Accommodation Claims: The New Approach

- How We Got Here and Where Do We Go From Here

- A panel discussion with

   Charlie Cory Wright QC, Neil Block QC, Susan Rodway QC , Emily Formby and Ashley Pratt

Outline

- Discussion will cover a number of issues not solely the calculations.

- Questions and Answers

- Webinar recording and other materials on website

Procedural Issues

- The permission to obtain additional evidence
- Brief overview
- Reasons new expert and oral evidence allowed
- Could the same apply in other cases

The Proposed Solutions

- Reminder of the various options presented in **Swift**

- The options abandoned before full hearing on appeal

- The reasons these options were abandoned

- The issues remaining before CA

Options offered

- Opportunity for Court of Appeal to provide *guidance* to assist pragmatic negotiation of claims

- Two options agreed:
    - Full capital value of additional sum required
    - Capital sum reduced to reflect "windfall" of assumed increase in value of property over time : the reversionary interest
        - If a reversionary interest : how to calculate it?

Abandoned Options

- Interest only mortgage backed by a PPO
  - out because no such product available
- Life multiplier x mortgage payments / mortgage interest payments or rental costs
  - out because led award to exceed capital cost
- Loan from D to C with a charge over the property
  - out because D insurer not financial regulator
- *BUT* could happen in other situations?

Roberts v Johnstone: Issues

- 2 main issues

  (1) is it binding on the CA?

  (2) If not should it be departed from?

- D submissions: that it was binding (see **Wells / Thomas** in HL); and in any case should not be departed from.

- Lack of evidence before Lambert J and her reasons for finding could not depart

Roberts: CA Conclusions

(1) RvJ not binding; (a) guidance, not principle; (b) nature of PI law in practice; rarity of court hearings; prevalence of settlements; need for clear, predictable guidance in settlements

[? Can Irwin LJ reasoning apply elsewhere?]

(2) RvJ no longer fit for purpose (a) concerns long expressed re rising cost of housing, need to raid other heads [see below] (b) Negative DR – distinct problem, made it much worse.

(3) Therefore new approach necessary

Roberts: per Underhill LJ

- *"the approach to … the calculation of compensation [has] to be reconsidered by the courts from time to time in the light of changing economic circumstances … In my view … the court [in Roberts] must be taken to have understood that that solution was dependent on the broad economic conditions on the basis of which it made its decision continuing to obtain."*

Should C rob Peter to pay Paul?

- Disagreement within Court of Appeal:
- Irwin LJ - unacceptable for Claimant to spend damages from one head to fund property
- Underhill LJ felt while can depart from *RvJ* not to extent of abandoning this recognized reality
- Davies LJ agreed with Lord Irwin on this point

Notional Reversionary Interest

What is it ? A beginner's guide

Background to the COA of conclusions

- Following dismissal of all other options

- Avoiding the need for expert evidence in the proposed cash flow model

- Pragmatic approach was for a discount rate (5%) to be applied to capital sum

- Worked example

A Simple Example of Reversionary Interest Calculation

➢ Value of property now required = £1m

➢ Value of property would have bought = £500,000

➢ Difference = £500,000

➢ C life expectancy @ -0.25% = 35

➢ £500,000 x 1.05 (the 5% calculation) to the negative power of 35 is calculated as follows:

How to calculate the negative power

- Use your calculator in landscape
- Take 1.05 and press the (x to power of y) button on left
- Then insert 35 and you have 5.516….
- Now copy this figure (press and hold)
- Then press 1 and **press division symbol**
- Then paste the copied figure back and press =
- The figure you get is 0.181 …

The final steps

- Multiply this 0.181(full figure) by £500,000
- Result = £90,645 (rounded figure)
- This is the figure you deduct from the £500,00 for the damages
- Final damages = £409,355

What is the worst that can happen???

- For Claimant

- For Defendant

- The reality of short v long life expectancy

- Other issues

- Some examples

DON'T PANIC! MR MAINWARING

All slides will be available on website