

Briefing Note:

The Aggregate Hourly Rate and the Appropriate Percentile of ASHE 6115

Richard Cropper, 23rd February 2009

There seems to be a little bit of mystery surrounding how one calculates the aggregate hourly rate for future care and then how one selects the appropriate percentile of ASHE 6115.

The purpose of this document is to provide a practical guide to calculating the aggregate hourly rate and how one applies this figure to calculate the appropriate percentile of ASHE 6115 to be applied to uprate a Claimant's periodical payments for future care and case management.

The following sets out paragraphs 83 to 85 of the Court of Appeal Judgment in *Thompstone et al*:

“How the weighted average was used in order to apply ASHE 6115 has been described in paragraph 71 above. That process is put in issue by the appellants' issue 7. The appellants did not criticise the calculations in themselves but, as explained by Swift J in paragraphs 108-110 of Thompstone, objected to any use of a weighted average, as an artificial construct, not a real earnings rate, and impossible to calculate with absolute accuracy.”

“These are completely irrelevant objections, and were treated as such in the courts below. One of the leading requirements of an index, as agreed in the extract from RH that is set out in paragraph 75 above, is that it should combine simplicity in application with accuracy of match. To take a weighted average of the wages of the people making up the agreed care package, rather than (as seems to be suggested) assessing each worker individually, is an obviously sensible way of achieving those two objectives. The complaint that the result does not set out the position of any single individual only demonstrates a misunderstanding of the nature and purpose of indexation, as did the complaint that ASHE 6115 does not specifically set out the wage-rates of domiciliary carers. The whole point of an index is that it enables general trends to be applied to a particular situation that is sufficiently accurately related to the matter on which the index is based. And as to accuracy, it was for the defendants to produce their own calculations if they were able to do so.”



“Swift J summarised the position thus in paragraph 47 of Thompsonstone: “I am satisfied that the weighted average hourly rate, as calculated by Dr Wass, provides a fair and reasonable estimate of the average wage to be paid to the Claimant’s carers. It is based on the pay rates agreed by the care experts. Any imprecision is likely to be negligible. I find that it is appropriate to use it in order to match the carers’ earnings level to the appropriate ASHE 6115 percentage.”

“Nothing said to us gave any reason for differing from that assessment. The complaints as to the use of a weighted average failed before the courts below, and again their reiteration in this court has not improved the appellants’ position.”

A simple averaging of hourly rates will only produce an accurate result if the same number of hours, at each hourly rate, is purchased. In reality, a care regime is likely to include a mixture of hours provided at different times and rates. A calculation of the weighted average hourly rate is therefore necessary. This calculation takes into account the different quantities of hours purchased at each hourly rate.

The weighted average (“aggregate”) hourly rate is calculated by applying the following formula¹:

$$\text{Aggregate Hourly Rate} = \frac{\sum \left[\frac{\text{Annual hours for each element of the care regime} \times \text{Hourly rate for that particular element of the care regime}}{\text{Total annual hours for all of the care regime}} \right]}{\sum \text{Total annual hours for all of the care regime}}$$

In practice, the following is an example of what this means and how one works it out:

Type of Care	Annual Hours	Hourly Rate	Total
Weekdays	4,130.00	£10.50	£43,365.00
Weekends	2,360.00	£11.50	£27,140.00
Team leader	1,770.00	£15.50	£27,435.00
	8,260.00 (A)		£97,940.00 (B)
Aggregate hourly rate = (B) ÷ (A) =			£11.86

In some cases this can be more complex, as the regime changes over the Claimant’s lifetime.

For example:

¹ One must remember that care is often claimed on a 60-week year basis.



To age 14

	Annual Hours	Hourly Rate	Total
Care	468	£7.77	£3,636
Additional care	42	£7.77	£326
Additional care	150	£7.77	£1,166
Additional care	96	£7.77	£746
	<u>756</u> (A)		<u>£5,874</u> (B)
Aggregate hourly rate = (B) ÷ (A) =			<u>£7.77</u>

Age 14 to 18

	Annual Hours	Hourly Rate	Total
Care	<u>1014</u>	£8.07	<u>£8,183</u>
	1014 (A)		£8,183 (B)
Aggregate hourly rate = (B) ÷ (A) =			<u>£8.07</u>

Age 18 to 23

	Annual Hours	Hourly Rate	Total
Care	1040	£10.95	£11,388
Care	416	£11.50	£4,784
Care	<u>32</u>	£11.05	<u>£354</u>
	<u>1488</u> (A)		<u>£16,526</u> (B)
Aggregate hourly rate = (B) ÷ (A) =			<u>£11.11</u>

For life thereafter

	Annual Hours	Hourly Rate	Total
Care	1040	£10.95	£11,388
Care	416	£11.50	£4,784
Care	32	£11.05	£354
Additional care	2860	£10.95	£31,317
Additional care	1144	£11.50	£13,156
Night care	2600	£8.00	£20,800
Night care	1040	£8.50	£8,840
Additional care	88	£11.05	£972
Night care	<u>80</u>	£8.00	<u>£640</u>
	<u>9300</u> (A)		<u>£92,251</u> (B)
Aggregate hourly rate = (B) ÷ (A) =			<u>£9.92</u>



Having identified the aggregate hourly rate for each 'step' of the future care regime, one must then 'spot' this rate into the earnings distribution of ASHE 6115 for the year that is closest to the date that the hourly rates were determined.

In other words, given that the ASHE data is collected in the April of each year, if the hourly rates are from, say, June 2008 it is appropriate to 'spot' the aggregate hourly rate into the earnings distribution for ASHE 2008.

Clearly, if the hourly rates are taken from a care report in, say, June 2007, it is appropriate to 'spot' the aggregate hourly rate into the earnings distribution for ASHE 2007 rather than 2008.

The following table sets out the annual earnings level for the 70th percentile and above of ASHE 6115:

	<u>Annual earnings level</u>			
	70 th percentile	75 th percentile	80 th percentile	90 th percentile
1997	£5.43	£5.73	£6.11	£7.06
1998	£5.60	£5.92	£6.27	£7.36
1999	£5.94	£6.23	£6.58	£7.65
2000	£6.08	£6.42	£6.80	£7.85
2001	£6.38	£6.69	£7.07	£8.19
2002	£6.89	£7.24	£7.65	£8.75
2003	£7.45	£7.82	£8.27	£9.53
2004	£7.68	£8.09	£8.60	£9.97
2005	£8.03	£8.47	£8.96	£10.30
2006	£8.28	£8.69	£9.16	£10.58
2006	£8.33	£8.71	£9.25	£10.67
2007	£8.79	£9.21	£9.79	£11.36
2008	£9.11	£9.55	£10.11	£11.68

Whilst it can often be the case that the closest midpoint of the percentile is easy to spot, this is not always the case. As a result, the distribution can be accurately split into percentile bands by the application of a spline function.

Dr Victoria Wass has kindly provided the following spline function for the 2008 distribution of ASHE 6115:



Interval for carers hourly earnings in 2008 (inclusive)	Spline midpoint of ASHE (6115) percentile range	Hourly earnings at the mid-point
£0 to £6.07	ASHE (6115) 10 th percentile is the midpoint of this range	£5.85
£6.08 to £6.47	ASHE (6115) 20 th percentile is the midpoint of this range	£6.29
£6.48 to £6.92	ASHE (6115) 30 th percentile is the midpoint of this range	£6.69
£6.93 to £7.44	ASHE (6115) 40 th percentile is the midpoint of this range	£7.19
£7.45 to £7.98	ASHE (6115) 50 th percentile is the midpoint of this range	£7.71
£7.99 to £8.69	ASHE (6115) 60 th percentile is the midpoint of this range	£8.32
£8.70 to £9.54	ASHE (6115) 70 th percentile is the midpoint of this range	£9.11
£9.55 to £10.83	ASHE (6115) 80 th percentile is the midpoint of this range	£10.11
£10.84 and above	ASHE (6115) 90 th percentile is the midpoint of this range	£11.68

Therefore, the aggregate hourly rates as set out in the examples would fit in the following percentiles:

Aggregate hourly rate	Appropriate percentile	Percentile band
£11.86	90 th percentile	£10.84 and above
£7.77	50 th percentile	£7.45 to £7.98
£8.07	60 th percentile	£7.99 to £8.69
£11.11	90 th percentile	£10.84 and above
£9.92	80 th percentile	£9.55 to £10.83



I hope that this acts as a useful guide to all those applying ASHE 6115 to periodical payments Orders for future care and case management. If you ever have a specific issue in respect of identifying the appropriate percentile, please do not hesitate to contact us.

Richard Cropper

The contents of this document are © Personal Financial Planning Limited 2009 and all rights are reserved. No liability is accepted by PFP Limited or by any of the authors of the contents for any loss or damage caused to any person relying on any statement or omission in this briefing. You should seek case specific independent legal and financial advice if it is of sufficient importance for you to do so.