] [non disabled] Mortality only	0.68 [Table C]	16.048	£240,720

6th Edition [educational attainment to A level]

multiplicand	Ogden 6 th edition	Discount factor	Multiplier	Total
£15,000	23.60 [Table 8] [non disabled] Mortality only	0.82 [table C]	19.353	£290,280

6th Edition [educational attainment to Degree Level]

multiplicand	Ogden 6 th edition	Discount factor	Multiplier	Total
£15,000	23.60 [Table 8] [non disabled] Mortality only	0.89 [Table C]	21.004	£315,060

Potential Problem with the new Methodology:

The new methodology does not take into account:

Pre-accident employment history. Take for example a CI who does not work in a “profession” but has a well paid job but left school 30 years ago with little qualification. What educational attainment would such a CL be put in?

Reduction factors post age 54.

All circumstances and this can only be considered as a framework.

The tables only deal with averages, what for example if CI suffers from medical conditions that had no effect on earnings in the past, but would have had an effect on his future earning capacity.

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