

NOTE TO PRACTITIONERS IN
PERSONAL INJURY LITIGATION

Interest on General Damages Prior to Commencement of Proceedings

Some practitioners have sought clarification of the entitlement to or liability for interest on General Damages (Pain, Suffering and Loss of Amenity).

Strict entitlement to such interest in the absence of agreement runs only from the date of service of the Writ. With the emphasis upon pre-action negotiation and settlement, a Plaintiff's solicitors will want to protect their client's position on this aspect.

Once the Plaintiff's solicitors have accorded to the Defendant(s) (through their insurers or solicitors) proper facilities and opportunity for negotiations to comply with the terms and spirit of the Practice Direction of February 2001, the question of protecting the Plaintiff's position on interest in relation to such damages, arises.

If the Defendant's response is unconstructive or entirely lacking, the Plaintiff is at liberty to commence and serve proceedings and no difficulty arises.

Where the Defendants make it clear that they wish to discuss the claim or negotiate a settlement and the preliminary period provided for

in § 2.3 of the Practice Direction has elapsed (see also the Guidance to § 2) then the parties' representatives should endeavour to reach an agreement as to the time from which interest should run without the need to commence and serve proceedings. In the absence of such agreement the Plaintiff would have to issue and serve the writ.

There are however circumstances in which the Defendant or his insurers may, for some reason, not be prepared to make a formal agreement as to the date from which interest will run, but genuinely wish to pursue discussions or negotiations and the Plaintiff considers the Defendant's approach to be bona fide and is equally interested in responding. In such a situation a Writ should be issued and served (with the Defendant's solicitors indicating that they will accept service) on a protective basis and both parties' solicitors should write to the court asking for the Check-list Review not to be 'triggered' for 2 or 3 months in order to enable the discussions/negotiations to continue.

This should preferably be done by a joint letter to the court at the same time as the Writ is issued. The Plaintiff's solicitors will be expected to notify the Court if such discussions/negotiations break down so that the progress provided for by the Practice Direction can be restored.

In general the Plaintiff's solicitors should remember that the issue of a Writ triggers the procedure under the Practice Direction.

If however they are not in a position to proceed they should not issue a Writ and a degree of reasonableness by both parties is to be expected and encouraged.

It is not possible to lay down hard and fast rules as to how the matter of interest on general damages for pain and suffering etc. should be reflected in negotiations for settlement. There are so many variable situations.

If negotiations in accordance with the protocol are within a relatively short time of the accident e.g. within a year or less, interest will hardly be significant and should not be seen as a sticking point. In any event the parameters for negotiations make such a feature irrelevant at that stage.

If however, by contrast, 2 or nearly 3 years have elapsed, such a delay in the presentation of the claim rules out interest as a material consideration. The timetable set out in the non-mandatory protocol does not allow for interest to be a material consideration.

In practice the matter of interest will only be a burning issue where the quantification of a claim is, of necessity, a drawn out affair. Then the solicitor's duty to his client will require either agreement as to interest or the issue of a Writ. The Defendants too will be expected to respond reasonably, act pragmatically and be reciprocal.

Courts however are unlikely to concern themselves with an examination of a dispute over interest, in its consideration of whether the

parties have observed the spirit of the Practice Direction save in the most exceptional of circumstances.

15 August 2003

(Conrad Seagroatt)
(Judge in Charge of the Personal Injury List)
