



THE HIGH COURT ORDERED that pursuant to CPR Rule 39.2(4), there shall not be disclosed in any report of these proceedings or other publication the name or address of the Appellant, the Appellant's Litigation Friend or other immediate family members, or any information that could lead to the identification of CCC or MMM. That order continues to apply.

## Press Summary

18 February 2026

**CCC (by her mother and litigation friend MMM) (Appellant) v  
Sheffield Teaching Hospitals NHS Foundation Trust  
(Respondent)**

**[2026] UKSC 5**

*On appeal from: [2023] EWHC 1770 (KB)*

**Justices:** Lord Reed (President), Lord Briggs, Lord Burrows, Lord Stephens and Lady Rose

### Background to the Appeal

In this appeal, the Supreme Court is asked to decide whether a child claimant can recover damages for financial loss caused by her inability to work during the years of expected life she has lost due to the defendant's clinical negligence. These are known as “**lost years damages**”.

The claimant, CCC, suffered a severe brain injury caused by hypoxia during her birth in 2015. Her life expectancy has been reduced to 29 years as a result. The defendant, Sheffield Teaching Hospitals NHS Foundation Trust, runs the hospital where the claimant was born. The defendant has accepted responsibility for the clinical negligence which caused the claimant's injury.

At the trial, the parties agreed that, if the claimant had not been injured, she would have had a normal life expectancy. They also agreed that she would likely have gained GCSEs and other qualifications leading to paid employment, that she would have worked until the age of 68, and that she would have received a pension for the remainder of her life. The claimant's loss of earnings to the age of 29 was agreed to be £160,000. This left the question of financial loss during her lost years.

Two House of Lords' decisions, *Pickett v British Rail Engineering Ltd* [1980] AC 136 ("**Pickett**") and *Gammell v Wilson* [1982] AC 27 ("**Gammell**"), respectively establish and confirm that lost years damages are recoverable in English law. Such damages are commonly awarded to adult and adolescent claimants who have suffered life-shortening personal injuries. However, they have not been awarded to child claimants because, in *Croke v Wiseman* [1982] 1 WLR 71 ("**Croke**"), the Court of Appeal held that lost years damages could not be recovered in cases where the claimant is a young child.

The parties agreed that the trial judge was bound by the decision in *Croke*, so he could not award the claimant any lost years damages. He granted a leap-frog certificate which enabled the claimant to appeal directly to the Supreme Court on this issue. In her appeal to the Supreme Court, the claimant argues that the Court of Appeal's decision in *Croke* should be overruled because it is inconsistent with the earlier House of Lords' decisions in *Pickett* and *Gammell*.

## **Judgment**

By a majority of four to one, the Supreme Court allows the claimant's appeal. It holds that lost years damages can be recovered in cases where the claimant is a young child, just as they can in cases where the claimant is an adolescent or adult. The Court of Appeal's decision in *Croke* was therefore incorrect and should be overruled. The Supreme Court remits the claimant's case to the trial judge to decide whether the claimant should be awarded lost years damages on the facts of her case and, if so, what the value of that award should be. Lord Reed gives the majority judgment, with which Lord Briggs and Lord Stephens agree. Lord Burrows and Lord Stephens give concurring judgments. Lady Rose gives a dissenting judgment.

## **Reasons for the Judgment**

### **What has the Supreme Court been asked to decide?**

The principal question in this appeal is whether the Court of Appeal's decision in *Croke* is consistent with the earlier House of Lords' decisions in *Pickett* and *Gammell*. The Supreme Court is not asked to consider the reasoning in *Pickett* and *Gammell*. It has not heard argument on the basis for awarding lost years damages. In particular, it has not been asked to consider the question whether lost years damages are intended to compensate for the non-receipt of future economic benefits or for the immediate diminution in the claimant's earning capacity, viewed as a capital asset. The Court has also heard little argument on the method by which lost years damages should be assessed [4]-[6], [68]-[69].

All five members of the Supreme Court agree with the following propositions. First, *Pickett* established, and *Gammell* confirmed, that damages for financial loss during the lost years are recoverable in English law. Secondly, *Pickett* and *Gammell* do not restrict lost years damages to claimants who have, or may in future have, dependants. Thirdly, lost years damages are, in principle, available to claimants who were injured during early childhood, provided that they can prove their loss in accordance with normal principles. Fourthly, to calculate lost years damages, the courts usually identify a multiplier, derived from actuarial tables known as the Ogden tables. This reflects the number of years of expected life the claimant has lost, discounted to allow for the fact that the claimant is receiving a lump sum, rather than periodical payments over those years. The multiplier is applied to another number (the multiplicand) which reflects the claimant's net loss of income during her lost years, less her probable living expenses [7].

**Is *Croke* inconsistent with the earlier House of Lords' decisions in *Pickett* and *Gammell*? If so, should it be overruled?**

In *Croke*, the majority of the Court of Appeal held that lost years damages could not be recovered by claimants who were injured as young children because they did not, and would never have, dependants. The majority of the Supreme Court holds that this is inconsistent with legal principle and with *Pickett* and *Gammell*. It follows that *Croke* was wrongly decided and should be overruled [64], [150(i)], [152].

Lord Reed holds that there is no principled basis for drawing a distinction between claimants with and without dependants. Lost years damages are designed to compensate the claimant for her own loss, not anyone else's, and the claimant's right to damages does not depend on how she might choose to use them. The legislature could choose to distinguish between claimants with and without dependants for reasons of social policy, but this cannot be done by the courts, which must decide the cases before them on the basis of legal principle [48]-[51].

Lord Burrows (concurring) agrees that *Croke* is inconsistent with *Pickett* and *Gammell*, because those cases did not bar lost years claims by young children who do not, and will not, have dependants [89]-[93], [114], [136]. He adds that the reasoning in *Croke* proves too much: if lost years damages could only be awarded to claimants with dependants, some adults' claims would also be barred [137].

Lady Rose (dissenting) agrees that a claim for lost years damages can be made regardless of whether the claimant has any dependants [177], [199]. However, she would uphold the decision in *Croke* for other reasons, as explained below.

**Should *Croke* be upheld on the alternative basis that assessing lost years damages in cases where the claimant is a young child is too speculative?**

The defendant NHS Foundation Trust argues that *Croke* should be upheld on the alternative basis that assessing lost years damages in cases where the claimant is a young child is too speculative. The argument is that, because comparatively little can be known about a young child claimant's abilities and trajectory, the court should refuse to speculate on their earning capacity [52], [69]. The majority of the Supreme Court rejects this argument for the following reasons, set out in the majority judgment of Lord Reed and the concurring judgments of Lord Burrows and Lord Stephens.

First, damages for loss caused by negligence are compensatory. Broadly speaking, they are intended to place the claimant in the position she would have been in if the tort had not been committed. This general principle applies just as much to a claimant injured as a young child as it does to one who was injured as an adult. The court cannot properly exclude the recovery of compensatory damages on the ground of the claimant's age [53].

Secondly, it is not always possible for the courts to quantify a claimant's loss precisely. The financial loss caused by a personal injury to a child claimant can be difficult to assess, because there are many contingencies involved in attempting to forecast that child's likely earnings if she had not been injured. But that is always true of a claim based on the loss of future earnings or of earning capacity: even in the case of an adult claimant, the future is uncertain and subject to countless contingencies. This uncertainty is taken into account in the court's assessment. Where it is clear that the claimant has suffered substantial loss, but the loss cannot be precisely quantified, the court is required to assess damages as best it can on the available evidence. The evidential difficulties caused by the defendant, in inflicting a severe injury on a young child, should not be allowed to deprive the child of compensation [54]-[58], [152]-[154].

Thirdly, developments in the law of evidence have considerably reduced the evidential difficulties involved in assessing lost years claims by children. One such development is the use of actuarial tables, such as the Ogden tables. Another is the use of statistical evidence of average earnings as a guide to what a child claimant might have gone on to earn if she had not been injured. Claimants increasingly rely on evidence about a range of likely outcomes, based

on their family circumstances and attitudes. This helps the court to make the best assessment it can of the loss suffered by that particular claimant [59]-[60], [120]-[121], [139], [142], [162].

Fourthly, the courts routinely award damages to child claimants for financial loss caused by their inability to work during their lifetime. If it is possible for the courts to assess a child claimant's lifetime loss of earnings, it is difficult to see why they cannot do the same in respect of lost years earnings. In the present case, the available evidence has enabled the parties to agree that the claimant's lifetime loss of earnings to the age of 29 is £160,000. There is no reason why the same evidence could not be used to assess her probable income in the lost years, discounted to reflect her probable living expenses. The courts regularly assess the appropriate living expenses deduction in lost years claims brought by adults: a conventional percentage is generally applied to the net earnings on a rough and ready basis. A similar approach can be applied in claims brought by children [61]-[62], [140]-[142], [156]-[158].

Fifthly, if young children are to be excluded from claims for lost years damages because their loss cannot be precisely quantified, it is unclear where the line should be drawn between claims by young children and claims by older children and adults [63], [137], [139]. Lord Stephens adds that this leads to incoherence, since it causes arbitrary distinctions to be drawn between child claimants, depending on how their life expectancy has been affected by their injury [160].

Lady Rose (dissenting) would hold that a young child claimant cannot recover lost years damages if there is no evidence before the court about the child's earning capacity or individual characteristics [205]. She finds that there is a principled difference between adult claimants and young child claimants: in the case of an adult claimant, the court has some evidence of the individual characteristics and abilities of the claimant from which to assess lost years earnings; in the case of a young child, the court must make assumptions about the child's earning potential based on factors such as their gender, family background and social class [164], [171]-[191]. This pushes the court into uncomfortable territory, and contradicts the fundamental principle of tort law that the loss to be compensated is the loss suffered by this individual claimant [165]-[167]. Relying on average earnings figures risks unfairness to defendants [192]. The lack of evidence about the claimant is not helped by reliance on the Ogden tables; those tables may assist the court with determining the appropriate multiplier, but they do not assist with determining the child's earning capacity [193]-[197].

Lady Rose recognises that courts regularly assess child claimants' lifetime loss of earnings [169]. However, she holds that there are good policy reasons for awarding damages for lost earnings during a child claimant's lifetime, which do not apply in the lost years. One concerns the additional burden placed on NHS defendants. Another, referenced in *Croke*, is that claimants need money to pay for their care during their lifetime. This justifies an exception to the principle that damages are to compensate for loss suffered by an individual claimant. Claimants have no such need after they have died [202]-[204].

### **Should the House of Lords' decisions in *Pickett* and *Gammell* be reconsidered?**

The Supreme Court has not been asked to reconsider these House of Lords' decisions in the present case. However, Lord Burrows comments (obiter) that it is to be hoped that, at some time in the future, the Supreme Court will have the opportunity to reconsider *Pickett* and *Gammell* afresh, with the benefit of full submissions on their merits and demerits [143]-[149], [150(iii)].

*References in square brackets are to paragraphs in the judgment.*

#### **NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**