



MEDICAL NEGLIGENCE ASSESSING YOUR DAMAGES

This leaflet is designed as a brief guide to provide practical information. It is not a complete explanation of the law relating to the issues which are dealt within the leaflet. You should always seek specific legal advice regarding the particular circumstances of your claim.

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INDEX

<u>Section No</u>	<u>Content</u>
1.	General Damages
2.	Special Damages
3.	Damages for Future Financial Losses and Expenses
4.	Interest
5.	Basic Principles
6.	Proving your Claim for Damages

Assessing Your Damages

1 General Damages

General Damages are monetary compensation awarded to you by a Judge (or agreed by your opponent) to reflect the nature and severity of the injury (physical and/or psychological) which you have suffered and the consequences which it has had upon your life. They are intended to compensate you for (amongst other things):

- Your pain, suffering and loss of amenity
- Your handicap on the open labour market and/or loss of earning capacity
- Loss of congenial employment

General damages are assessed by reference to the Judicial College Guidelines and by comparing previous awards of damages which have been made by the Court in cases which have similar facts to your own.

2 Special Damages

Special Damages are awarded to reimburse you for any financial loss or expense which you can prove you have already incurred (up to the date of settlement or the final hearing). These will be such things as:

- Prescription charges
- Medical treatment and therapy costs
- Travel and transport costs
- Loss of earnings
- Cost of care and assistance

3 Damages for Future Financial Losses and Expenses

These damages are awarded to compensate you for the future financial losses and expenses which you can prove you will incur at some time during your life.

Unlike Special Damages, these damages are estimated, often with the assistance of expert evidence, taking into account the uncertainties which may arise in the future.

Damages for Future Financial Losses and Expenses can be awarded for any item of expense which you can prove you are likely to incur in the future. These may include such items as those mentioned above, together with many others, such as: -

- Loss of pension
- Cost of adapting accommodation
- Cost of aids and appliances
- Additional cost of holidays

4 Interest

You are entitled to claim interest on the award of General Damages, from the date that the Court proceedings are served upon your opponent. The current rate of interest is 2% per year.

You can also claim interest on Special Damages. The current rate is 0.5% per year. There are different methods for calculating interest on Special Damages but conventionally it is calculated at half the above annual rate, on the entire claim for Special Damages, for the whole of the period from the date on which the injury was sustained up to the date of settlement or final hearing.

No interest is payable on damages awarded for Future Financial Losses and Expenses.

5 Basic Principles

The basic principle is that the award of damages should be made to put you back into the position that you were in before you suffered your injury. This, of course, is never possible, but it is what the Court will try to achieve in monetary terms.

There are a number of principles which the Court applies to limit the extent of your opponent's liability: -

- You have a duty to mitigate your loss. This means that you must take reasonable steps to minimise your losses. For example, if your injury has prevented you from working, you must take reasonable steps to resume your pre-accident employment or to obtain suitable alternative employment as soon as reasonably possible.
- Damages will generally only be awarded where there is a clear link between the negligent act and the loss or harm suffered.
- Under the Social Security (Recovery of Benefits) Act 1997, most State benefits received because of your injury are repayable to the Department for Work and Pensions. Benefit recoupment is managed by a department called the Compensation Recovery Unit (CRU). The CRU issue a Certificate of Benefits received which your opponent uses to assess the relevant sum to be deducted from your compensation. General damages are exempted from these recoupment provisions. The regulations for recovery of benefits are complex and will be explained to you as and when the need arises.
- If you are deemed to be partly to blame for your injury, your entitlement to compensation may be reduced to take into account the extent of your own responsibility. For example, if a Court were to decide that you were equally to blame for the injury which you have suffered, then it is likely to reduce the total amount of your award by as much as a half.
- If you exaggerate the seriousness of your injury or the effect which it has upon your ability to work or aspects of your life and/or you exaggerate the amount of your past or future financial losses and expenses, the court may dismiss your claim in its entirety. If this were to happen, you would receive no damages and you would have to pay your opponent's legal costs.

6 Proving your Claim for Damages

You must establish your entitlement to compensation by producing evidence to prove not only the nature and extent of your injury, but also each past and future loss and expense for which you claim damages.

This means that: -

- For your injury, you should keep a clear and accurate continuing record, not only of your symptoms and your recovery, but also how your injury affects every aspect of your life. This record should reflect any changes in your circumstances as they occur.
- For your financial losses and expenses, you should keep accurate records and you should keep all your receipts and invoices in a safe place, to help us prove these claims later.
- For the voluntary help given to you by your friends and family, you will need to keep an accurate note of what care and assistance they provide, when they provide it and how many hours they spend helping you.