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**BUILDING**

# **ACCOMMODATION CLAIMS**

Accommodation claims in clinical negligence cases

Approach and aims of both Claimants and Defendants

Single Joint Expert instructions

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# Accommodation Claims

BASIC ISSUE now – the effect of Swift v Carpenter:

- Injured Claimant seeking damages for the cost of accommodation purchase, adaptations and running.
- Compared to what the Claimant has already – home owner, renter or nothing (yet).
- Sums of £££££ for such house purchase and other costs.
- What happens if C dies prematurely? Often the £££££ goes to nearest and dearest. Perhaps a windfall! This is the “revisionary interest” in the property.
- Balance to be struck. In the past the prevailing discount rate was a positive rather than negative figure. with a Roberts v Johnstone (1989) calculation which began at +2.0%.

# Accommodation Claims

Swift cont.

- Over the years the discount rate fell and had fallen to -0.75% by 2020. So more of a lump sum required (larger multipliers with negative discount rates) for purchase and future costs as a present lump sum. Much more than in 1989, The sums due in damages and possible windfall to other interest increased substantially! Or unfairly!
- Note all of this somewhat associated belief that capital inflation of property values will happen over time...
- Solution? The Court of Appeal deployed the calculation scheme Swift v Carpenter in 2020 to ameliorate the asserted windfalls. Defendants paying less.
- BUT the prevailing discount rate has changed from -0.75% and from 11.1.2025 is now +0.50%, so arguably, the Swift v Carpenter algorithm results in excessively cautious/low awards now.... **Only a just approach now say Defendants.**<sub>3</sub>

# Accommodation Claims

BASIC STARTING POINTS of the actual claim being made...

- Breach of Duty. Not always admitted! Could be a factor.
- Causation

Injuries – physical/mental injuries. !Paul v Wolverhampton for court's attitude to secondary victims.

Do not neglect the issue of C's condition “**but for**” the negligence, so what would her/his condition have been in any event? Short term and long term. With treatment. NB C's duty to take reasonable steps to mitigate claimed loss.

and the consequences? Here the lens to view through: *C's need for a suitable home following a life-changing injury*

Present accommodation – *details*

Unsuitable vs Unsafe....*Effect on recovery from injury of accommodation?*

**Proportionality.** Do not neglect this issue. It is often not considered save as to costs of experts etc. compared to the damages claimed. More than that – overall proportionality. Make even initial estimate. Not strictly CPR 1 and ORO.

# Accommodation Claims

The NEED for a SUITABLE home

Present accommodation

New property.

Why?

Right house....

Future. Promote improvement in condition

Buying

First thoughts, which property? Unreliable!

Need evidence of options and properties considered, from “experts”.

Adapting and altering

Specific needs - that person and others (family, carers)

independence vs dependence

new build vs part old build

Land access, garden

Transient or temporary accommodation

? Relating to the care regime – must relate to C’s needs and practical matters such as care, equipment.

? Live near family and friends and other matters less frequently articulated →see later

# Accommodation Claims

## Suitability of the building and adaptations

- Look carefully to the claimed expert *care regime* and responses
- Not just physical disabilities but mental – cognitive and psychological – disabilities
- Not worst day or best day scenarios, often selective.
- Background, interests, pastimes, culture and religion can be relevant – Ahsan v University Hospitals NHST [2006]
- Prognosis is so important.... ! Prognosis but for

# Addressing Accommodation Claims

What is suitable accommodation is via factual and expert evidence?

Expert evidence is a blend of accommodation expert, care expert and other medical expert evidence. Important to make the experts comment and interact.

Short life cases:

For the elderly or short life expectation C's the Swift/revisionary interest approach can be mathematically "challenging". ie the sum insufficient for purchase

ie The shorter the LE the greater the calculated value of the revisionary interest. It can extinguish the sum claimed.

Often associated with less PSLA award and less future loss of earnings, etc. So limited ability to rob Peter to pay Paul!

No real guidance in Swift about coping with this issue!

# Accommodation Claims

Credit must be given for any accommodation expenses that C would have **incurred in any event** Lynham v Morcambe Bay Hospitals NHST [2002], pre-Swift but still good law.

The set off should not be “speculative” Parkhouse v North Devon Healthcare NHST [2002].

If C expected or likely to have purchased property with a partner, then 50% of the equity is credited Robshaw v United Lincolnshire Hospitals NHST [2015]

No credit to reflect the benefit that C’s parents might receive living rent free in new accommodation purchased because of C’s injuries. It is a benefit to the parents. It is a benefit also to C of the love and care they provide: Parkhouse, Whiten, Manna, Robshaw...

Further the parents do not have to give credit for renting out their former home, but which they would not have rented “but for” C’s injuries Robshaw.

Should the rent be offset against any gratuitous care award given to C for the parents?

Similarly if a partner lives in C’s new accommodation rent free. It is a benefit to the partner, which C does not give any credit Noble v Owens [2008]

If the parent’s purchase a house to include C’s housing and care, where not likely to purchase in an event, then C’s claim in damages for the purchase is held for the parents Parkhouse.

Evidence is important...

# Accommodation Claims

Some matters are on first impression “non-functional” and arguable. Example awards made:

- Desire to live near family and friends M v Leeds HA [2002]
- Expense of parent moving from Norwich to the North-East Warrilow v Norfolk & Norwich Hosps NHST [2006]
- Decorative furnishings and fittings George v Pinnock [1973]
- Adaptations to relatives’ accommodation.

....Grandparents’ largish villa in Barbados (yes, but not much maintenance or future running costs as not there often).  
Not going to tell you how much! Manna v Central Manchester University Hospitals NHS FT [2102]

c/w Father’s house, where parents divorced, for increased access and mobility sought £6,000 (No, can manage with £500 or moveable ramps)... Robshaw

Seems to come back to view of proving reasonableness – emphasized by CA in Whiten v St George’s Healthcare NS Trust [2011]. This includes consideration of whether there is a more reasonable means of C meeting his or her reasonable needs!

No defence to assert that C should have been cared for in an institution rather own accommodation Peters v East Midlands SHA [2009]

! Less expensive alternatives – not everything Rolls Royce limos...

! Reassessments for NHS Continuing healthcare funding if different ICB, if funds still needed before settlement

TACTIC: - the facts and circumstances should be reviewed. Disclosure sought. ...And specifically put to the care and accommodation experts.

Desirable for the care experts for both C & D to be instructed to and ask C about proposed adaptations.

# Accommodation Claims

Other sources of funding: -

Local Authority care and housing – strictly no duty owed by Defendants to Local Authorities in these circumstances – Islington BC v UCLH [2004].

However, there may be circumstances where C has to make contributions to accommodation costs or care fees, for which D could be liable, such as Housing Associations or private care facilities, especially short term use and pre-settlement/trial.

Funds for some aspects are available for deployment now – eg Disabled Facilities Grant, charitable trust one off funding. Often modest and slow to actually receive the funds.

Avoid high interest “payday” loans.

# Accommodation Claims

SO USE EXPERTS... CO-ORDINATE THEIR OUTPUT in their reports!

- Care
- Occupational Therapy
- Other therapies such as: physiotherapy and speech and language therapy.

WHY? – these experts are used to the format they have deployed for a while. Format often not useful to the Court.

The costs/damages for accommodation can be substantial and need to be addressed, whether for C or D, so the reports must address the issues that (1) the parties require and (2) the Court will consider.

Do not forget past adaptations already done and costs

Consider using the approach of initial report and then a further response report that address what other experts/parties have set out.

Costs budgets for these additional reports should be clear; in experts phase, not just for pre- trial.

# Accommodation Claims

*Communication!* *Hadley v. Przybylo* [2024] EWCA

- C claimed solicitors' attendance at case management meetings with medical and other expert and meetings with financial and Court of Protection. **The CA decided that such costs were incidental to the proceedings and could be recovered.**
- The recoverability of the costs of case management meetings, etc and had utility, relevance and attributability to the claim, so the reasonable and proportionate costs could be recoverable
- C - no bar to claiming the costs of solicitors attending rehabilitation meetings and the like.
- Vs D - routine attendance by C's solicitors cannot be assumed to be recoverable.
- Argue that out on the facts and circumstances!

# Accommodation Claims

## Defendant Tactics:

D medical evidence disputing causal link between the injury and the need for alternative accommodation or the need for adaptations.

D medical or other expert evidence or factual evidence (of abilities), in the alternative and the circumstances of the claim that current accommodation can be adapted to meet C's needs. Actually arguing for loss costly solutions in the short or long term.

D might delay, so as to try to wait until condition or progress clearer or even to put C under financial or more financial pressures. Including opposing applications for interim payments.

D might argue that (proposed) adaptations are betterment more than necessity. Decoration and furnishings.

D may review and critique C's evidence – veracity of witnesses of fact, the expert opinions or the factual evidence that the expert opinion predicated upon. Often seeking to assert the injuries not as severe as claimed or medical expert too accepting of C's factual evidence.

# Accommodation Claims

Single joint expert instructions.

Is a Single Joint Accommodation Expert a realistic proposal in clinical negligence cases? My view - NO

Often the parties are not minded to be consensual, but there is a drive to focus on proportionate costs by the Courts.

How would this SJE instructions work, given the standard of preparation with sharing of the expert initial views, but not quite the final opinions, of the medical and care experts?

The accommodation reports are often the last reports produced.

They are often somewhat formulaic.

In many respects they are often not so far apart.

SJE have to weigh up the input from the parties other experts.

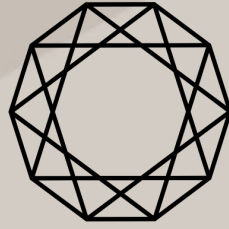
So SJE possible, however the instructions to the SJE would have to be detailed and discussion noted!

# Accommodation Claims

## Prognosis and Life Expectancy

- Prognosis is the province of expert evidence, but is informed by the factual evidence.
- LE feeds into multipliers for future loss and/or necessary expenditure.
- The facts relevant claimed disabilities and to LE assessment are, as a starting point, available from the clinical records, factual witness evidence and other relevant documents such as work/employment records, DWP or other benefits evidence.
- Mostly the facts are not determinative of LE, but require expert comment.
- Courts are reluctant to depart from the Ogden Tables.

FINALLY – CHECK OUT – an article by Ella Davis on the [details of property adaptation claims.](#)



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# Building Accommodation Claims

13<sup>th</sup> November 2025

**Anirudh Mandagere**

# Calculating accommodation costs

*Swift v Carpenter* [2020] EWCA Civ 1295

**Value of the Reversionary Interest:**  $R = (P - B) \times 1.05^{-L}$

**Damages:**  $D = (P - B) - R$

Abbreviation	Meaning
R	Reversionary Interest
P	Value of property now required
B	Value of property owned but for the accident
L	Predicted life expectancy
D	Damages

# Reversionary Interest

The "Windfall" Sum which must be deducted from the capital cost of the new accommodation

**New House: £600,000.00**

**Old House: £350,000.00**

**Difference: £250,000.00**

# The Rate of Projected Return

## Why do we have to multiply it by $1.05^{-L}$ ?

Court of Appeal in *Swift* ruled that 5% is an appropriate projected rate of return

## Why is life expectancy relevant?

To work out the windfall, you need to know when the claimant is going to die

# Calculating accommodation costs



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Criteria in <i>Swift</i>	Value
Value of the property required	£2,350,000.00 ( <b>P</b> )
Value of the property owned	£1,450,000.00 ( <b>B</b> )
Life Expectancy	45.32
<b>Damages</b>	<b>£801,913.00</b>

# Shorter Life Expectancy

Court of Appeal recognised that the formula does not work particularly well with short life expectancies

See also *Hill v East Kent Hospitals University Hospitals Foundation Trust* [2025] EWHC 1241 (KB), **[39]**

Consider

- a) Renting
- b) Third party to buy an property, allow it to be adapted, and grant a life tenancy to the injured claimant.



# Delayed purchase of the property

Child claimant is injured. What to do if they wouldn't have a bought until a house until they were 35? What if they wanted to upgrade their house?

Age	Value of house
25 – 35	No house
35 – 45	£350,000.00 house
45 – 70	£700,000.00 house

Calculate a weighted average of the houses' value

Deduct that figure from the cost of the required property

# Calculating the cost of the capital sum

Claimant owns 50% of their matrimonial home (£350,000.00), but owns 100% of their new home (£600,000.00)?

If the Claimant owned half the pre-accident home, then the value would be half the property value (£175,000.00)

Therefore, the relevant capital sum is **£425,000.00**

# Other costs

Don't forget...

1. Estate agents' fees,
2. Legal costs of the sale and purchase (including stamp duty),
3. Cost of removals,
4. New council tax charge,
5. Additional costs of decoration,
6. Increased costs in maintaining the garden



# Purchasing more than one property

*Whiten v St. George's Healthcare NHS Trust* [2011] EWHC 2066 (QB)

1. Claimant purchased a three bedroom house in London. It did not meet all his needs.
2. Claimant sought to also purchase a new bungalow home outside London.

## **Judgment.**

1. Court held that parents had not acted unreasonably

# Care Home?

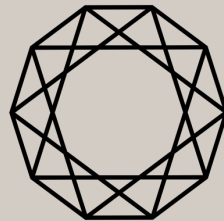
*Harman v East Kent Hospitals NHS Foundation Trust* [2015]

EWHC 1662 (QB)

1. Claimant did not wish to rely upon the state.
2. No duty to mitigate loss.
3. Cost of future accommodation was to be met by the defendant

# Thank you for your attention

contact our clerking team -  
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