

## 2010 Review: An IFA's Perspective

Ian Gunn and I were thinking back over 2010 and the cases in which we have been involved that we thought might be of interest to others.

### Reasonably Secure?

Security of periodical payments was high on the agenda for us in 2010.

I gave evidence for the Claimant in the case of *Bennett v Stephens* [2010] EWHC 2194 (QB), a case involving a Lloyd's syndicate where the accident was prior to the acceptance of Lloyd's market to the Financial Services Compensation Scheme.

It was the Claimant's case that, in the event of default of the insurer, the Motor Insurers' Bureau (MIB) would become responsible.

The Judgment of Mr Justice Mackay sets out what we believe is the first guidance in respect of the test for 'reasonable security' in the following terms:

*How should I approach this exercise? On the one hand the benefits of such an order for the Claimant are immense - peace of mind, a tax-free income stream proof against inflation and the knowledge of security for life. As I have said to the Defendants the advantages are to them commercial but real and it would be or might be a much more costly matter if I were to, for example, require them to go into the market and buy an annuity to produce the income stream I have set out at the start of this judgment. To deny the Claimant a periodical payment order is to condemn him to live among the uncertainties of the market and so to invest £1.3m as to give him the means to pay for care for life. It is particularly to be noted that the biggest call on that fund will come in the later years of his life when his upper body condition may deteriorate to the stage where he needs more care than he does at the moment.*

*However, if I make a periodical payments order and continuity of payment is broken and those payments cease the Claimant's position here would be a disastrous one. He would have no further recourse to the Defendants, to whom he will have given a legal discharge as a consequence of the making of the order. He will have no recourse to any compensation scheme or guarantee. He will be left with desperate measures seeking to set this order aside many years hence, or making a claim against his solicitors.*

*While therefore, I am only required by the statute to consider whether the proposed order is reasonably secure and not required to find that it is entirely secure or free of all risk, it seems to me that my satisfaction has to reach a high level, given what is involved and I must finish up satisfied on something higher than a mere balance of probabilities.*

The Judgment concludes as follows:

So the line of reasoning supported by both counsel in this case appears to me to be watertight, as it indeed seemed to be to the then solicitor for the insurers, who received this notice and said in his witness statement that service of notice, “has, of course, occurred.” But clear, conscientious and candid as both counsel were in their exposition of this argument, fully attempting to point to any possible problems in their way, I am conscious that I have not heard contrary argument, if there should be any, from the MIB itself. The Claimant did invite the MIB to state openly whether it would so argue if the point arose, but it felt unable to go further than a statement that they did not think they would take the point, but would not commit themselves. This is in line with their general disinclination against predicting what their stance would be in relation to some future claim which has not yet materialised.

My task, however, under s.2 does not give me the luxury of waiting to see what develops. I have to assess risk as of now on current information and cannot put that task off. If the Claimant’s advisors had a real fear that the MIB might resist the claim on this basis, and have some credible grounds for so doing, there is a remedy to which they could have resort, since the House of Lords’ decision in *Horton v. Sadler* [2006] 2 WLR 1356, which declined to follow its own earlier decision in *Walkley v. Precision Forgings Limited* [1979] 1WLR 606. The Claimant could now discontinue this claim, reissue and seek the necessary exercise of discretion under the Limitation Act 1980 and, assuming success, give due notice of that fresh action. That is a course that seems to me to be undesirable if it can be avoided, though it is not for me to advise the Claimant how best to proceed, but I believe there is a possible alternative and we need to discuss the form of this order with counsel. I have been shown the decision of Swift J of 8th December 2006, in *Harpin v. Walsall Hospital NHS Trust*. She made a periodical payments order where the Secretary of State for Health was not a party to the claim, but was the source of a payment which was to be made, and that order required notice to be given to him the order being stated to take effect unless he by a specified date applied to set aside or vary its terms. In the absence of such application the order on its face expressed satisfaction of the continuity under s.2.

It seems to me that that device could legitimately be used in this case and that if it was; I would feel able to express my satisfaction under s.2(3) of the Damages Act 1996. I therefore need to discuss the implications of this ruling with counsel.

During the hearing the role of the IFA in these matters was considered in the following terms:

MR. WESTCOTT: I do not need Mr. Cropper to make good the points that I have made to you about the Motor Insurance Bureau but he has expressed in his reports which have been admitted, and I would invite my Lord to take as evidence in the case —

MR. JUSTICE MACKAY: Yes.

MR. WESTCOTT: — some reservations about the financial security provided by Faraday, the reinsurers, the Lloyd’s Central Fund. I must emphasise Mr. Cropper is obviously not party pro in his analysis —

MR. JUSTICE MACKAY: No, no.

MR. WESTCOTT: — nor is he anti the analysis that —

MR. JUSTICE MACKAY: *No. He sees his role as researching the background ---*  
MR. WESTCOTT: *And advising you.*  
MR. JUSTICE MACKAY: *--- and advising the court as to potential areas of weakness or possible weakness.*

The transcript of the hearing also notes the following:

MR. JUSTICE MACKAY: *Right. At the stage we have reached do you need to ask Mr. Cropper any questions or elucidate anything through him?*  
MR. BROWNE: *No, thank you.*  
MR. JUSTICE MACKAY: *Or are you content to leave things? He has performed his usual valuable function in this case of setting the issues out and raising the questions that he raises.*

And ...

MR. JUSTICE MACKAY: *Thank you very much.*  
*I think actually, as I am an inquisitor, Mr. Cropper, you have been listening to all this and the court is very grateful for your written reports.*  
MR. CROPPER: *Thank you, my Lord.*  
MR. JUSTICE MACKAY: *Is there anything you have heard this morning that you would like to correct or comment on either from me or from counsel or from any source?*  
MR. CROPPER: *I think the only concerns that I have still relate to the notion of trust and how that fits in.*  
MR. JUSTICE MACKAY: *Yes.*  
MR. CROPPER: *Particularly with regard to things like the tax status of any payments that would come from that trust, if they were not subject to the ---*  
MR. JUSTICE MACKAY: *I am sorry, I am taking this as evidence on oath.*  
MR. WESTCOTT: *These are points that Mr. Cropper has mentioned to me while my learned friend has been speaking. Perhaps the best thing – I do not mean to steal his thunder – is for Mr. Cropper to tell you what he has told me and then maybe my Lord could put the same question to him again in five minutes' time.*  
MR. JUSTICE MACKAY: *My experience of Mr. Cropper is that he is actually ---*  
MR. WESTCOTT: *He is better than counsel! (Laughter)*  
MR. JUSTICE MACKAY: *--- quite good at speaking for himself. Do we need this on oath?*  
MR. WESTCOTT: *I think there should be a record of it.*

Following service of the Order on the MIB, we are currently awaiting a skeleton from the MIB prior to a further hearing in March if the role of the MIB is disputed.

However, there are still some cases where reasonable security cannot be established and the parties need to be very careful.

I acted for the Defendant in another case with a Lloyd's insurer, but where the date of accident was prior to the implementation of the 1999 Uninsured Drivers' Agreement. As a result, any liability that would fall on the MIB was limited to a nominal total of £250,000.00 under the 1988 Agreement. This was clearly insufficient to provide 'reasonable security' for a Claimant with high annual needs and a very long life expectancy.

Ian was involved in a case where settlement had been concluded on the basis of a mixed lump sum/PPO, subject to approval and where the Defendant's insurer (Independent) was insolvent. As a result the Financial Services Compensation Scheme (FSCS) had become responsible for paying the damages.

Whilst there is no issue about the status of the FSCS as "reasonably secure", there was a fatal flaw in the chain of security because the insurer became insolvent *before* the FSCS came into effect.

On receiving Ian's advice, the Claimant's legal team were forced to re-open negotiations. Eventually, a lump sum was agreed and approved by the Court.

Finally, we have both been involved in cases in 2010 where, as the Claimant was injured in an accident at work, the Defendant's insurer's liability was limited to a stated nominal figure.

The issue as to how such limits are applied and impact on the 'form of award' had to be considered with the help of actuarial advice, although we are not aware of any ruling on the issue.

For example, is the value of the periodical payments the sum total of the nominal payments to the Claimant over their lifetime, or the present value of the lifetime stream of payments at the point of settlement?

If it is the former and the nominal limit on the insurance is breached at some point during the Claimant's lifetime, then the Defendant's insurer's liability would simply cease at that point, defeating the 'guaranteed for life' benefits of periodical payments.

These cases serve as a salutary reminder that the *current* status of the payer of periodical payments is not necessarily an indicator that reasonable security can be taken for granted. Reasonable security is an issue that must be formally considered in order to manage the Claimant's expectations and guide negotiations.

### Accommodation

Purchasing a property can be a big headache, especially in a case where life expectancy is short/uncertain. The conventional *Roberts v Johnstone* approach simply fails in such cases and this problem will only become more acute in the event that the discount rate is reduced.

Both Ian and I are committed to finding a workable alternative to the *Roberts v Johnstone* approach.

Earlier this year Ian provided advice in a case where a novel solution was found. In *Ryan St George v The Home Office* the answer was to provide the Claimant with periodical payments for rent, and a contingency lump sum to cover a number of moves over his lifetime. This replaced the usual lump sum award under *Roberts v Johnstone*.

At the approval hearing, Mr Justice Mackay indicated that this solution ought to have a more general application in other suitable cases.

To us, this may well be the most important issue of 2011.

### Independent Advice and the Claimant's Preference

I provided written evidence in the case of *Morton v Portal Limited* which raised a number of interesting issues when considering the advice to be put before the Court and the weight to be given to the Claimant's preference.

Mr Morton was to receive 75% of the full liability of his award.

The Judgment of Mr Justice Walker states:

*On 5 November 2009 I heard oral evidence from Mr Edward Mark Tomlinson, a financial adviser employed by IM Asset Management. At the conclusion of his evidence I was concerned that I did not have an explanation of the risks to Mr Morton in the light of the amounts that had already been spent and how he could make arrangements for his future needs. I adjourned the matter so that further evidence could be prepared.*

*Further evidence was served in December 2009 in the form of two reports by Mr Richard Cropper, an independent financial adviser. The first was dated 30 November 2009. The second was prepared after a "fact find" discussion with Mr Morton, and was dated 4 December 2009. On 3 February 2010 Portal's legal team notified Mr Morton's legal team and the court that the appropriateness of a periodical payments order was no longer in issue.*

...

*The reports of Mr Cropper identified disadvantages associated with a lump sum payment for future care. They explained how periodical payments could be used to generate a surplus in the early years and described how Mr Morton could “cut his suit according to his cloth” on matters other than future care.*

*The factors referred to in CPR 41.7 (see paragraph 7 above) are set out in paragraph 1 of Practice Direction 41B. I take them in turn.*

*The first factor is the scale of the annual payments taking into account any deduction for contributory negligence. My concern in November 2009 was that after the deduction of 25% as the agreed proportion for contributory negligence, the payments would be very significantly less than the amount that Mr Morton would require. This has now been examined in detail by Mr Cropper. I am satisfied from the explanation in his report that the difficulties facing Mr Morton in this regard are not as great as might ordinarily have been expected, and that the sums available by way of annual payments will go a considerable way towards meeting Mr Morton's needs.*

*The second factor is the form of award preferred by the claimant, including the reasons for the claimant's preference and the nature of any financial advice received by the claimant when considering the form of award. The principal reasons for Mr Morton's preference reflect the disadvantages associated with a lump sum payment for future care. Mr Cropper has given a full analysis of these disadvantages. I am satisfied that his report offers a thorough and independent analysis. In my view it is in Mr Morton's interests to avoid those disadvantages to the extent practicable.*

Both Ian and I consider it imperative that all of the Claimant's means be taken into account when considering the most appropriate form of award, and not just the damages in isolation. The Claimant may have other capital or sources of income that impact on the viability or otherwise of periodical payments.

In other words, undertaking a full and formal fact-find is essential.

We consider this Judgment of particular interest for the further consideration as to the weight to be given to the Claimant's preference and the role of the Court in the 'form of award' decision.

The Judgment states:

*Earlier in this judgment I said that the question whether a periodical payments order should be made is a question for the court. It is a question which may be particularly acute when the claimant is too young to be able to form a considered opinion on the advantages and disadvantages of such an order, or otherwise lacks capacity.*

*Mr Morton is of full age and capacity. At one stage it appeared to be suggested on his behalf that for that reason the court should treat his desire to have a periodical payments order as conclusive. In my view that cannot be right.*

The legislative history is that s 2(1) of the Damages Act 1996 permitted the court to make an order that damages were wholly or partly to take the form of periodical payments. Such an order could, however, only be made if both parties agreed. In *Wells v Wells* [1999] 1 AC 345 Lord Steyn said at 384b:

*... there is a major structural flaw in the present system. It is the inflexibility of the lump sum system which requires an assessment of damages once and for all of future pecuniary losses. ... the lump sum system causes acute problems in cases of serious injuries with consequences enduring after the assessment of damages... it is a wasteful system since the courts are sometimes compelled to award large sums that turn out not to be needed. It is true, of course, that there is statutory provision for periodic payments: see s 2 of the Damages Act 1996. But the court only has this power if both parties agree. Such agreement is never, or virtually never, forthcoming. The present power to order periodic payments is a dead letter. The solution is relatively straight forward. The court ought to be given the power of its own motion to make an award for periodic payments rather than a lump sum in appropriate cases.*

The concerns expressed by Lord Steyn were examined in the report of a Working Party set up by the Master of the Rolls. The report was in turn followed by amendments to the 1996 Act under the Courts Act 2003. Those amendments came into force on 1 April 2005. Since that date s 2(1) of the 1996 Act has provided:

2. (1) A court awarding damages for future pecuniary loss in respect of personal injury:-
  - (a) may order that the damages are wholly or partly to take the form of periodical payments, and
  - (b) shall consider whether to make the order.

It was in those circumstances that the Civil Procedure Rules Committee introduced CPR 41.7. As mentioned above, this required the court, when considering whether to make a periodical payments order, to have regard to all the circumstances of the case and in particular the form of award which best meets the claimant's needs. That requirement seems to me to be quite inconsistent with any contention that the amendments to the 1996 Act handed the claimant a trump card. If there is an issue as to what form of award best meets the claimant's needs, the court would have to determine that issue – and the mere fact that the claimant believes that such an award will best meet the claimant's needs cannot prevent a defendant from inviting the court to conclude that the claimant is wrong. If there were any doubt about this, the matter is made perfectly clear by paragraph 1 of Practice Direction 41B. This identifies as a factor – but no more than a factor – the form of award preferred by the claimant. Whatever may be the claimant's preference, the court must nevertheless have regard to other factors, the first of which is the scale of the annual payment taking into account any deduction for contributory negligence. The third factor is the form of award preferred by the defendant including the reasons for the defendant's preference. This approach is manifestly inconsistent with any contention that merely because a claimant is of full age and capacity the court must give effect to a preference on the part of the claimant for a periodical payments order.

Even without the Practice Direction and CPR 41.7 it seems to me that the legislative history is inconsistent with any contention that the 2003 Act amendments enabled a claimant of full age and capacity to insist that a periodical payments order must be made. I have quoted above from the speech of Lord Steyn in *Wells v Wells* where he identified problems in cases of serious injuries with consequences enduring after the assessment of damages. The problem which he highlighted was the unwillingness of defendants to agree to a periodical payments order. He did not suggest that defendants should be compelled to submit to such an order if a claimant desired it. The answer that he identified was for the court to have a power to make such an order “of its own motion” in appropriate cases. It seems to me plain that Lord Steyn contemplated that determination of what were “appropriate cases” would be a question to be considered and decided by the court. There is no reason to think that Lord Steyn had in mind that this would be so only in cases where a claimant was not of full age or for some other reason lacked capacity. Looking at the matter in the round, it seems to me that the problem identified by Lord Steyn was that under the 1996 Act as originally enacted the defendant held the trump card. There was good reason to deprive the defendant of that trump card, but I cannot detect any legislative intention to hand the trump card over to the claimant.

In written submissions Mr Morton’s legal team did not seek to say that the effect of the Damages Act 1996 as amended is to give a trump card to a claimant of full age and capacity who desires a periodical payments order. Instead, however, it was submitted that a special position arose where a claimant of full age and capacity had reached agreement with a defendant that damages for future pecuniary loss in respect of personal injury should take the form of periodical payments. The written submissions acknowledged that under s 2(3) of the 1996 Act a court may not make an order for periodical payments unless satisfied that the continuity of payment under the order is reasonably secure. They appeared nonetheless to suggest that the court has no duty to consider whether it is so satisfied if the parties were agreed upon the matter. I doubt whether that is a tenable construction of s 2(3). Further, even without having regard to the provisions of s 2(3), it seems to me that s 2(1) of the 1996 Act makes it perfectly clear that before making an order which awards damages for future pecuniary loss in respect of personal injury the court is under an obligation to consider whether to make an order that the damages are wholly or partly to take the form of periodical payments. There is nothing to suggest that agreement of the parties - either that the damages should be lump sum only, or that they should wholly or partly take the form of periodical payments - would remove that obligation. It follows that if the parties were to reach a contractual agreement in this regard the court would not be required to give effect to that contract. Moreover, in the present case I doubt whether any such contractual agreement has been reached - Portal has done no more than indicate that it does not object to the making of a periodical payments order.

It is not necessary in the present case for me to determine whether any particular factor - be it the mere fact that a claimant of full age and capacity desires a periodical payments order, or this coupled with contractual agreement for, or a lack of objection to, a periodical payments order - means that the court is no longer under an obligation to consider whether to make the order.

*For the reasons given earlier, my view is that having considered all relevant factors it is right to make the order. Having reached that conclusion I did not think it either necessary or desirable to invite oral argument on the questions identified above, and the views which I have expressed should be regarded as provisional only.*

### **The Discount Rate**

Since APIL's announcement on 9<sup>th</sup> November 2010 that the Lord Chancellor had agreed to review the discount rate, this issue became the most talked about of 2010.

The review was to:

- Commence shortly;
- Include consultation with HM Treasury and the Government Actuary;
- Be concluded prior to a decision being made as to whether it is appropriate to:
  - Reduce the discount rate;
  - Increase the discount rate; or
  - Leave it unchanged at 2.5% per annum.

If the Lord Chancellor considers it is appropriate to reduce the discount rate, then the effects will include:

- An increase in the net present value of every element of the claim for future loss, with the exception of accommodation; and
- A reduction in the claim for annual loss of use of capital under the *Roberts v Johnstone* approach to accommodation.

The potential impact of these effects on our opinions as to the most appropriate form of award is likely to be as follows:

- In respect of future losses for which periodical payments were not previously considered to be suitable (based on a 2.5% per annum discount rate), our opinion (that a conventional lump sum is more appropriate) is unlikely to change.
- In respect of future losses for which periodical payments are considered to be suitable, a conventional lump sum may become more appropriate.

Ian and I agree that our opinions would be impacted upon (from that based on a 2.5% per annum discount rate) if the revised discount rate materially reduces the investment and mortality risks associated with a conventional lump sum and, therefore, increases the weight to be given to features peculiar to a conventional lump sum, for example flexibility and finality.

For example, if the Lord Chancellor were to follow the result for earnings-based losses in *Helmut v Simon*, then it may well be that a conventional lump sum would be the most appropriate form of award, in cases where the Claimant's life expectancy is long and not particularly uncertain.

However, we would not expect a reduction in the discount rate to minus 1.5%.

In *Helmut v Simon*, evidence was given with regard to the appropriate return on Index Linked Government Stocks, which is a factor that is likely to impact on the review of the discount rate in the UK.

The Judgment sets out the following:

*In a letter to Advocate Dawes dated 1 October 2009, [Mr Rowland Hogg - accountant] stated that the average gross yield from ILGS at the end of September 2009 was 0.68%, the average over the last 12 months was 1.18% and the three year average was 1.28%, all calculated by using a simple average of all stocks in issue, as the Lord Chancellor had done in 2001.*

...

*In his [Mr Christopher Daykin – actuary and former Government Actuary] opinion, a one-year average for gilt yields is more reasonable than three years as the rate is declining and a three year average includes gilts that are no longer available. The present rate is influenced by the Government's quantitative easing policy that is flooding the market and driving yields down. He doesn't think rates will go much lower but they will not return to 2.5 or 3%. The current rate is 0.5%, which is lower than Mr Hogg said.*

Assuming that the evidence given in that case was reasonable, then it would seem unlikely that the Lord Chancellor could presently set the discount rate outside the range of between 0.5% and 1.5%.

However, such general analysis is subject to an evaluation of the impact on the *Roberts v Johnstone* calculation in each case, and any consequent increase in the capital shortfall, which may also have an adverse impact on the suitability and 'affordability' of periodical payments where life expectancy is modest or uncertain.

If the Lord Chancellor considers it is appropriate to increase the discount rate, then the effects will include:

- A reduction in the net present value of every element of the claim for future loss, with the potential exception of accommodation; and
- An increase in the claim for annual loss of use of capital under the *Roberts v Johnstone* approach to accommodation.

The potential impact of these effects on our opinions as to the most appropriate form of award is likely to be as follows:

- In respect of future losses for which periodical payments were not previously considered to be suitable (based on a 2.5% per annum discount rate), it may be that our opinion (that a conventional lump sum is more appropriate) would change.
- In respect of future losses for which periodical payments are considered to be suitable, our opinion is unlikely to be revised.

Ian and I agree that our opinions would be impacted upon (from that based on a 2.5% per annum discount rate) if the revised discount rate materially increases the investment and mortality risks associated with a conventional lump sum and, therefore, **suitably-linked** periodical payments may be more appropriate for more elements of the claim.

However, again, this would be subject to an evaluation of the impact on the *Roberts v Johnstone* calculation and indexation issues.

The above illustrates that whilst a change in the discount rate has no direct impact on the **value** of periodical payments, there is a change in respect of the **viability** of that form of award.

Consequently, there may be danger in locking a Claimant into a periodical payments Order, based on the assumption that nothing would change if the discount rate alters.

These issues are very case-specific and require careful and individual analysis.

### **The First Anniversary for the First Designated “Personal Injury Fund”**

2010 saw the first anniversary for 7IM's investment fund developed for personal injury Claimants.

The fund's aim<sup>1</sup> is stated as being:

*The CF 7IM Personal Injury Fund aims to provide a long-term total return from investment in a range of asset classes. The Fund has been designed to be potentially suitable for investment by or on behalf of individuals who have been granted personal injury awards but is not restricted to such persons.*

*There may be moderate risk to capital but the Fund will be managed with the intention of limiting volatility to relatively low levels in normal circumstances. However, as a consequence, long-term return expectations may be lower than for higher risk portfolios.*

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<sup>1</sup> December 2010 factsheet, taking from [www.7im.co.uk](http://www.7im.co.uk)

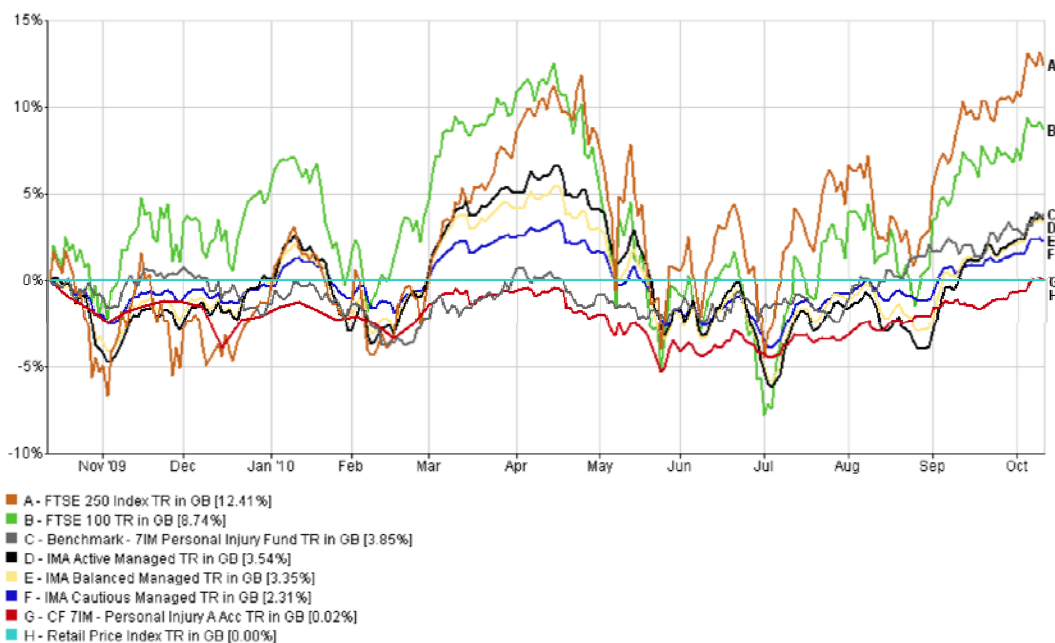
The benchmark by which the performance of CF 7IM Personal Injury Fund is measured is 60% Index-linked Gilts (FT-Actuaries All Stocks Index-Linked Gilt Total Return); 20% UK Equity (FTSE All-Share Total Return) and 20% Government Bonds (FT-Actuaries All Stocks Gilt Total Return).

At the time of the fund launch, 7IM indicated that the expected return for the fund was around 4.8% gross of charges. When we asked how that fitted with the need for a 2.5% real and net return, Nick Heath responded (2<sup>nd</sup> November 2009) in the following terms:

*How do we square 4.8% gross with 2.5% real that the Court of Protection suggests? Well, finding 2.5% real would be nice!, when index-linked gilt yields are significantly lower than that – it simply cannot be achieved without taking some risk. Our diversified portfolio is intended to be much less risky than other routes to generate this sort of return. Furthermore, while inflation remains very low (current reading of 1.1%, and falling), the nominal return implied by 2.5% real would appear to be achievable: charges will clearly impact the gross returns achieved by the fund's mix of asset classes (and bear in mind that the strong usage of ETFs means that costs of underlying investments are low), but we would hope that over time this could be offset by beneficial impact of tactical asset allocation – on our other funds, we have often been able to achieve modest positive performance due to Tactical Asset Allocation that has offset or indeed outweighed the TER on our funds. There can be no guarantees on this either of course, and it's important that we keep thinking long-term rather than suggesting we will hit 2.5% real every year, but I think the low target of 2.5% real (say 3.6% nominal currently, but this is a moving target), the efforts we make to keep costs low and the scope for modest gains from careful TAA mean that this is not inconsistent. [Bare] in mind of course that 2.5% real is not of course the fund's benchmark, the benchmark is a composite of index linked gilts, gilts and equities.*

The following graph illustrates the performance of the fund (shown as line G in red) twelve months from 13<sup>th</sup> October 2010 to 12<sup>th</sup> October 2011 relative to the RPI, gross of any initial charges and before taxation compared with:

- A. The FTSE 250;
- B. The FTSE 100;
- C. The composite benchmark set for the fund by 7IM;
- D. The IMA Active Managed investment fund;
- E. The IMA Balanced Managed investment fund; and
- F. The IMA Cautious Managed investment fund.



13/10/2009 - 12/10/2010 © Data provided by Financial Express 2011

According to 7IM's fund factsheet to December 2010, over the previous 6 months the Personal Injury Fund (C class accumulation units) has under-performed the benchmark by 2.04%.

In light of the fund's stated aims and asset allocation and the need for our clients to achieve 2.5% real and net returns, we have yet to be convinced of the merits of this fund.

### Conclusions

2010 was a year in which we continued to apply our skills for the benefit of our clients and to push boundaries. Our commitment for 2011 is to not change.

**Richard Cropper**  
5<sup>th</sup> January 2011

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