



RICHARD LOWERY EXPLAINS THE TACTICAL CONSIDERATIONS SURROUNDING INTERIM PAYMENTS

The issue of requesting and / or applying for an interim payment in catastrophic injury personal injury claims remains contentious, particularly if the claimant requests a large interim payment at an early stage in the claim.

An interim payment is usually requested when a claim cannot be settled for some time; either because it is not possible to value the claim, or because the claimant may require funds to meet financial needs or fund specific expenditure.

CPR 25.7 provides five conditions that the claimant must meet before the Court will grant an interim payment following an application. In my experience, the most relevant are:

1. Where the defendant has admitted liability to pay damages or some other sum of money;
2. Where the claimant has already obtained judgment against the defendant, so the defendant is liable for a sum that still has to be assessed;
3. Where the Court is satisfied that if the claim were to be determined at trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant.

Ultimately, the Court must consider what is likely to be awarded at trial, and order an appropriate amount for an interim payment. This assessment of the likely final award is made in a conservative way, to prevent any overpayment to the claimant. There is no longer any requirement to establish financial need for an interim payment.

Court guidance

Helpful guidance was provided in the case of *PAL (A Child) v Davison & Ors* [2021] EWHC 1108 (QB), where Mrs Justice Yip considered an interim payment in the case of a seriously injured 13-year-old child. Mrs Justice Yip reviewed the previous case on this issue, *Eeles v Cobham Hire Services Ltd* [2009] EWCA Civ 204, in which the Court of Appeal provided guidance on the principles to be considered in an application for an interim payment.

In *Eeles*, Smith LJ said the judge's first task was to assess the likely amount of the final judgment, leaving out any heads of future loss likely to be dealt with by PPO. Strictly speaking, the assessment should comprise only special damages to date and damages for PSLA, with interest on both. However, it will usually also be appropriate to include accommodation costs.

Smith LJ said the assessment should be on a 'conservative basis', and the interim payment should normally be a 'reasonable proportion' of that assessment. He added that 'a reasonable proportion may well be a high proportion, provided that the assessment has been conservative. The objective is not to keep the claimant out of his money but to avoid any risk of over payment'.

Smith LJ added: 'For this part of the process, the judge need have no regard as to what the claimant intends to do with the money.'

In *PAL*, Mrs Justice Yip awarded the claimant nearly £1.2m as an interim payment, albeit the claimant had requested an interim payment of £2m. She held that 'it is sensible that the interim payment in respect of accommodation is sufficient to meet the full cost of purchasing, adapting and moving into the property'.

The claimant had clear evidence to support the interim payment sought, and the defendant conceded that the principle of the further interim payment was agreed, although the amount to be provided was in issue.

In practice

My own experience is that the provision of larger interim payments can be contentious. In a catastrophic injury case, a client will be seeking a large award to fund a care package or house purchase. But defendants tend to try to avoid committing to compensating the claimant with such a large amount early on - often suggesting that providing a large interim damages award at an early stage could affect the final award given by the Court.

In practice, an immediate needs assessment is regularly carried out for catastrophically injured claimants, often recommending a

package of measures to help them. The tension in disclosing this needs assessment at an early stage is that doing so gives the defendant - and often its insurers - information about the claimant's financial difficulties (if any), and a detailed analysis of their injuries.

This immediate needs assessment will often have been carried out at an early stage with significant uncertainty surrounding the claimant's recovery. But providing this report can enable the defendant to consider the potential value of the claim - possibly making a pre-medical offer that could pose Part 36 risks for the claimant.

The alternative is that the recommendations within the immediate needs assessment are funded without reference to the defendant - but this is not always feasible.

And while an immediate needs assessment or medical evidence may be disclosed to help the claimant in seeking an interim payment, defendants are often unwilling to provide that payment, even if liability has been admitted. In my experience, it is often necessary to issue Court proceedings earlier than would otherwise be the case in order to apply for an interim payment. As the claimant's medical evidence may not yet have been finalised, this can lead to issues at the first CMC, when permission is sought to rely on expert evidence from specialisms where the reports are not available at the hearing.

In summary, the issue of interim payments in catastrophic cases should be considered on a case by case basis according to the needs of the claimant, always recognising the potential implications of disclosing both medical evidence and other quantum documents to the defendant, at a stage when the claim is incapable of valuation.

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