



MULTIPLIERS

(A) BACKGROUND

1. A lump sum award of damages is designed to place C in the position he would have been in if the accident had not occurred, no more and no less, see Wells v Wells [1999] AC 34 page 390, per Lord Hope.
2. The 8th edition of the Ogden Tables were published on 17 July 2020, replacing the 7th edition (2011). They are prepared by the Government's Actuary Department and offer an evidence based methodology, as opposed to more random results from judicial intuition. The 2019/20 edition of Facts and Figures is due to be replaced in the next few weeks.
3. The Ogden Tables should be regarded as the starting point for multipliers from which Judges should be slow to depart on impressionistic grounds, see Wells per Lord Lloyd page 374. Practitioners should use the multiplier/multiplicand method to calculate future loss of earnings wherever possible, see Bullock v Atlas Ward Structures [2008] EWCA Civ 194, Ward v Allies & Morrison Architects [2013] PIQR Q1 and Irani v Duchon [2020] PIQR P81 (see below).
4. There are 36 tables within Ogden 8:
 - a. Tables 1 (men) and 2 (women) are full life multipliers where loss is assumed to commence immediately;

- b. Tables 3 - 18 are tables for multipliers for loss of income to varying retirement ages of 50, 55, 60, 65, 68, 70, 75 and 80. These tables take no account of risks other than mortality, see paragraph 54;
- c. Tables 19 - 34 are the multipliers for pension losses with the pension commencing at ages 50, 55, 60, 65, 68, 70, 75 and 80;
- d. Table 35: discounting factors for a certain term. Mortality not taken into account;
- e. Table 36: multipliers for a fixed period of loss. Mortality not taken into account;
- f. Additional Tables to Ogden 8 provide tables from any age up to 125. Interpolation from the tables is still envisaged, but use of the Additional Tables will provide the most accurate multipliers, see paragraphs 25 – 27 and Government Actuary Dept. website¹.

Discount rate:

- 5. For many years it was thought that it was not possible to adopt the number of years for which the loss would last as the multiplier, as this would over compensate C who would receive his future loss immediately; it was perceived that C would be able to invest at rates which exceeded inflation. The object of using the discount rate is to produce a lump sum which, when invested and after tax will generate what C has lost. The discount rate is calculated as the return C is likely to receive over and above the increase in the value of money in the Retail Price Index (RPI). C is assumed to invest in Index Linked Government

¹ <https://www.gov.uk/government/publications/ogden-tables-actuarial-compensation-tables-for-injury-and-death>. Additional tables currently available in Excel format.

Stock (ILGS). Recently it has been accepted that the purchasing power of any lump sum was likely to diminish over time rather than grow. In 2017 a negative discount rate was introduced for the first time, recognising that the average investor would not be able to invest at rates which were likely to keep up with inflation.

6. Recent discount rates set by the Lord Chancellor under the Damages Act 1996 have been:

Before March 2017:	2.5%
March 2017 – 4 August 2019:	- 0.75%
From 5 August 2019:	- 0.25%

For present purposes only the -0.25% discount rate column will be considered.²

(B) FULL LIFE MULTIPLIERS (Tables 1 and 2)

7. Full life multipliers are ascertained by reference to gender and age at trial.

Example A: a full life multiplier for a male aged 22 at trial is 69.89 (Ogden 7: 70.98). For a female aged 47 it is 42.52 (Ogden 7: 44.31).³

Example B: nursing care: tetraplegic in a road accident requiring nursing care for life costing £120,000 per annum:

- a. Male, 29 at trial. £120,000 x 61.00 (multiplier) = £7,320,000;
- b. Female, 43 at trial. £120,000 x 47.19 (multiplier) = £5,662,800;

² Note that the discount rate in Scotland is - 0.75% and in Northern Ireland 2.5%. Also, when going through the examples which follow, cast your eye to the 2.5% discount level column in order to realise by just how much multipliers increased in 2017.

³ See the analysis of Stephen Grime QC & Richard Whitehall on the Deans Court Chambers' website where he has set out the Ogden 7 and Ogden 8 tables to enable easy comparison. In 2020 the life expectation figures are lower than was anticipated in 2011.

8. It is frequently necessary to interpolate between years e.g. if female 43 years and 3 months at trial take multipliers for 43 years and 44 years and apportion the difference to obtain the exact multiplier.⁴

9. **Example C: DIY & Decorating:** an injury may limit a person's ability to carry out DIY or housework. People inevitably cease undertaking such activities sometime before death, particularly heavier aspects of DIY/gardening and decorating. Traditionally a full life multiplier would be taken and reduced. The better methodology is to use the "loss of earnings" tables and assume that C will be increasingly unable (or unwilling) to carry out such tasks from age 70 or 75, Tables 13 – 16 e.g.
39 year old female to 75 = 36.15 (Table 16).

10. C likely to carry out housework for longer than decorating and DIY, consider Tables 17 & 18 to age 80.

11. The life expectancy data factored into tables 1 & 2 applies to the whole population. Unless there are truly exceptional features, the tables should apply.

12. The 0% discount column identifies life expectancy.

(C) FIXED TERMS:

13. Discount factor for term certain (Table 35):

"Discount factor" in Ogden 8 is sometimes referred to as the "deferment factor"

⁴ See paragraph 23.

Example D: C, 46, will require a hip replacement at 70, which would not otherwise have been required at a cost of £10,000. Loss in 24 years.

Discount factor for 24 years is 1.0619 (Table 35) = £10,619.

14. **Example E:** C 28, suffers a knee injury and will require knee replacements at age 40, 58 and 70. The discount factors for the cost of the surgery are:

- a. 1.0305 (surgery at 40 accelerated by 12 years);
- b. 1.0780 (surgery at 58 accelerated by 30 years);
- c. 1.1109 (surgery at 70 accelerated by 42 years)

Pecuniary loss for term certain (Table 36):

15. This applies where a pecuniary loss is to be valued for a fixed period. There is no allowance for mortality or any other contingency.

Example F: C's life expectation reduced markedly e.g. asbestosis, or brain injury. C, now 32 years, life expectation is to age 55, a further 23 years.

C's care/equipment valued at £15,000 p.a. for 23 years.

Multiplier for 23 years 23.67 (Table 36);

$£15,000 \times 23.67 = £355,050$

Other methods which have been used on occasions in the Courts are now endorsed by Ogden 8.⁵

16. Discount rates and fixed period losses can be combined

Example G:

⁵ See Smith v LC Window Fashions [2009] EWHC 1532 life expectancy reduced by 5 years and Judge added 5 years onto age in Table 1, although this is not strictly accurate from an actuarial point of view, see Kemp 4-067. This approach endorsed by Ogden Tables 8, paragraph 15 and further judicial authority cited. Kemp suggests resolution should be considered at appellate level.

- a. Child injured at birth and suffers from cerebral palsy. Life expectation to age 30. Trial when the child is aged 2;
- b. Wheelchair required for life at a cost of £2,100 initially, replacement every 5 years. First wheelchair required when the child is aged 5;
- c. Capital cost of the wheelchair is accelerated by a period of 3 years: Discount factor 1.0075 (Table 35);
- d. Annual replacement costs starting in 3 years $\text{£}2,100 \div 5 = \text{£}420\text{p.a.}$ subject to a discount factor of 1.0075 (Table 35);
- e. Multiplier for the fixed period of loss (ages 5 - 30) is the multiplier for 25 years, 25.80 (table 36);
- f. Wheelchair purchase: $\text{£}2,100 \times 1.0075 = \text{£}2,115.75$
Annual cost: $\text{£}420 \text{ p.a.} \times 1.0075 = \text{£}423.15 \text{ p.a.}$
 $\text{£}423.15 \text{ p.a.} \times 25.80 = \underline{\text{£}10,917.27}$
 $\text{£}13,033.02$

Multipliers at intervals:

17. These are set out in table form in Facts and Figures.

$$(\text{number of years}) \times (\text{frequency of payments in years}) = \text{multiplier}^6$$

Split multipliers:

18. **Example H:**

Male, 20 at trial, life expectancy to 70 years. Requires care and assistance until 70 years which will increase: 20 – 30 years £30,000 p.a.; 30 – 50 years £60,000 p.a.; 50 – 70 years £80,000 p.a.⁷

⁶ Facts and Figures 2019/20 illustrates the point with the Ogden 7 figures at page 40

(a) Fixed term (Table 36) method:

50 years term certain = 53.26

20 – 30 years = 10.13

20 – 50 years = 31.16 (30 year fixed term) – 10.13 (10 year fixed term) = 21.03

50 – 70 years = 53.26 (50 year fixed term) – 31.16 (30 year fixed term) = 22.10

Age	Multiplier	Care cost £	Total £
20 – 30	10.13	30,000	303,900
30 – 50	21.03	60,000	1,261,800
50 – 70	22.10	80,000	1,768,000
Total	53.26		3,333,700

(b) Additional Tables:

Where C has normal life expectancy, use Additional Tables

Male, 20, full life multiplier (Table 1) = 72.46

Additional tables: age at trial (row), age (vertical column)

20 – 30 years: 10.11

30 – 50 years: 30.86 – 10.11 = 20.75

50 onwards: multiplier 72.46 - 30.86 = 41.60

Age	Table 1 (split)	Care costs £	Total £
20 – 30	10.11	30,000	303,300
30 – 50	20.75	60,000	1,245,000
50 onwards	41.60	80,000	3,328,000
Total	72.46		4,876,300

⁷ See paragraphs 45 onwards, examples 4, 5 and 6

(c) Apportionment method:

The methodology, which is more time consuming, is set out at paragraphs 52 – 53.

(D) PENSION LOSS MULTIPLIERS (Tables 19 – 34)

19. **Example H:** C aged 30 at trial would have worked to 68. By reason of her injuries her ability to work and earn are reduced, and she suffers a loss of pension, see paragraphs 111 – 123:

- i. Pension loss £7,000 p.a. (for these purposes ignore loss of lump sum);
- ii. The pension loss multiplier 23.99 (Table 28)

$$£7,000 \times 23.99 = £167,930$$

(E) MULTIPLIERS & LOSS OF EARNINGS:

20. The basic multiplier in tables 3 – 18 must be reduced to take into account risks other than mortality, see paragraph 54.

21. **Example I:** multiplicand for loss of earnings is always net of tax and NI. The multiplier must take into account accelerated receipt, mortality risks and discounts for contingencies other than mortality.

22. Select basic multiplier from Tables 3 – 18.

- i. C, male, 45, anticipated retirement 65, multiplier 19.84 (Table 9).
- ii. C, female, 45, anticipated retirement 65, multiplier 20.07 (Table 10).

Adjust basic multiplier to take account of contingencies other than mortality, see Ogden Tables, paragraphs 54 – 98:

- a. The age of the person at Trial;
- b. Whether the person is or is not in employment, definition of employment, see paragraph 67;

- c. Whether the person is or is not disabled within the Disability Discrimination Act (DDA) (see paragraph 68 onwards and below);
- d. Highest educational qualification (see below).

Tables to enable calculation of adjustment factor at paragraph 82. Males A and B, Females, C and D. Adjustment factor must be multiplied by the basic multiplier to give an adjusted multiplier.

23. Disability:

Ogden 8 definition of disability is based on Disability Discrimination Act 1995 (DDA). It is not the same as the Equality Act 2010. A person is categorised as “disabled” if all 3 of the following are met:

- a. The person has an illness or a disability which has or is expected to last for over a year or is a progressive illness; and
- b. The DDA definition is satisfied in that the impact of the disability has a substantial⁸ adverse effect on the person’s ability to carry out normal day-to-day activities.⁹
- c. The effects of impairment limit either the kind or the amount of paid work he/she can do.

Consider how C’s residual disability affects C’s work, paragraph 90

24. Highest Educational Attainment:

- Level 3: Higher degree, degree or equivalent, higher educational qualification below degree level;
- Level 2: A level or equivalent, GCSE or equivalent (at least one Pass at A* to C/9 to 4)
- Level 1: Low level qualifications below GCSE, no qualifications¹⁰

⁸ Paragraph 3.2 of the DDA Code of Practice defined substantial as being more than minor or trivial.

⁹ See Schedule 1, paragraph 4 of DDA. The guidance notes from DDA were dropped from the Equality Act as they were thought to be overly restrictive. They are reproduced at paragraph 70.

¹⁰ See paragraphs 72 – 73.

normally be expected to be modest. Interpolation using a mid-point between the disabled and non-disabled reduction factors is not advised” paragraph 91.

Expert opinion may be considered, paragraph 92.

Modest judicial amendment of Ogden 7 adjustment factor:

29. Swift v Carpenter [2018] EWHC 2060:

Female, 43 at trial, graduate working as travel journalist “*dynamic and ambitious*”. Below knee amputation, leaving her with fluctuating pain.

Pre accident worked 5 days a week, net income £41,712 p.a. Now disabled and earning £33,360 p.a. net, 4 days a week.

Ogden 7 approach upheld in principle as C likely to experience times when not working and longer periods of unemployment.

D submitted reduction factor should be at mid-point between disabled and not disabled. Injury did not obviously fall within the examples of mobility provided in Ogden Tables. However C disabled and disability may threaten employment status.

Discount factor for residual earning (Table D) = 0.60 increased to 0.70. Lambert J did not think that this was “*impermissible judicial tinkering*”

30. The adjustment factor in Tables A – D only gives statistics from 16 years to 54 years. For 54 years onwards, for those in employment the reduction factors increase towards 1.00 at retirement, and for those not in employment towards 0.00. If C older than 54, the individual circumstances are particularly important.¹² There is judicial authority for a linear approach.¹³

31. If C plans to retire at an age which isn’t in the Tables use what is in the Tables and interpolate, see paragraph 24.

¹² See paragraph 82

¹³ 56 year old prison officer in secure employment reduction factor of 0.79 (Table A) increased to 0.83 (2 x 0.2 p.a.), see Marsh v MOJ [2017] EWHC 1040 Thirlwall LJ (sitting as a HC Judge).

32. Rationale/criticism of Ogden 8:

- a. geography, general economic circumstances, or type of work not taken into account;
- b. Situations which may not be good models:
 - geographical differences e.g. between the South East and North East;
 - a recession where a non-skilled worker may be badly affected;
 - professional person in sedentary job less affected by disability than a manual worker.

(F) FATAL ACCIDENTS:

33. The multiplier is fixed at the date of the trial, see Knauer v Ministry of Justice 2016 UKSC 9, see paragraphs 124 - 160.

(G) BLAMIRE:

34. If the evidence as to future loss of income is uncertain and there are many imponderables a lump sum may be awarded. Blamire v South Cumbria HA [1993] PIQR Q1, B a 22 year old nurse who suffered a lower back injury with permanent consequences. B gave up nursing, worked in residential home, then started a family. CA upheld the trial Judge's award of £25,000 lump sum. Assessment of the likely pattern of her earnings had she not been injured, together with the likely pattern of her earnings given her back injury was met with very great uncertainty.

Ward v Allies and Morrison Architects [2012] EWCA Civ 1287:

W theatrical model maker who suffered serious injuries when her index finger of her non-dominant hand was cut off by a circular saw and her middle finger was significantly damaged by dislocation. W's index finger re-attached and she made a considerable recovery. Judge held that W not disabled and awarded a £30,000 lump sum on Blamire lines to allow her to retrain. LJ Aikens, in a unanimous decision, held that the judge was entitled to reach the conclusion that there were 'too many imponderables' for him to adopt a multiplier/multiplicand approach.¹⁴

35. Irani v Duchon [2020] PIQR P81, [2019] EWCA Civ 1846 Hamblen LJ, giving the judgment of the Court, was unequivocal: the multiplier/multiplicand approach "*...should be adopted unless the court is driven to conclude that there is no real alternative to a Blamire award*" [20]. However, there was no real alternative in this case where there was (a) insufficient evidence, or (b) too many imponderables to support a multiplier/multiplicand approach.¹⁵

(H) SMITH V MANCHESTER:

36. Loss of earning capacity, or Smith v Manchester (1974) 17 KIR 1 awards, compensate disadvantage in seeking employment caused by residual disability arising from the accident. It is separate to loss of earnings and forms part of the award of general damages, see Moeliker v Brown [1977] 1 All ER 9¹⁶

¹⁴ Unanswered questions included: (a) would W have succeeded in becoming a theatrical model maker? (b) would she have remained in that position throughout her working career? (c) the levels of remuneration in that occupation? (d) whether the physical and psychiatric recovery of W was such that she could do either the job of a theatrical model maker or other jobs as a model maker after the accident? It is for C to prove earnings but for the accident, and likely future earnings after the accident.

¹⁵ C a high earning Indian national off work after serious leg fractures. Wrongly made redundant and injuries a contributing factor. Out of work for over 60 days and lost his right to remain in the UK indefinitely. He was likely to return to India where his earnings would be much lower. CA upheld Judge's decision based on lack of evidence of what C would be likely to earn when he returned to India. Employment expert could have been instructed?

¹⁶ Browne LJ identified 2 questions: (a) What is the risk that the claimant will, at some time before the end of his working life, lose his job and be thrown onto the open labour market? (b) What is the value of the risk in financial terms should the claimant lose his employment (i.e. will he get other employment at a similar level)?

Multiplier/multiplicand approach and Smith?

37. It is not possible for C to be awarded loss of earnings if there is a total loss claim or if C is disabled and an Ogden 8 calculation is used. A Smith claim may be possible in addition to a loss of earnings claim if C is not disabled within Ogden 8 and there is a claim for partial loss of earnings, or if C is retraining or recovering¹⁷.

Periodical Payment Orders:

38. PPO's should always be considered. They are particularly advantageous for many claimants: the periodical payments are inflation proof (increase by reference to ASHE 6115); disregarded for tax and benefit purposes; money won't run out; C's headache of managing a large sum of money removed; risk of money being misappropriated reduced. For detailed notes on indexation and residual earning capacity, see paragraphs 161 – 177.

HUGH DAVIES

Deans Court Chambers

24 St John Street

Manchester

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¹⁷ The rationale is to compensate for additional time that C is likely to spend on the labour market. Judges conventionally use a multiplicand of one year's net income and multiply this by a multiplier from a fraction of a year up to five years.