

General Damages

Speakers:



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Outline of this talk

- General Damages / PSLA
- The new 16th edition of the JC Guidelines
- Combinations of injuries
- Conclusions / future issues with general damages

What are “General Damages”?

What do you think of?



Beware ...

- “General Damages” can mean or include much more
- PSLA
- Handicap on the labour market
- Loss of congenial employment
- Loss of enjoyment (e.g. holiday)
- Loss of use (e.g. vehicle)
- Personal losses/those without an exact monetary value

PSLA

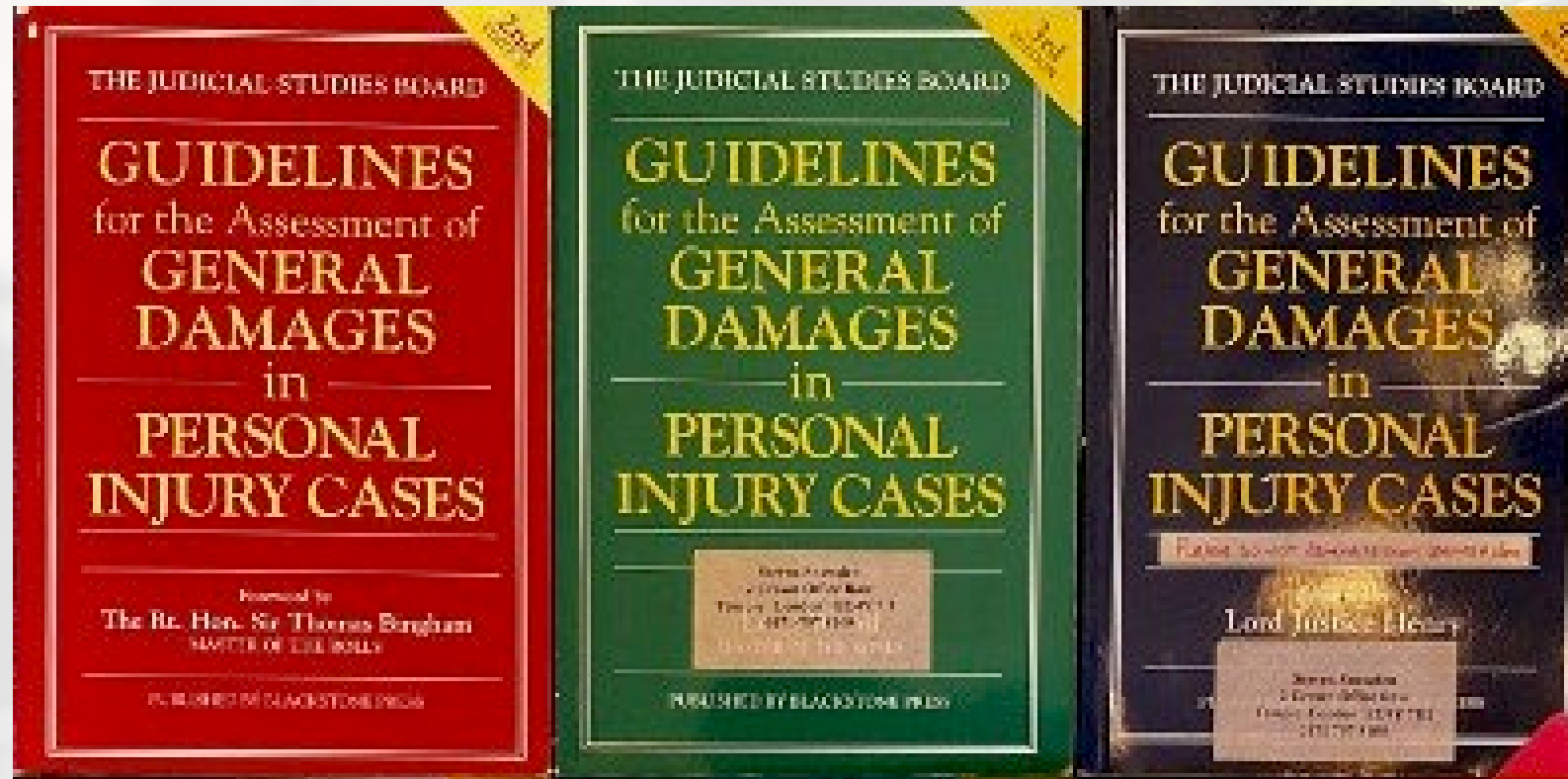
- What are the awards for?
- Pain and suffering
- Loss of amenity
- Individual and fact-sensitive / case-specific
- The role the Court of Appeal used to perform
- Heil v Rankin [2001] QB 272
- Simmons v Castle [2013] 1 WLR 1239

PSLA – reminder of some basics

- What is compensable injury – industrial disease cases
- The theory: Heil v Rankin, Wright v BRB, “jury award”
- “Fair and reasonable compensation”
- Factors to determine the award: nature and severity of injury, impact on claimant, prognosis.
- Other factors: age, sex, means, stoical claimant, pre-existing disability, acceleration, etc.

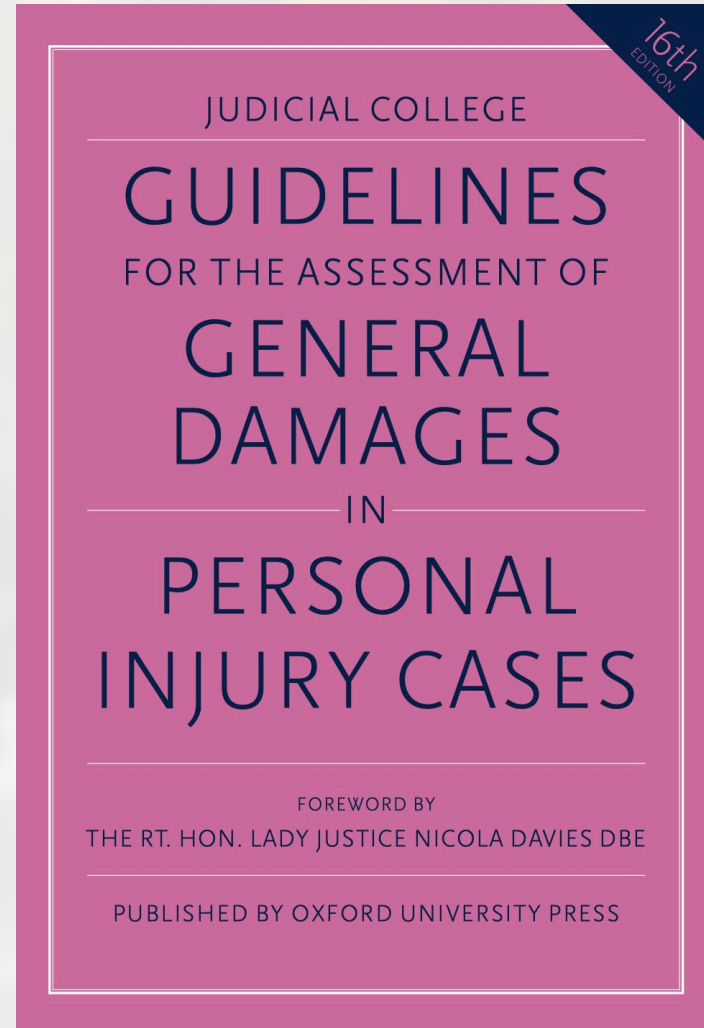
Judicial College Guidelines

How it began ...



Judicial College Guidelines

How it's going ...



JC Guidelines

- Focus on awards for pain, suffering and loss of amenity
- Editorial team
- Purpose of the guidelines
- What do we do?
- First edition 1992
- New edition (16th) published April 2022

JC Guidelines

A-G of St Helena v AB [2020] UKPC 1

“a substitute for contemporary judicial law-making ... main source of the common law in relation to the quantification of PSLA damages”

- per Lord Briggs at [21]

The new (16th) edition, April 2022

- Even fewer judicial decisions (Covid lockdown!)
- Some brackets need to be approached with care
- New: sexual and other abuse; cold injuries
- Changes: reproductive system, asbestosis
- Interaction with whiplash scheme – for the CA
- Done away with the pre-uplifted figures (*not mesothelioma*)
- Still “guidelines not tramlines”

16th edition headline figures

- Top of the bracket for tetraplegia = **£403,990**
- Top of the bracket for paraplegia = **£284,260**
- Top of the brain injury bracket = **£403,990**
- Moderate TBI top figure = **£219,070**
- Above-knee loss of a leg top figure = **£137,470**
- Top of the bracket for CRPS = **£84,010**
- Top of the mesothelioma bracket = **£114,460 ***

16th edition headline figures

- Minor hand, finger and thumb injuries = *up to £4,750*
- The lowest for minor injury remains *a few hundred pounds*

NB

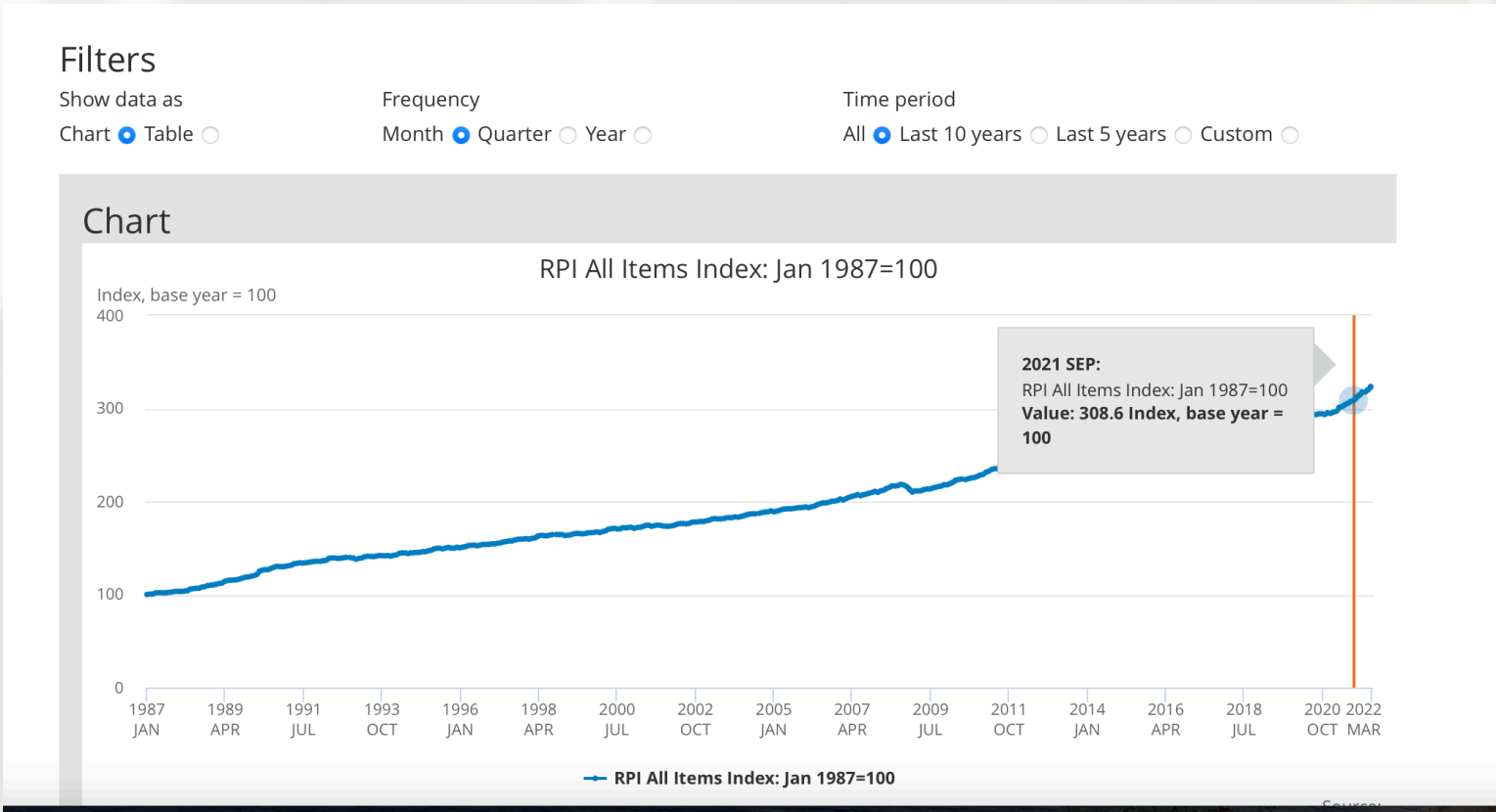
- Still no reported scarring cases after the 14th ed changes

Indexation

- Indexation for inflation = RPI
- Ongoing application of indexation to the figures – see e.g. *Witham v Steve Hill Ltd* [2020] EWHC 299 (QB)
- 16th edition uses figures updated to the end of September 2021, so already (inevitably) out of date
- RPI in Sept 2021 was 308.6 / March 2022 was 323.5
- That is a rise of **4.8%** in six months
- In context, rise between 15th and 16th eds was 6.56%

Indexation

<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/chaw/mm23>



Indexation

2021 JUL	305.5
2021 AUG	307.4
2021 SEP	308.6
2021 OCT	312.0
2021 NOV	314.3
2021 DEC	317.7
2022 JAN	317.7
2022 FEB	320.2
2022 MAR	323.5

Download this time series

Full unfiltered time series | Filtered time series

Download full time series as:

Image | .csv | .xls

16th edition figures **updated to today**

- Top of the bracket for tetraplegia = ~~£403,990~~ **£423,381**
- Top of the bracket for paraplegia = ~~£284,260~~ **£297,904**
- Top of the brain injury bracket = ~~£403,990~~ **£423,381**
- Moderate TBI top figure = ~~£219,070~~ **£229,585**
- Above-knee loss of leg, top figure = ~~£137,470~~ **£144,068**
- Top of the bracket for CRPS = ~~£84,010~~ **£88,042**
- Top of the mesothelioma bracket = ~~£114,460~~ **£119,954**

Indexation

By contrast, CPI has risen from 112.4 in Sept 2021 to 117.1 in March 2022, a rise of 4%

		CPIH Index (UK, 2015 = 100)	CPIH 12- month rate	CPIH 1- month rate	CPI Index (UK, 2015 =100)	CPI 12- month rate	CPI 1- month rate	OOH Index (UK, 2015 =100)	OOH 12- month rate	
2021	Mar	109.7	1.0	0.2	109.4	0.7	0.3	109.1	1.3	
	Apr	110.4	1.6	0.7	110.1	1.5	0.6	109.2	1.4	
	May	111.0	2.1	0.5	110.8	2.1	0.6	109.4	1.5	
	Jun	111.4	2.4	0.4	111.3	2.5	0.5	109.6	1.6	
	Jul	111.4	2.1	0.0	111.3	2.0	0.0	109.8	1.6	
	Aug	112.1	3.0	0.6	112.1	3.2	0.7	110.0	1.7	
	Sep	112.4	2.9	0.3	112.4	3.1	0.3	110.2	1.8	
	Oct	113.4	3.8	0.9	113.6	4.2	1.1	110.5	1.9	
	Nov	114.1	4.6	0.6	114.5	5.1	0.7	110.8	2.1	
	Dec	114.7	4.8	0.5	115.1	5.4	0.5	111.2	2.2	
	2022	Jan	114.6	4.9	0.0	114.9	5.5	-0.1	111.6	2.4
		Feb	115.4	5.5	0.7	115.8	6.2	0.8	111.8	2.5
Mar		116.5	6.2	0.9	117.1	7.0	1.1	112.1	2.7	

Source: Office for National Statistics – Consumer price inflation

PSLA – multiple injuries

- Majority of claims for personal injury will involve multiple injuries
- Where two or more injuries are sustained to different parts of the body, or where there is a physical and psychological injury the damages cannot be assessed by adding what would be given for each of the injuries by itself.
- An injury to the neck, for example, has a general effect on well-being which will no doubt be increased but not doubled by an ankle injury: *Wieland v Cyril Lord Carpets Ltd* [1969] 3 All ER 1006, QBD.
- On the other hand, damage to both eyes or to both arms may be much worse than twice the damage to one of them.

PSLA – multiple injuries (overview)

Three different approaches:

- Overall impression
- Aggregate of awards with discount for overlap
- Aggregate of each injury without discount

Illustration of each approach

Multiple injuries (overall impression)

- *Hicks v Barnes* (13 January 1988, unreported). QBD, Turner J dealt with a claimant with a number of injuries, he stated: ‘There is no satisfactorily rational way in which to evaluate a claim such as this. It would be unrealistic to approach the individual injury or groups of injuries and award a sum for each and arrive at a total. What has to be done is for the judge, as best he may, to sit back from it all and try to form an overall impression, both of the impact of the injuries and how as best, but imperfectly as he may, evaluate that in terms of money. It is not just the individual judge’s assessment of money because, of course, his award has to be more or less in line with awards in broadly comparable cases, and I lay emphasis on the word “broadly”, because no two of these cases are strictly comparable. No two individuals respond equally to the same insult, whether it is of a physical or non-physical kind.’

Multiple injuries (overall impression)

- *Brown v Woodall* [1995] PIQR Q36, Sir John May: ‘In this type of case, in which there are a number of separate injuries, all adding up to one composite effect upon a plaintiff, it is necessary for a learned judge, no doubt having considered the various injuries and fixed a particular figure as reasonable compensation for each, to stand back and have a look at what should be the aggregate figure and ask if it is reasonable compensation for the totality of the injury to the plaintiff or whether it would in the aggregate be larger than was reasonable?’

Multiple injuries (overall impression)

- *Sadler v Filipiak* [2011] EWCA Civ 1728, Pitchford J [34]: ‘It is my judgment always necessary to stand back from the compilation of individual figures, whether assistance has been derived from comparable cases or from the [Judicial College] guideline advice, to consider whether the award for pain, suffering and loss of amenity should be greater than the sum of the parts in order properly to reflect the combined effect of all the injuries upon the injured person’s recovering quality of life or, on the contrary, should be smaller than the sum of the parts in order to remove an element of double counting. In some cases, no doubt a minority, no adjustment will be necessary because the total will properly reflect the overall pain, suffering and loss of amenity endured. In others, and probably the majority, an adjustment and occasionally a significant adjustment may be necessary.’

Multiple injuries (overall impression)

- *Newell v Ministry of Justice* [2021] EWHC 810 (QB), Marquand J, at paragraph 108:
‘The correct approach is not just to simply add the different amounts attributable to each injury to come up with a total but to look at the totality of the evidence to come to quantification. The extent of the brain injury alone is at the top of the bracket of chapter 3(A)(d) and the bottom of chapter 3(A)(c). The evidence is that the Claimant’s cognitive impairments do not significantly affect him on a day-to-day basis. The Claimant is now totally blind in one eye and he has a cosmetic abnormality that may be alleviated by surgery. The Claimant has significant facial injuries and nasal injuries, but there is an overlap between the JCG Guidelines for facial injuries and eye injuries.... Whilst I accept that it is necessary to consider any loss of amenity to the Claimant as a result of his injuries in the circumstances in which he finds himself, I do not accept the argument put forward by the Defendant. Although because of his circumstances, there are certain things that the Claimant will not be able to experience, the very nature of his imprisonment means that impairments in his cognitive functioning, vision and mental health are likely to be of increased significance to him. The Defendant’s assessment of general damages is too low. Standing back and looking at the evidence in the round, the appropriate award in this case is £85,000 for general damages and that is the sum that I award and to which interest will need to be added.’

Multiple injuries (overall impression)

- *Stansfield v BBC*, [2021] EWHC 2638 (QB), Mrs Justice Yip at paragraph 212: ‘In my view, this case does not fit neatly into any category within the Judicial College Guidelines. As a starting point, I have considered the “moderate brain damage” category. Although the heading might suggest something more severe than the mild brain injury I have found, the description fits the findings I have made better overall than other categories. Given the complexity of the medical evidence and the overlapping nature of the various injuries, before setting on an appropriate award, I have also considered the guidelines applicable to other relevant injuries including whiplash, psychiatric damage and tinnitus. I have stood back and looked at the overall impact upon the claimant, the extent of his ongoing disability, the impact on personality and the loss of a successful career.’
General damages for PSLA assessed at £65,000.

Multiple injuries (overall impression)

Why is overall impression important?

- Each case must be considered on its own facts
- Measure of internal consistency across comparable cases
- Measure of proportionality across injuries of different severity
- Flexibility

Multiple injuries (other approaches)

- Aggregate and then discount:
Bracken v Lancashire County Council Education Authority (QBD 1/4/87, unrep), Wood J
- Aggregate for separate injuries without discount:
Mathieu v 1) Hinds 2) Aviva [2022] EWHC 924 (QB), Mrs Justice Hill at paras 84 to 86. The Claimant suffered a serious head injury and also a fracture of the left foot. Mrs Justice Hill assessed the appropriate award for the head injury at £60,000 and a separate award for the foot injury of £6,580.

Multiple injuries (conclusions)

- Which approach will be used?
- No hard and fast rule
- In my view, overall impression remains the best test / best description of what Judges do
- Endorsed by JC Guidelines

Potential Future issues on GDs

- Paucity of reported decisions and simple effect of inflation = disparity between brackets / expectation
- Impact of evolving technology and improving medicine
- Changes in diagnostic criteria / medical assessment scales
- Likely test case on the whiplash tariff scheme / overlap cases
- Indexation

Final thoughts

- General damages are well worth close scrutiny in all cases
- Don't gloss over them
- Worth fighting over if other issues are at stake too
- Don't forget provisional damages

In conclusion

Thank you.

Questions?