

## NIIFA Recent Developments

- NIIFA have received an application for membership from Watts Gregory in Cardiff.
- Mike Mason from Burnett Swayne in Southampton is currently speaking on behalf of NIIFA at 6 APIL regional conferences on "Multipliers and The Ogden Tables".

## NIIFA Recent Judgement – The recovery of agents' costs

In a recent case **Smith Graham (solicitors) v Lord Chancellors Department (Court of Appeal 30 July 1999)** - it was held that a solicitor who used an agent to do a piece of work, which would have normally been done by a fee earner, could claim the cost for legal aid.

This allows solicitors to subcontract the calculation of claims to forensic accountants and recover their costs, including an uplift.

## NIIFA Technical Update 1 – The new Ogden Tables

The Fourth Edition of the Ogden Tables was issued in September 2000. The main changes are as follows:

### 1 Fatal Accidents

The new tables include a recommended procedure to adopt to produce accurate assessments of damages in Fatal Accident Act cases.

### 2 Projected Mortality

To prepare the official national population projections, the Government Actuary makes a prudent estimate of future improvements in mortality. Tables 19 to 36 are based on projected mortality and provide a more accurate estimation of future income streams than the historic mortality tables 1 to 18. The Ogden working party recommends the use of tables 19 to 36.

### 3 Expanded Retirement Ages

The tables have been expanded to include retirement ages of 55 and 70.



The text in the new edition has also been revised and there is also discussion on the following areas:

- The rate of return
- Tax
- Younger ages
- Variable losses or expenses.



# NIFA Ancillary Relief - The judgement in White v White

The landmark ruling in the House of Lords decision (26 October 2000) could mean that a divorce results in the enforced sale of a small business. The ruling means that now business assets are included within the total marriage assets, a lot more people face having their businesses valued as part of the divorce settlement.

In this case the husband - Martin White - and his wife Pamela, who had been married for 33 years, battled over the split of their two farms, which were worth approximately £4.6 million. In 1998 Pamela had been awarded £800,000 in the High Court on the basis that this would meet her "reasonable requirements". However, this did not recognise her considerable input into running the farming business with her husband over the years. She appealed and was awarded a further £700,000. The House of Lords ruling reinforced the principle of equality rather than needs in the division of assets on divorce.

## NIFA Technical Update 2 – Personal Injury

The Human Rights Act 1998 came into force on 2 October 2000. The Act enables a Court to make a declaration of incompatibility. Thus a declaration can be sought that a provision of primary legislation is incompatible with a Convention Right. Using an imaginative interpretation of the Act it may impact on Personal Injury litigation in the following ways:

- Article 2 - Right to Life: Health authorities and NHS Trusts may not be able to argue about a lack of resources, and the Bolam test may also not apply in cases of medical negligence.

This article may apply where injury has been sustained and a loss of life was a possibility from the action complained of.

- Article 6 - Right to a Fair Trial: Can artificially imposed time limits (eg for cross examination) satisfy the right?

Is there a right for both parties to call their own expert rather than a Single Joint Expert imposed by the Court?

Can we exclude hearsay evidence? Can procedural delays violate the right to have the "fair and public hearing within a reasonable time"? Will this affect the late submission of evidence?

The Lord Chancellor is presently facing a judicial review of his legal aid regulations on the grounds that they are in breach of Article 6. The Court has allowed an action against to be brought by solicitor Robert Broudie.

There is also concern that conditional fee agreements are a poor substitute for the "winner takes all" if successful claimants recover only a part of their costs.

- Article 8 - Right to Respect for Private Family Life: How much medical evidence needs to be disclosed? It may also be argued that a claimant could refuse to undergo a medical examination conducted on behalf of the defendant.

Will video evidence fall foul of this right?

## NIFA Accredited Forensic Accountants

Phillip Allsop, **Barber Harrison & Platt** - Sheffield  
Duncan Stannett, **Barnes Roffe** - Dartford  
Phillip Wood, **Barringtons** - Newcastle-under-Lyme  
Mark Levy, **Berley** - London  
Mike Mason, **Burnett Swayne** - Southampton  
Peter Luscombe, **Carter Backer Winter** - London  
Garry Potts, **Conways** - Chester  
Peter Lee, **Dendy Neville** - Maidstone

Andrew Knight, **Dyke Yaxley** - Shrewsbury  
Martin Berry, **Hobsons** - Nottingham  
Nick Munton, **John Gordon Walton & Co** - Leeds  
Peter Kelsall, **Kelsall Steele** - Truro  
Clive Adkins, **Kilby Fox** - Northampton  
Michael Woof, **Little & Company** - Gloucester  
Graham Manning, **Manning & Girling** - Ipswich  
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