Quantum Leap

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Faith, hope and.....love?
Uncertainty

\[ \Delta \chi \Delta \rho \geq \frac{\hbar}{2} \]

Common theme

- What would have happened v What did happen
- Not what:
  - Could
  - Might
  - Hoped
  - Dreamed
Expectation

- Corporate or personal claims.....expectation quotient remains high
- Assertion and assumption-based....it would have happened
- Acceptance of what the Claimant asserts without proper investigation
- Loss of chance
- Cause and effect

Calibrating the uncertainty

- Hurdles of proof
- Documents
- Analyse the business
Losses

- Driven by sales / income
- Methodologies:
  - Historic performance
  - Budgets / forecasts / plans
  - Benchmarking
  - Econometrics?

Other issues

- Other issues from the business cycle:
  - Property
  - Supplies
  - Production
  - Customers
  - Finance

- Ignore the Balance Sheet at your peril
Personal Claims

- Self-employed.....same applies
- Beware the Super-Claimant
- Selling the business
- Pensions

Discount rates......more uncertainty

Illustrative discount rate based on 3 year moving average of iG0S yields (pre-tax and rounded to nearest 0.1pp)
**Discount Rates**

- 1979: Cookson v Knowles: “basket”: 4.5%
- 1981: ILGS introduced
- 1994: Law Commission recommended ILGSs
- 1996: Damages Act
- 1998: Wells v Wells: ILGS: 3%
- 2001: Damages (Personal Injury) Order: 2.5%
- 2002: Warriner v Warriner
- 2003: Cooke v United Bristol Healthcare
- 2005: Periodical Payments
- 2010: Helmot v Simon
- 2012: MOJ Consultation

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**MOJ Consultation**

- Guided by Wells v Wells
- Principle: full compensation from investments based on a “low risk investment strategy”
- Endure for a reasonable length of time – mindful of a balance
- 2 options:
  - ILGS-based methodology applied to current data
  - Mixed portfolio of appropriate investments
    - Mixed: 0% to 35% shares
    - Sterling Fixed Interest
    - Money Market
History of 2.5%

- Single rate to cover all cases
- Rate to nearest half a percent
- Rate should last for a reasonable period in the future
- Claimant not an ordinary investor
- Reference to (simple) average yields on ILGS in 3 years to June 2001
- Government Actuary / HM Treasury view?

The Questions (1)

- Option 1 : ILGS
  - Period : historic, current or anticipated?
  - Which yields included – how averaged?
  - RPI or a different index?
  - Rounding?
  - Allowance for tax or investment expenses?

- Option 2 : Mixed Portfolio
  - Is it consistent with Wells v Wells?
  - What mix of portfolio?
  - Range of data : historic, average?
  - Allowance for tax or investment expenses?

- Option 3 : some other approach?
- Single rate or different rates for different classes?
- What rate?
The Questions (2)

- Impact assessment:
  - on Claimant
  - on Defendant
- Small firms
- Equality impact assessment

After effect?

Where will the focus be........

- Multiplicand
- Retirement Age
- Dependency factor
- Residual Earning Capacity
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