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A Change in Direction for 'Lost Years' Claims

Long occupying a complex position within English personal injury law, 'lost years' claims are embedded in principles of compensatory justice, where claimants seek to recover damages for the earnings they would have accrued but for a life-limiting injury. However, despite roots which date back to a Court of Appeal decision in 1981, the legal framework governing 'lost years' has remained the subject of sustained judicial scrutiny and academic debate, drawing on an arbitrary and much-criticised distinction between adult and child claimants.

The UK Supreme Court has brought the issue back into focus in reversing over 40 years of precedent when handing down its decision in *CCC v Sheffield Teaching Hospitals NHS Foundation Trust* [2026] UKSC 5. The Court ruled by a four-to-one majority that young children whose life expectancy has been shortened through negligence may recover damages for their 'lost years', i.e. income they would have earned during the years of life they will never experience.

The ruling revisits the underlying rationale of 'lost years' awards, bringing child claimants into alignment with adults in relation to compensation for future lost earnings. However, in doing so, it highlights significant challenges regarding claims involving children and signals the future possibility of a more fundamental reassessment of the governing authorities.

Background and Recent Ruling

The principle of 'lost years' damages was established by the House of Lords in *Pickett v British Rail Engineering Ltd* [1980] AC 136, a case in which a factory worker contracted mesothelioma from exposure to asbestos. It was subsequently confirmed in *Gammell v*

Wilson [1982] AC 27, with both decisions unambiguous in finding that damages for pecuniary losses during the lost years are recoverable in English law, and their availability is not conditional upon the claimant having dependants.

Despite the House of Lords ruling in *Pickett* and *Gammell* that a living claimant could recover damages for pecuniary loss during the 'lost years', the Court of Appeal in *Croke v Wiseman [1982] 1 WLR 71* excluded young children from the head of loss. The *Croke* case centred on a 21-month-old child and created a distinction whereby a young adult or adolescent could recover damages for the lost years, but a very young child could not.

The tragic circumstances behind the recent proceedings involved an 11-year-old child, anonymised as CCC, diagnosed with cerebral palsy following a severe brain injury caused by clinical negligence during birth, leaving her requiring 24-hour care. The defendant NHS trust accepted liability, and in 2023, a High Court judge ordered the trust to pay approximately £6.8 million in damages, including around £2.7 million already paid. However, bound by *Croke*, the court declined to award further damages for the 'lost years', so CCC's mother subsequently took the case to the Supreme Court on her daughter's behalf.

The Supreme Court agreed that *Pickett* and *Gammell* do not restrict lost years damages to claimants who have, or may in future have, dependants, and that such damages are in principle available to claimants injured during early childhood, provided they can prove their loss in accordance with normal principles. In the lead judgment, Lord Reed ruled the compensatory principle applies equally to a child as to an adult, stating "*the claim for lost years is in respect of the claimant's own loss, not in respect of anyone else's, and the right to damages is not dependent in any way on how they might be used*".

Financial and Practical Implications

Joe McManus, from the Forum of Insurance Lawyers' catastrophic claims sector focus team, described the decision as representing a significant expansion of recoverable damages in catastrophic injury cases involving children, noting that extending lost years claims to young children will increase the cost of expensive claims even more and push up damages reserves, having a substantial impact on the NHS given the number of high-value brain injury claims already progressing through the courts.

Defendant lawyers have warned that any expansion of recoverable damages will need to be carefully managed to ensure awards are based on robust evidence and remain proportionate, particularly given that the cost of many of these claims is borne by a publicly funded healthcare system with finite resources.

Legal practitioners should be prepared for the possibility that 'lost years' claims may become an area of renewed litigation and doctrinal development. In particular, there may be increased scrutiny of the assumptions underpinning quantum assessments and expert evidence in relation to future earnings and living costs may come under greater challenge.

Additionally, parties may seek to preserve arguments for a potential future reconsideration by the Supreme Court.

For insurers, the judgment introduces an element of uncertainty; while the current framework remains in place, the prospect of reform could affect reserving practices, settlement strategies and the valuation of high-value catastrophic injury claims, particularly those involving children.

The Difficulties of Assessment

Despite a broad consensus on the issue of principle, the assessment of lost years damages for young children raises evidential difficulties, as Lady Rose raised in her dissenting judgment. The basis for her disagreement centred on the distinction between adult claimants with evidence of individual characteristics and abilities and young children, for whom no such evidence exists. Awarding lost years damages to young children would therefore require courts to rely on assumptions, rather than evidence about the individual claimant, which contradicts the fundamental tort principle that loss compensated must be the loss suffered by the individual.

Lady Rose adopted the position that damages for lost earnings where there is no evidence as to the claimant's earning capacity or individual characteristics should be awarded up to the end of the survival period and should not extend to the lost years. Her concern is based on the practical difficulties in demonstrating future earning capacity for the assessment of loss, where some supportive evidence was available in the *CCC* case, a similar context will not always be available.

The dissenting judgment by Lady Rose, alongside references made by Lord Burrows to the awards given in *Smith v Manchester Corporation (1974) 17 KIR 1* and *Blamire v South Cumbria Health Authority [1993] PIQR Q*, serves as a reminder that, in some cases, the future earnings capacity of a young child could be too speculative to calculate an award. The Court held that in instances where the evidence does not enable loss to be precisely quantified, the court must do its best on the available evidence when assessing damages. While this finding is legally orthodox and practically necessary, it does not fully dismiss concerns that, in some cases, the exercise will be entirely artificial.

The Prospect of Reform

Whilst the Supreme Court resolved the specific question raised in *CCC*, it was based on the acceptance that 'lost years' awards are valid. In giving his judgment, Lord Burrows raised two fundamental questions about whether there is merit in a reconsideration of the whole conceptual framework surrounding such claims.

The first is whether there is any justification for treating a lost years award as compensating a pecuniary loss of the injured claimant at all. This reaches to the heart of the jurisprudential basis for the head of loss, that being the general principle that a claimant cannot suffer loss

after death. If correct, it raises the question of how a living claimant can have a current legal interest in earnings they will never receive because they will be dead.

In addition, Lord Burrows suggested clarification on the basis on which lost years damages are awarded; whether they are to be viewed as compensation for the loss of future economic benefits, or as an immediate reduction in earning capacity treated as a capital asset. Lord Reed also suggested this was an area that would benefit from future review.

The second issue identified by Lord Burrows is whether lost years claims should be restricted to compensate dependants only, rather than forming an unconditioned entitlement of the claimant. The significant practical difficulties such a restriction would create were noted, as was the fact it would almost certainly exclude young and infant claimants from the head of loss entirely, something directly at odds with the majority's ruling in *CCC* itself.

Accordingly, Lord Burrows commented that the Supreme Court may have the opportunity to reconsider *Pickett* and *Gammell* in future should a case come before the Court with full submissions that would allow a ruling that considered the longstanding concerns about consistency, fairness, and workability. Whether this leads to incremental refinement or wholesale reform remains to be seen. These remarks serve as clear recognition that further work is needed to explore the principles of lost years claims, and Lady Rose's opinion should be fully considered, given it runs to more than a quarter of the full 57-page judgment.

Possibility of Further Change

The Supreme Court's decision represents a landmark ruling that scrutinises a long-established feature of English law and provides greater clarity for practitioners that a lost years claim for an infant and young child is recoverable in principle. However, Lord Reed and Lord Burrows reminded readers of their judgments that they had not been asked to reaffirm the law on lost years, nor to consider if *Pickett* and *Gammell* were correctly decided, instead practically inviting the opportunity to do so in the future.

The recent judgment establishes that young children are not excluded from lost years awards simply because their future is hard to predict, but it provides no specific framework for assessing those awards. The task for legal practitioners, insurers and the NHS now is to navigate the immediate financial consequences of this ruling whilst remaining alert to the possibility that the law in this area has perhaps yet to find its final form.

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