



Swift v Carpenter – One Size Doesn't Fit All

Swift v Carpenter is a ground-breaking new case on accommodation claims in Personal Injury litigation, but does it provide all the answers?

What is an accommodation claim?

An “accommodation claim” refers specifically to the amount of compensation claimed for the purchase of a new or upgraded property. The new property is required by the Claimant due to their increased needs that have arisen due to their injury.

Swift v Carpenter

The Court of Appeal decision in *Swift v Carpenter* on 09 October 2020 has resulted in a new method for calculating accommodation claims.

This decision brought an end to a period of uncertainty which began when the previous landmark ruling in *Roberts v Johnstone* ceased to function correctly, resulting in Claimants being unable to claim anything for their accommodation claim.

At first glance, the result in *Swift v Carpenter* appears to be a victory for Claimants.

In *Swift v Carpenter*, Ms Swift had a capital shortfall of £900,000. The “capital shortfall” was the difference between the value of her current property and the value of the new property she needed to buy.

When the new calculation was applied, Ms Swift was awarded £801,913 for her accommodation claim.

The remaining £98,087 would still need to be taken from her other compensation so that she could afford the full price of the new property.

Nevertheless, the Court was content that this was a satisfactory outcome that got as close as possible to achieving the opposing goals of “fair and reasonable compensation” and preventing overcompensation or a “windfall” to Ms Swift’s estate on her death.

Where Swift breaks down

Whilst *Swift v Carpenter* provides an excellent outcome for the average Claimant, there will always be Claimants with more complex issues and requirements.

Once *Swift v Carpenter* is examined through the lens of some of these other circumstances, it becomes readily apparent that one size doesn't fit all.

When the calculation is applied to Claimants with shorter life expectancies, the rate of recovery of the capital shortfall decreases dramatically.

In *Swift v Carpenter*, life expectancy was 45.43 years, and this resulted in a recovery of 89.1% of the capital shortfall.

A 30-year life expectancy produces recovery at 76.86%, but a 7-year life expectancy would result in a recovery of just 28.93%.

As such, in cases where life expectancy is short but the Claimant still has high needs, and thus a large accommodation claim, *Swift v Carpenter* does not provide a satisfactory outcome.

The Court has acknowledged this and has stated that different considerations and arguments could be applied to this category of case, and that *Swift v Carpenter* should not be applied as a "straitjacket" to all cases.

In claims involving shorter life expectancy, Claimants will need to consider alternative strategies to ensure recovery of fair and reasonable compensation.

Issues also arise where a Claimant would have rented a property rather than purchased one had they not suffered an injury. In these circumstances, there will be debate over whether to deduct the rental costs instead of the value of an existing property, and whether this creates an unfair "cliff-edge" for Claimants who live longer.

Some other factors that may complicate and derail the calculation from *Swift v Carpenter* include the impact of Betterment (associating a value for improvements to a property) and Acceleration (associating a value for obtaining a property sooner than normal).

Summary

Ultimately, the decision in *Swift v Carpenter* is a significant improvement for Claimants, but one that must be considered and applied carefully in cases that do not fit the mould of an "average" claim.

How can we help?

Our specialist Personal Injury and Medical Negligence team at Lester Aldridge have experience in dealing with complex high value claims involving accommodation claims.

If you or anyone in your family has suffered an injury and you are concerned about the treatment received, our [Personal Injury team](#) can assist on 0344 967 0793 or online.enquiries@la-law.com