

## Ogden 8 - Why it matters for Aviation

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Recently published updates to actuarial data will impact the calculation of damages in personal injury cases and are likely to be significant for aviation clients defending claims of this type in all jurisdictions within the UK. The effects of this may be felt disproportionately in the general aviation (GA) arena as a result of demographic trends within the GA community.

On 21 July the Government Actuary's Department (GAD) published the 8<sup>th</sup> edition of the Ogden Tables, nine years after the preceding 7<sup>th</sup> edition. The Ogden Tables are used to calculate lump sum compensation for personal injury and fatal accident cases by providing adjusted multipliers that can be applied to an annual loss figure to produce the final amount to be paid. These multipliers take into account mortality and other risks, such as unemployment, with the aim that the final lump sum neither over nor under compensates a claimant.

The 8<sup>th</sup> edition takes into account changes to mortality assumptions since the 7<sup>th</sup> edition (which was based on life expectancy projections from 2008), using the most recent life expectancy tables published by the Office for National Statistics (ONS) (the 2018-based projections, which were published at the end of 2019). These indicated a slight reduction in projected life expectancy compared against the more optimistic 2008 figures. The reduction in life expectancy as a percentage of overall life expectancy is obviously not uniform across all ages: for younger claimants the difference in overall predicted life expectancy may be only 1-2% but for older claimants this can increase to as much as 8-9%.

We anticipate that the impact of this life expectancy differential may be of particular relevance for GA claims involving personal injury, given the typical age profile of those participating in GA activities. UK CAA pilot licence holder data from 2018 shows clear age trends across the GA sector.<sup>[1]</sup> Whilst there were only 28 UK Private Pilot's Licences for Aeroplanes held by 25-30 year olds, this increased to 1413 for the 65-70 age bracket. Significantly more holders of EASA Balloon Pilot's Licences were in their 50s and 60s than their 20s and 30s, and numbers of EASA Sailplane pilots peaked at age 67. GA accidents also account for the majority of aviation fatalities: 2018 EASA statistics showed that 84% of EU air transport fatalities arose from accidents involving aircraft with a MTOM (Maximum Take-Off Mass) under 2250kg, which includes small aeroplanes, gliders, microlights and hot air balloons.<sup>[2]</sup>

It is important to recognise that the 8<sup>th</sup> edition of the Ogden Tables has been based on pre-Covid data and William Latimer-Sayer QC, Chairman of the working party, expressly acknowledges this in the forward to the 8<sup>th</sup> edition:

*"At the time of writing, the UK remains under lockdown and the future remains uncertain. The restrictions are slowly easing. However, there is no doubt that the long-term and far-reaching impact of Covid-19 on life expectancy, employment prospects and the economy will need to be considered in future editions of these Tables."*

At this stage, whilst the short-term mortality increases as a result of Covid-19 are relatively clear, it is more difficult to predict what the impact will be on longer-term mortality rates which feed into projected life expectancy figures. Although no date has been set for the release of a 9<sup>th</sup> edition of the Tables, which would reflect these changes, it seems reasonable to anticipate that this may be timed around the next review of the discount rate (to occur by 2024 in England & Wales and Scotland). By this point two further sets of past and projected period and cohort life expectancy figures would have been released by the ONS (in December 2021 and December 2023).

In the interim, however, the impact of the 8<sup>th</sup> edition will be a modest reduction in future damages awards calculated using those new multipliers. The older a claimant is, the higher the percentage impact on their damages award will be.

In this context, aviation defendants and their insurers with claims in the UK may wish to reconsider settlement offers made in respect of claims involving future loss awards where the previous edition of the Ogden tables has been used in calculating the amount offered. The effect on specific multipliers will need to be considered on a case by case basis, but in broad terms Aviation claims involving older claimants and long loss periods are likely to experience a more significant change. It is important to remember that it is open to the court or parties to adopt a bespoke fixed term for life expectancy if the claimant's individual circumstances demand this and, for these cases, the changes to the 8<sup>th</sup> edition will have no impact. For claims subject to the Ogden regime, whilst the impact will be modest in the majority of cases, there may be some instances where existing offers may need to be withdrawn or changed.

[1] [https://www.caa.co.uk/uploadedFiles/CAA/Content/Standard\\_Content/Data\\_and\\_analysis/Datasets/Licence\\_holders\\_by\\_age\\_and\\_sex\\_by\\_year/Pilot%20licence%20holders%20by%20age%20a](https://www.caa.co.uk/uploadedFiles/CAA/Content/Standard_Content/Data_and_analysis/Datasets/Licence_holders_by_age_and_sex_by_year/Pilot%20licence%20holders%20by%20age%20a)

[2] <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/38778.pdf>

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