NHS Resolution

Guidance note five: How claims are valued

This note focuses on how claims are valued. The general principle is that damages are paid to a claimant with the aim of restoring them (as far as possible) to the position they would have been in but for the negligence.

General damages

This is a lump sum payment to compensate the claimant for pain, suffering and loss of amenity (PSLA). The assessment of PSLA is based largely on previous awards made by the Court on cases involving similar injuries or disabilities. The Judical College produces guidelines which provide a clear and logical framework for the assessment of damages in personal injury cases.

The claimant must prove the existence and nature of the injury by providing evidence such as an expert medical report, factual witness evidence and medical records. Factors to consider when assessing PSLA include the age and life expectancy of the claimant (a claimant with a short life expectancy will generally receive less).

When calculating a PSLA award for multiple injuries these are not simply aggregated. Rather, a global figure for the multiple injuries is required. In addition, a general sum can be included for "disadvantage on the labour market" to reflect the risk of a reduced earnings capacity in the future.

Interest is recoverable at the rate of 2% per annum from the date of service of proceedings until trial.

Special damages (past losses)

Special damages are specific financial losses arising from the claimant's injuries and incurred up to the date of trial, for example loss of earnings, care, private medical treatment, travel expenses, DIY, gardening and other services.

All items claimed must be reasonable.

The claimant must prove that the losses have been incurred with receipts or other evidence, and provide a Schedule of loss or witness statement detailing the specific losses suffered and why this has caused financial loss.

Loss of earnings - the claimant is entitled to the net loss (after tax and national insurance payments) resulting from the injury and should provide evidence supporting previous earnings. Credit should also be given for savings made not having to go to work.

Care - the claimant should provide evidence of the need for and amount of extra care that has been provided. This can be gratuitous care. This evidence is also required for DIY, gardening and other services.

Interest - is recoverable after proceedings have been issued. Interest runs at half the special investment account rate for on-going losses calculated from the date of injury to the date of trial and at the full rate (currently 0.5% per annum) for a fixed loss calculated from the date of the loss to the date of trial

Future losses

Future losses are by their nature speculative and cannot be determined precisely. Expert evidence is often required, particularly in relation to life expectancy.

Claimants are usually compensated by way of a conventional lump sum award, but periodical (usually annual) payments can be made, particularly in relation to future care required for the claimant's lifetime. This is often appropriate when life expectancy is uncertain.

A conventional lump sum award is quantified by:

- calculating the "multiplicand" (i.e. the annual loss); and
- finding the multiplier (based on the period of likely future loss) and adjusting this figure to reflect matters including investment return potential and contingencies of life. This is done with reference to actuarial tables prepared by the Government's Actuaries to assist in the calculation of the lump sum compensation due in personal injury and fatal accident cases. These are commonly referred to as the 'Ogden tables'. Since 20 March 2017, the rate of return to be adopted has been -0.75%.

Following recent Government consultation, this rate is potentially subject to change.

Case story - Adam is 70 and it has been agreed that he will need future care amounting to £5,000 p.a. for a fixed period of 10 years following trial. By using Ogden Table 28 and the -0.75% rate of return, a fixed term of 10 years is adjusted to produce a multiplier of 10.39. The future care claim is 10.39 x £5,000 = £51,950

Damages when someone has died

Law Reform (Miscellaneous Provisions) Act 1934 - Where claims are brought on behalf of the deceased's estate. The usual heads of claim include PSLA for the deceased prior to death, loss of income and funeral expenses.

Fatal Accidents Act 1976 - Where claims are brought on behalf of dependents, usually family members who can prove financial loss or loss of support due to a personal (not business) relationship.

Heads of claim include:

- statutory bereavement damages – a spouse, or parents of a deceased minor, are entitled to total bereavement damages currently £12,980 for deaths on or after 1 April 2013; and
- loss of dependency (financial or services).

Claims can be brought under two different statues.

Please contact your nominated NHS Resolution team leader or a Nominated Partner at your Panel solicitors if you wish to discuss anything arising from this guidance note.

Prepared with the assistance of the NHS Resolution legal panel

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