


New methodology for calculating accommodation claims - the reversionary interest approach

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The dilemma facing the courts has been how to fairly compensate claimants for their additional accommodation costs without providing their estates with the “windfall” of a capital asset after they die.

Whilst the existing 1989 Court of Appeal decision in *Roberts v Johnstone* provided “authoritative guidance” as to how these losses should be calculated, it did not establish legal principle. The Court of Appeal felt able to revisit that guidance if it was demonstrated to be ineffective in achieving the objective of full (but not over) compensation.

Case summary

Charlotte Swift had, at age 39, been involved in a serious road traffic accident. She had undergone a left below-knee amputation and suffered significant disruption to her right foot. At first Instance, she was awarded damages in excess of £4,000,000. Whilst the Court accepted that she required special accommodation that would cost £900,000 more than her existing home, she was not awarded damages for this head of loss, as the Judge, Mrs Justice Lambert DME, concluded that she was bound by the *Roberts v Johnstone* approach.

The Claimant appealed and the case was heard at a 3-day remote Hearing at the Court of Appeal commencing on 23 June 2020.

The problem

Since March 2017 the Personal Injury Discount Rate has been set at a negative figure. This has meant that the *Roberts v Johnstone* methodology (multiplying the capital cost of the property by the discount rate and then by the life multiplier) inevitably also produced a negative figure.

Outcome of the case

The Court unanimously decided that it is no longer a ‘safe prediction’ that property prices will rise or even hold their current value over the ensuing decades and that the *Roberts v Johnstone* methodology no longer achieved fair compensation.

Instead full (but not over) compensation should be achieved by awarding a sum equivalent to a life interest in the special accommodation that injured Claimants required.

The life interest figure can be calculated by taking the present capital cost of the property (i.e. the difference between the value of the property the Claimant now requires and the property he or she would have required in the uninjured scenario) and deducting the nominal

value of the reversionary interest. The Court accepted that there were practical problems associated with calculating the value of the reversionary interest. Whilst a market rate approach was right in principle, there was not a sufficiently active market in the purchase of reversionary interests to set a rate on that basis. On the expert evidence before it the court decided to set the rate at 5%.

The ongoing problem of short life expectancy cases

In *Swift*, the Claimant's life expectancy was lengthy. It is notable that in the Leading Judgment Lord Justice Irwin identified that in a short life expectancy case, the value of the reversionary interest would be much higher. Different considerations and arguments could be applied but he declined to express any further view on these. The decision did not deal with other issues that commonly crop up in accommodation claims such as adaptations and betterment and it will be interesting to see how case law develops in these areas.

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