

Note of: Richard Cropper, Independent Financial Adviser  
 Re: *Swift -v- Carpenter*  
 For: Ampersand Advocates



**A *Swift* Response**

**The Bits Not Dealt With**

17<sup>th</sup> December 2020

**The Starting Point**

The Court of Appeal Judgment in *Swift -v- Carpenter* created a new basis for the recovery of an additional need for capital in respect of future accommodation.

It gives rise to the following calculation to determine the recoverable sum:

$$ACD - [ACN \times (1.05^{-D})], \text{ where:}$$

- ACD is the additional capital need; and
- D is the pursuer's life expectancy in years from the date of purchase.

The facts of the case *Swift* were:

- The new property would cost £2.35million;
- CS owned a property with a value of £1.45million;
- The additional need for capital in respect of accommodation was, therefore, £900,000;
- There were no 'betterment' or 'reinstatement' costs;
- There was no 'lost years' claim;
- The purchase was at the point of the hearing, as was the sale; and
- CS's life expectancy is long; 45.43 years.

The appropriate calculation is (in full):

**Value of 'recoverable' LI in new property**

New property value:	£2,350,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£2,350,000	(A2) = (A) + (A1)
Life expectancy (in years):	45.43	(A3)
Value of the RI:	£256,117	(A4) = Swift calculation on (A2) over (A3) years
Value of the 'recoverable' LI:	£2,093,883	(A5) = (A) - (A2)



**Credit for 'otherwise' LI**

'Otherwise' property value (today):	£1,450,000	(B)
How many years from now:	0	years (B1)
Table 35 figure for this duration:	1.0000	(B2)
Present value:	£1,450,000	(B3) = present value of 'otherwise' property
Life expectancy (in years):	45.43	years (B4)
Value of the 'otherwise' RI:	£158,029	(B5) = Swift calculation on (B3) over (B4) years
Value of the 'otherwise' LI:	£1,291,971	(B6) = (B3)-(B5)

**Recoverable sum**

Value of the 'recoverable' LI:	£2,093,883	(c1) = (A5)
Less, value of the 'otherwise' LI:	£1,291,971	(c2) = (B6)
	£801,913	(c3) = (c1)-(c2)

The figures at Appendix 1 illustrate the recoverable percentage of the additional capital need for all durations from 1 to 80.

**The Bits Not Dealt With**

However, the following bits were not dealt with:

- What do you do if there is a 'lost years' claim?
- What do you do if the pursuer was renting for life?
- What do you do if the property was purchased before trial?
- What do you do if the property is to be purchased after trial?
- What do you do if the pursuer was to rent for a while and then purchase?
- How do you deal with 'betterment' and 'reinstatement' costs?
- What do you do if life expectancy is short?

I do not set out the following analysis as a definitive answer. There are legal arguments with regard to all of the above. This is simply my current view of these issues, from a financial perspective.

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### ‘Lost Years’

It is difficult to argue that, during the pursuer’s lifetime, any recovery in respect of ‘lost years’ is not ‘spare’. Therefore, is it unreasonable to assume that this sum should be used to fund the purchase of the new property?

If it is not unreasonable, then the ‘lost years’ capital recovery would be deducted from the additional capital need in full.

### Renting

If the pursuer was renting and would have continued to rent, then they would not have built up a ‘life interest’ in their ‘otherwise’ property. As a result, it cannot be appropriate to offset the present value of the future rent from the additional capital need and then undertake the *Swift* calculation.

As a result, it is appropriate to deduct the value of the rent after the calculation of the ‘life interest’ in the new property.

If it was appropriate to assume that CS would have rented a £1.45million property for life and one assumes a 5% rental yield for illustrative purposes, then the annual rent is £72,500. The lifetime multiplier for a duration of 45.43 years (at minus 0.75%) is 54.17, giving a value to the rent of over £3.9million.

That said, lifetime renting is more likely over shorter durations and more likely with lower ‘otherwise’ property values. Set out below is an example where:

- The new property costs £750,000;
- The pursuer would have rented a property with a friend with a value of £250,000, giving total annual rent of £12,500 at 5% and credit being allowed for half, i.e. £6,250 per annum;
- There are no ‘betterment’ or ‘reinstatement’ costs;
- There is no ‘lost years’ claim;
- The purchase was at the point of the hearing; and
- Life expectancy is 30 years.

The calculation is as follows:

#### Value of ‘recoverable’ LI in new property

New property value:	£750,000	(A)
Net ‘betterment’ (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£750,000	(A2) = (A) + (A1)
Life expectancy (in years):	30	(A3)

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Value of the RI:	£173,533	(A4) = Swift calculation on (A2) over (A1) years
Value of the 'recoverable' LI:	£576,467	(A5) = (A) - (A4)
<b>Credit for 'otherwise' rent</b>		
Annual rent:	£6,250	(B)
Rental duration:	30	years (B1)
Table 36 figure for this duration:	33.66	(B2)
Value of the 'otherwise' rent:	£210,375	(B3) = (B)x(B2)
Deferred period:	0	years (B4)
Table 35 figure for this duration:	1.0000	(B5)
Present value of the 'otherwise' rent:	£210,375	(B6) = (B3)x(B5)
<b>Recoverable sum</b>		
Value of the 'recoverable' LI:	£576,467	(C1) = (A5)
Less, value of the 'otherwise' rent:	£210,375	(C2) = (B6)
	£366,092	(C3) = (C1) - (C2)

Compare the above with 50% share of a purchased house with a value of £250,000:

**Value of 'recoverable' LI in new property**

New property value:	£750,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£750,000	(A2) = (A) + (A1)
Life expectancy (in years):	30	(A3)
Value of the RI:	£173,533	(A4) = Swift calculation on (A2) over (A3) years
Value of the 'recoverable' LI:	£576,467	(A5) = (A) - (A2)

**Credit for 'otherwise' LI**

'Otherwise' property value (today):	£125,000	(B)
How many years from now:	0	years (B1)
Table 35 figure for this duration:	1.0000	(B2)

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Present value:	£125,000	(B3) = present value of 'otherwise' property
Life expectancy (in years):	30 years	(B4)
Value of the 'otherwise' RI:	£28,922	(B5) = Swift calculation on (B3) over (B4) years
Value of the 'otherwise' LI:	£96,078	(B6) = (B3) - (B5)
<b>Recoverable sum</b>		
Value of the 'recoverable' LI:	£576,467	(C1) = (A5)
Less, value of the 'otherwise' LI:	£96,078	(C2) = (B6)
	£480,389	(C3) = (C1) - (C2)

Arguing that the pursuer would rent for life could well be a very attractive option for a defender.

### Purchase Before Trial

If the property was purchased with an interim payment, when did the 'life interest' start:

- At the date of purchase; or
- At the date of trial?

I can see that the defender might argue that if the property was purchased with an interim payment, that there was no capital loss until the date of trial, as the property was purchased with its capital.

This is more likely to be argued where the value of the property has increased materially from the date of purchase to trial.

However, it is my opinion that the 'life interest' in the new property started at the date of purchase. Furthermore, the only market valuation that we have for the new property is that at the date of purchase, with the market valuation being preferred to an opinion in *Swift*.

Therefore, it is my opinion that the best approach is to use the market valuation at purchase and a duration from the date of purchase for life.

Set out below is an example where:

- The new property was purchased for £750,000;
- It was purchased two years ago;
- The pursuer owned a property jointly with a friend with a value of £250,000, with credit being given for £125,000;



- There are no 'betterment' or 'reinstatement' costs;
- There is no 'lost years' claim; and
- Life expectancy is 30 years.

The calculation is as follows:

**Value of 'recoverable' LI in new property**

New property value:	£750,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£750,000	(A2) = (A) + (A1)
Life expectancy (in years):	32	(A3)
Value of the RI:	£157,400	(A4) = Swift calculation on (A2) over (A3) years
Value of the 'recoverable' LI:	£592,600	(A5) = (A) - (A2)

**Credit for 'otherwise' LI**

'Otherwise' property value (today):	£125,000	(B)
How many years from now:	0	years (B1)
Table 35 figure for this duration:	1.0000	(B2)
Present value:	£125,000	(B3) = present value of 'otherwise' property
Life expectancy (in years):	32	years (B4)
Value of the 'otherwise' RI:	£26,233	(B5) = Swift calculation on (B3) over (B4) years
Value of the 'otherwise' LI:	£98,767	(B6) = (B3) - (B5)

**Recoverable sum**

Value of the 'recoverable' LI:	£592,600	(c1) = (A5)
Less, value of the 'otherwise' LI:	£98,767	(c2) = (B6)
	£493,834	(c3) = (c1) - (c2)

One can see that the duration of calculation used is 32 years, which is life expectancy from the date of purchase. The recoverable sum increases from £480,389 to £493,834, which is £13,445. This is a relatively modest amount.

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## Purchase After Trial

If either the new property or the 'otherwise' property has yet to be purchased, how does one take that into account?

There are two possible approaches:

- Apply the discounting factor (Table 35) for the deferred duration to the current value and use the life expectancy minus the deferred duration; or
- Apply the current value and use the life expectancy minus the deferred duration.

The appropriate approach will depend on the court's view of property prices and consistency with other approaches.

If one applies the Table 35 discounting factor, the presumption is that the value of the property is increasing each year at the rate of RPI minus 0.75%. The previous (*Roberts/ Wells*) assumption that the value of the property will increase in line with inflation has now been broken, as the link to ILGs has gone.

However, that is true of other elements of the claim too, but if we were valuing a future purchase (for example the future purchase of a prosthetic limb), we would consider it appropriate to apply the Table 35 discounting factor (even though the RPI has been materially lower than the growth in the cost of such prosthetics over the past 20 years).

I have set out below an example of an immediate purchase price and a deferred 'otherwise' purchase on each basis respectively, where:

- The new property costs £750,000;
- The pursuer would have purchased a property jointly with a friend with a value of £250,000, with credit being given for £125,000, in ten years' time;
- There are no 'betterment' or 'reinstatement' costs;
- There is no 'lost years' claim;
- The purchase was at the point of the hearing; and
- Life expectancy is 30 years.

The calculation for the first approach is as follows:

### Value of 'recoverable' LI in new property

New property value:	£750,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£750,000	(A2) = (A) + (A1)

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Life expectancy (in years):	30	(A3)
Value of the RI:	£173,533	(A4) = Swift calculation on (A2) over (A3) years
Value of the 'recoverable' LI:	£576,467	(A5) = (A) - (A2)
<b>Credit for 'otherwise' LI</b>		
'Otherwise' property value (today):	£125,000	(B)
How many years from now:	10	years (B1)
Table 35 figure for this duration:	1.0782	(B2)
Present value:	£134,775	(B3) = present value of 'otherwise' property
Life expectancy (in years):	20	years (B4)
Value of the 'otherwise' RI:	£50,795	(B5) = Swift calculation on (B3) over (B4) years
Value of the 'otherwise' LI:	£83,980	(B6) = (B3) - (B5)
<b>Recoverable sum</b>		
Value of the 'recoverable' LI:	£576,467	(C1) = (A5)
Less, value of the 'otherwise' LI:	£83,980	(C2) = (B6)
	£492,487	(C3) = (C1) - (C2)

The calculation for the second approach is as follows:

**Value of 'recoverable' LI in new property**

New property value:	£750,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£750,000	(A2) = (A) + (A1)
Life expectancy (in years):	30	(A3)
Value of the RI:	£173,533	(A4) = Swift calculation on (A2) over (A3) years
Value of the 'recoverable' LI:	£576,467	(A5) = (A) - (A2)
<b>Credit for 'otherwise' LI</b>		
'Otherwise' property value (today):	£125,000	(B)
How many years from now:	10	years (B1)
No discount:	1.0000	(B2)



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Present value:	£125,000	(B3) = present value of 'otherwise' property
Life expectancy (in years):	20	years (B4)
Value of the 'otherwise' RI:	£47,111	(B5) = Swift calculation on (B3) over (B4) years
Value of the 'otherwise' LI:	£77,889	(B6) = (B3)-(B5)
<b>Recoverable sum</b>		
Value of the 'recoverable' LI:	£576,467	(C1) = (A5)
Less, value of the 'otherwise' LI:	£77,889	(C2) = (B6)
	£498,578	(C3) = (C1)-(C2)

The difference is £6,091.

### Rent Then Purchase

In my experience, this is the most common 'otherwise' situation, where the pursuer would rent for a period of time (at the time of the accident or upon leaving home) and then, in the future, purchase with a partner/friend.

This, in effect, combines the previous examples.

I have set out below an example of an immediate purchase price and an 'otherwise' rent then purchase, where (applying the first approach with regard to the deferred purchase):

- The new property costs £750,000;
- The pursuer would have continued to rent for a period of five years at a cost of £6,250 per annum and then purchased a property jointly with a friend with a value of £250,000, with credit being given for £125,000, in ten years' time;
- There are no 'betterment' or 'reinstatement' costs;
- There is no 'lost years' claim;
- The purchase was at the point of the hearing; and
- Life expectancy is 30 years.

The calculation is as follows:

#### Value of 'recoverable' LI in new property

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New property value:	£750,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£750,000	(A2) = (A) + (A1)
Life expectancy (in years):	30	(A3)
Value of the RI:	£173,533	(A4) = Swift calculation on (A2) over (A1) years
Value of the 'recoverable' LI:	£576,467	(A5) = (A) - (A2)
<b>Credit for 'otherwise' rent</b>		
Annual rent:	£6,250	(B)
Rental duration:	5 years	(B1)
Table 36 figure for this duration:	5.10	(B2)
Value of the 'otherwise' rent:	£31,875	(B3) = (B) x (B2)
Deferred period:	0 years	(B4)
Table 35 figure for this duration:	1.0000	(B5)
Present value of the 'otherwise' rent:	£31,875	(B6) = (B3) x (B5)
<b>Credit for 'otherwise' LI</b>		
'Otherwise' property value (today):	£125,000	(C)
How many years from now:	5 years	(C1)
Table 35 figure for this duration:	1.0384	(C2)
Present value:	£129,800	(C3) = present value of 'otherwise' property
Life expectancy (in years):	25 years	(C4)
Value of the 'otherwise' RI:	£38,330	(C5) = Swift calculation on (C3) over (C4) years
Value of the 'otherwise' LI:	£91,470	(C6) = (C3) - (C5)
<b>Recoverable sum</b>		
Value of the 'recoverable' LI:	£576,467	(D1) = (A5)
Less, value of the 'otherwise' rent:	£31,875	(D2) = (B6)
Less, value of the 'otherwise' LI:	£91,470	(D3) = (C6)
	£453,122	(D4) = (D1) - (D2) - (D3)

### 'Betterment' and 'Reinstatement' Costs

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Under *Roberts*, the pursuer claimed the 'reinstatement' costs and gave credit for the 'betterment' against the adaptation costs in full, then adding the 'betterment' to the additional capital need (only to then recover zero for that amount).

It is my opinion that the net 'betterment' sum (i.e. 'betterment' minus 'reinstatement') be added to additional capital provided by the defender, with the pursuer then only able to claim a 'life interest' as being the difference between the value of the additional capital excluding the 'betterment' and the 'reversionary interest' included, with no credit being given against the adaptation costs.

I have set out below an example, where:

- The new property costs £750,000;
- The pursuer owned a property jointly with a friend with a value of £250,000, with credit being given for £125,000;
- There is 'betterment' of £40,000 and 'reinstatement' costs of £10,000 (assumed to be in present value terms, having applied the appropriate discount factor for 30 years), giving a net 'betterment' of £30,000;
- There is no 'lost years' claim;
- The purchase was at the point of the hearing; and
- Life expectancy is 30 years.

The calculation for the first approach is as follows:

**Value of 'recoverable' LI in new property**

New property value:	£750,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£30,000	(A1)
Additional capital need:	£780,000	(A2) = (A) + (A1)
Life expectancy (in years):	30	(A3)
Value of the RI:	£180,474	(A4) = Swift calculation on (A2) over (A3) years
Value of the 'recoverable' LI:	£569,526	(A5) = (A) - (A2)

**Credit for 'otherwise' LI**

'Otherwise' property value (today):	£125,000	(B)
How many years from now:	0	years (B1)
Table 35 figure for this duration:	1.0000	(B2)
Present value:	£125,000	(B3) = present value of 'otherwise' property

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Life expectancy (in years):	30	years (B4)
Value of the 'otherwise' RI:	£28,922	(B5) = Swift calculation on (B3) over (B4) years
Value of the 'otherwise' LI:	£96,078	(B6) = (B3) - (B5)
<b>Recoverable sum</b>		
Value of the 'recoverable' LI:	£569,526	(C1) = (A5)
Less, value of the 'otherwise' LI:	£96,078	(C2) = (B6)
	£473,448	(C3) = (C1) - (C2)

I reiterate, that no deduction to the adaptation costs is then allowed for.

In effect, the 'betterment' reduces the recoverable 'life interest' in the new property by £6,941, but the pursuer does not give credit for net 'betterment' of £30,000, leaving the pursuer better off by £23,059.

### Short Life Expectancies

The *Swift* calculation is a workable solution where the duration is long. However, as set out at Appendix 1 and acknowledged in the Judgment, the percentage of the additional capital that is recovered in a short-life case means that the *Swift* calculation is potentially not workable in short-life cases.

However, the position of the pursuer in short-life cases is potentially dependent on their age.

To illustrate this, I have considered three scenarios, although the life expectancy in each is 15 years.

1. A child cerebral palsy case, where the pursuer is aged 15 and has a life expectancy of 15 years;
2. A pursuer aged 40 and has a life expectancy of 15 years; and
3. A pursuer aged 70 and has a life expectancy of 15 years.

As set out at Appendix 1, *Swift* treats all of these pursuers the same and they can recover 51.90% of any additional capital need.

Based on an additional capital need of £750,000 the calculation is as follows:

#### Value of 'recoverable' LI in new property

New property value:	£750,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£750,000	(A2) = (A) + (A1)
Life expectancy (in years):	15	(A3)

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Value of the RI:	£360,763	(A4) = Swift calculation on (A2) over (A3) years
Value of the 'recoverable' LI:	£389,237	(A5) = (A)-(A2)

The Court of Appeal indicated that, as a result, a different approach might have to be taken in such cases.

I consider that the least likely alternative approach is for the pursuer to be able to recover all of the additional capital need.

Furthermore, there may well be mitigating factors in each of these cases:

- In the case of a child, the property will have to be purchased in trust. As a result, the 'reversionary interest' could actually be auctioned. Furthermore, the market value for such a 'reversionary interest' could well be impacted by the uncertainty surrounding life expectancy.

I understand that the table of data set out below is the starting point for the life expectancy assessment in such cases.

**Table III: Life expectancy: additional years (standard error) for adolescents and adults with cerebral palsy<sup>a</sup>**

Sex/Age	Cannot lift head			Lifts head or chest			Rolls/sits			Walks unaided <sup>b</sup>	General population
	TF	FBO	SF	TF	FBO	SF	TF	FBO	SF		
<b>Female</b>											
15y	14 (1.0)	18 (1.2)	–	18 (1.5)	23 (1.0)	–	27 (1.8)	37 (1.3)	48 (1.2)	55 (1.0)	66.2
30y	14 (0.9)	19 (1.2)	–	14 (0.8)	23 (1.1)	–	18 (1.8)	32 (1.2)	37 (0.8)	43 (0.7)	51.6
45y	12 (1.0)	14 (1.0)	–	12 (1.0)	17 (1.2)	–	12 (1.5)	21 (1.0)	25 (0.6)	29 (0.6)	37.4
60y	7 (0.8)	10 (1.4)	–	7 (0.8)	10 (1.1)	–	7 (0.8)	10 (0.8)	16 (0.5)	19 (0.7)	24.1
<b>Male</b>											
15y	14 (1.0)	18 (1.2)	–	18 (1.4)	23 (1.0)	–	27 (1.7)	33 (1.1)	45 (1.1)	52 (0.9)	61.4
30y	14 (0.9)	19 (1.2)	–	14 (0.8)	23 (1.1)	–	18 (1.7)	28 (1.1)	33 (0.7)	39 (0.6)	47.4
45y	12 (1.0)	14 (1.0)	–	12 (1.0)	17 (1.1)	–	12 (1.5)	18 (0.9)	22 (0.5)	25 (0.5)	33.5
60y	7 (0.8)	10 (1.4)	–	7 (0.8)	10 (1.1)	–	7 (0.8)	10 (0.8)	12 (0.4)	15 (0.5)	21.1

–, Results not shown because of small sample size. <sup>a</sup>As noted in the text, these life expectancies do not necessarily apply to younger children. <sup>b</sup>Life expectancies for the 'walks unaided' groups assume that individuals in the group will remain ambulatory until at least age 60. FBO, fed orally by others; SF, self-feeds orally; TF, tube fed.

I appreciate that the medical experts adjust this data (for UK projected population and factors personal to the pursuer) it is important to consider the potential range of outcomes from an investor's perspective.

A 'male' aged 15 in the 'Cannot lift head' and 'TF' (tube fed) cohort has a further life expectancy of 14 years, i.e. to the age of 29. However, on average, those of the cohort that reach the age of 30, then have a further life expectancy of 14 years, i.e. to age 44. Those who live to 45 have a further life expectancy of 12 years, i.e. to age 57.

I accept that the proportion of the cohort aged 8 that live to age 57 is likely to be small (on data

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provided to me by Dr John Pollock, almost 8% will live to age 50, 4.6% will live to 55 and almost 2.5% will live to age 60), but this data illustrates that it could happen, demonstrating the potential mortality risk for the investor that they might have to wait far beyond 15 years to realise their investment.

This information would not alter the real discount rate an investor might seek (in line with the evidence in *Swift*), but the price that might be offered could well be based on a much longer duration than 15 years.

For example, if the investor priced the reversionary interest on basis of life expectancy to age 40 (the age at which the pursuer has only a 20% chance of life), rather than age 30 (i.e. a further 25 years from now), the expected offer would be £221,477 as calculated below:

**Value of 'recoverable' LI in new property**

New property value:	£750,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£750,000	(A2) = (A) + (A1)
Life expectancy (in years):	25	(A3)
Value of the RI:	£221,477	(A4) = Swift calculation on (A2) over (A3) years
Value of the 'recoverable' LI:	£528,523	(A5) = (A) - (A2)

In other words, an investor would only be prepared to offer £221,477 for the reversionary interest, rather than £360,763.

Whilst such longevity risks apply in all cases, that risk is more significant in a child whose life expectancy could tend towards the normal over time.

Additionally, the investor would carry the potential risk of having to remove family from the property following the pursuer's death, which would be off-putting. It is for legal opinion as to whether such a risk could be managed or removed. This is likely to impact on the real yield that the investor would demand.

Finally, it is my understanding that few investors have the free capital to invest large capital sums in 'reversionary interests', particularly given the potential duration over which the investment will yield no return at all. The market for the sale of a reversionary interest at a price of £200,000 to £300,000 is likely to be small, increasing the expected real yield.

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As a result, these issues are likely to increase the required discount rate to the top end of the estimate provided by Mr Watson in his evidence in *Swift*, that being 6.2% to 7%.

By way of example. If one were to adopt the 7% discount rate and apply a duration of 25 years, instead of 15 years, then the *Swift* calculation would be as follows:

**Value of 'recoverable' LI in new property**

New property value:	£750,000	(A)
Net 'betterment' (betterment less reinstatement costs):	£0	(A1)
Additional capital need:	£750,000	(A2) = (A) + (A1)
Life expectancy (in years):	25	(A3)
Value of the RI:	£138,187	(A4) = Swift calculation on (A2) over (A3) years
Value of the 'recoverable' LI:	£611,813	(A5) = (A) - (A2)

Clearly, whether such arguments would be successful, would be down to the evidence in each case, and an appetite on behalf of such a pursuer to take the point; which could actually require the pursuer to sell the 'reversionary interest' at any price, with the defender then making up the difference. This could give rise to a conflict of interest with the family / litigation friend.

2. In the case of a 40-year-old, it is more likely that there will be a 'lost years' claim, which could well limit the impact of the capital shortfall. The life expectancy risk point is also relevant here.
3. In the case of the 70-year-old, equity release will be available to the pursuer, where that option was not available to CS (as she was not aged 55, which is the youngest age at which such a plan can be taken out). The life expectancy risk point is also relevant here.

It is my opinion that there are good reasons to challenge the assumptions adopted in *Swift*, particularly taking the balance of probability life expectancy. I consider that no investor would base a 'reversionary interest' investment decision on that basis, wanting more surety that they will achieve the expected yield (or more).

**Other Points**

Please make sure that your loss of earnings claim synchronises with the accommodation claim in respect of the 'otherwise' purchase of the property, particularly if the purchase is in the future.

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The loss of earnings multiplicand is a net amount, whereas commercial lending works on gross earnings (so the multiplicand needs to be grossed-up). The maximum multiple of gross earnings, in terms of a mortgage, is 4.5 times (based on current FCA requirements).

Therefore, make sure that the pursuer could afford to purchase the property allowed for (taking into account a 10% deposit). Also, make sure that a property can be bought in the area that the pursuer is claimed to have 'otherwise' lived, based on these maximums.

### Conclusions

CS was a very brave person.

The result in *Swift* has the following two implications:

- It reduces the capital shortfall faced by pursuers as a result of requiring additional accommodation; and
- It limits the *Eeles* implications, meaning pursuers should be able to be rehoused more quickly, thereby allowing more effective support and rehabilitation sooner.

That said, it is not a panacea.

Individual cases will continue to cause problems, but (hopefully) these are now much more limited.

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Appendix 1

Life Expectancy	Recoverable Percentage of Additional Capital Need	Life Expectancy	Recoverable Percentage of Additional Capital Need
1	4.76%	41	86.47%
2	9.30%	42	87.12%
3	13.62%	43	87.73%
4	17.73%	44	88.31%
5	21.65%	45	88.87%
6	25.38%	46	89.40%
7	28.93%	47	89.91%
8	32.32%	48	90.39%
9	35.54%	49	90.84%
10	38.61%	50	91.28%
11	41.53%	51	91.69%
12	44.32%	52	92.09%
13	46.97%	53	92.47%
14	49.49%	54	92.83%
15	51.90%	55	93.17%
16	54.19%	56	93.49%
17	56.37%	57	93.80%
18	58.45%	58	94.10%
19	60.43%	59	94.38%
20	62.31%	60	94.65%
21	64.11%	61	94.90%
22	65.82%	62	95.14%
23	67.44%	63	95.38%
24	68.99%	64	95.60%
25	70.47%	65	95.81%
26	71.88%	66	96.01%
27	73.22%	67	96.20%
28	74.49%	68	96.38%
29	75.71%	69	96.55%
30	76.86%	70	96.71%
31	77.96%	71	96.87%
32	79.01%	72	97.02%
33	80.01%	73	97.16%
34	80.96%	74	97.30%
35	81.87%	75	97.42%
36	82.73%	76	97.55%
37	83.56%	77	97.66%
38	84.34%	78	97.78%
39	85.09%	79	97.88%
40	85.80%	80	97.98%