

CLAIMING FOR COSTS OF CARE IN PERSONAL INJURY CASES

CIVIL WATCH - PRACTICE NOTE

As part of Goldsmith Chambers' Civil Watch series, Ian Cain of Goldsmith Chambers has provided a practice note on the principles behind claiming for the costs of care and quasi-nursing services in personal injury cases.



PROFESSIONAL CARE OR GRATUITOUS CARE?

1. Recently, I have been approached by a number of firms regarding confusion about what costs can be claimed for care required in personal injury cases, especially where a family member has been required to provide care and assistance to an injured claimant.
2. Where care services are provided by a '*professional*' care service on a commercial basis, they can be recovered from the defendant as a matter of course, as long as the sum claimed is reasonable in amount and they have been reasonably incurred. Usually, invoices would be provided by the care service to the claimant, and the claimant can then use these invoices as evidence of the special damage claimed.
3. In a situation where a family member or friend has been providing care services to an injured claimant, the situation becomes less clear. As a matter of principle, the care provider is unable to make a claim against the defendant themselves as a third party is unable to claim for losses that have been incurred as a result of the claimant's injuries. However, the claimant can recover for '*gratuitous*' care costs that have been provided to him, as long as these services were required as a result of the actions of the defendant.
4. The courts will usually expect any gratuitous care to be above and beyond what the claimant would have usually received from a claimant. If, for example, the claimant was elderly and their child would pop to their property once a week before the index accident to clean or assist them with shopping, the court is unlikely to then award gratuitous care costs for continuing to offer this service. However, if their child was required to additionally help them dress, clean and cook as a result of injuries suffered, the claimant would be able to claim damages for the care and assistance required.
5. Where a gratuitous carer has given up work in order to look after the injured claimant, and has thereby incurred a loss of earnings, the lost earnings will be

recoverable, provided that they were reasonably incurred. Evidence in the way of payslips will need to be obtained to prove these losses, and solicitors will need to be mindful to avoid double recovery if the carer's employers continued to pay them whilst they were providing the care.

6. Where there is no loss of income, the court will usually consider what it would cost to employ professional help. There is a tendency to favour the standard hourly rate paid at spinal point 8 of the National Joint Council for Local Government Services table.¹ This rate, currently £10.62 per hour, represents the earnings of care home workers. The court will normally deduct 20-30% to reflect the absence of tax and national insurance deductions, traveling costs to and from work, the profit elements associated with commercial care services and the fact that professional carers may be more efficient. If the claimant seeks a rate in excess of the commercial rate, he has the onus of proving the higher value.
7. In order to determine the level of care and assistance required in a particular case, the medical expert who assessed the injuries suffered by the Claimant should be invited to comment on whether the level of care received at the date of the examination was reasonable, and what, if any, ongoing care will be required. Sadly, this is often overlooked in initial medical assessments, and solicitors will need to be mindful that questions may need to be put to the expert about care and assistance required after a report has been produced. The expert will usually give a reasonable level of care and assistance required as a 'number of hours' figure, both for present and ongoing care.
8. Using this information, you can simply multiply the number of hours of care by the spinal point 8 figure from the National Joint Council for Local Government Services table. When considering offers for settlement, solicitors will then need to remember that 20-30% of this figure may be removed by the court.

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¹ [National Joint Council for Local Government Services](#)

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