

## **Inflation and the Quantum of General Damages for PSLA: a new edition of the Judicial College Guidelines**

A new edition of the *Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases*, the seventeenth, hit the shelves this week. The primacy of these guidelines as a starting point for the assessment of something as potentially abstract as quantum for pain, suffering and loss of amenity is probably universally acknowledged.

An issue which is raised routinely in a great many cases where general damages for injury fall to be assessed, is to what extent the question of inflation should be taken into account. Recent high rates of inflation have sharpened the focus of practitioners' on the considerable effect this can have on a claimant's award. It is perhaps surprising that the only widely reported case dealing with this issue is from the County Court in *Blair v Jaber [2023] EW Misc 3 (CC)*. The finding of the learned recorder in this case, and indeed as I understand it, the typical practice of the courts, is vindicated not only by the new edition of the *JC Guidelines*, uplifting its suggested brackets for awards to account for inflation since 2022, but specifically by the exhortation of Mrs Justice Lambert in the foreword to the edition. It is pointed out that there was an inevitable delay between the finalisation of the latest edition, in August 2023, and its publication in March 2024, meaning that "[f]or the avoidance of doubt, of course these guideline figures should be increased by the appropriate index for inflation between August 2023 and the date of the assessment of damages".

The brackets have been uplifted by about 22.05% across the edition. The editors of the *JC Guidelines* used the Retail Price Index as their measure of inflation in preference to the Consumer Price Index. According to the Office for National Statistics, the RPI figure from August 2023 was 376.6, but for January 2024 (published on 14 February 2024) increased to 378, meaning that (without allowing for the lag in RPI figures), the brackets for awards suggested in the latest edition of the *JC Guidelines* need to be further uplifted but about 0.37%.

There are some potential issues with this approach. For example:

- It is liable to render the prediction of court awards for general damages all the harder in cases of high inflation and/or where a long delay before assessment occurs.
- Part 36 offers will need closely to be considered when narrowly beaten or not beaten, where the effect of inflation could be said to have constituted a determining factor in this.
- It may become even less unlikely that general damages will be enumerated in Schedules, unless the future effect of inflation figures is predicted or speculated and taken into account when doing so. This may inhibit early settlement in cases which otherwise could have been compromised.

A further noteworthy aspect of Lambert J's foreword is the reference to the judgment of Cotter J in *Scarcliffe v Brampton Valley Group Ltd [2023] EWHC 1565 KB* in the context of specific lost amenity which can or cannot be replaced by technology or other means as constituting a factor which could potentially reduce or increase an award of general damages. In Chapter 2 of the *JC Guidelines*, pertaining to awards for injuries involving paralysis, it is specifically suggested that an award of general damages may be lower where the injured person regains a degree of independence or attains pain relief from treatments, therapies or aids / equipment. The specific example is "[f]or example, an award for a home hydrotherapy pool may justify a reduction in the loss of amenity element of the award". The corollary example from *Scarcliff* (ibid.) was an increase in this element of the award for an inability to walk a pet dog not otherwise compensated via a claim for a professional dog walker's services.

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