The Discount Rate Debate – Personal Injury and Clinical Negligence

AUTHOR / KEY CONTACT

Melanie Lidstone-Land
Senior Associate

Melanie.Lidstone-Land@LA-law.com
07552 164048

The intended outcome of compensation in a clinical negligence or personal injury claim is to put an injured person back, as far as possible, in the position they would have been had the accident/negligent treatment not occurred. The compensation available to Claimants varies widely depending on the severity of injuries and/or negligence that has occurred.

It is important that victims of accidents and clinical negligence who have sustained serious injuries through no fault of their own are fully compensated for their future financial loss. Of course, in the interest of balance, the Courts also have to ensure that the way future loss is calculated is fair to Defendants. This refers to the general principle that a successful claimant should not suffer detriment due to negligence but, also, should not benefit from it.

What is “Future Loss”?

This is, more or less, what the phrase implies, losses that will occur in the future. An example would be care that is required to be provided to the injured person in the future. Another example might be the ongoing loss of earnings in the future.

Periodical Payments and Lump Sums

There are two methods for payment of compensation that can be made if a Claimant is successful.

1. Periodical payments; and
2. A lump sum.

Periodical payments are made annually to cover the injured person's (Claimant) rehabilitation and enduring care costs where life expectancy is good and it is more difficult to accurately determine future care needs and costs. Crucially, with this type of compensation, the injured person does not need to worry about investing and managing the money to make sure that it lasts.

A lump sum payment is a one-off 'lump' sum of money paid to the Claimant in full and final settlement of a claim. Part of that lump sum will likely relate to future loss to cover the cost of future care and earnings, for example. These losses are likely to be spread many years into the future and any lump sum awarded needs to take this into account. It will, therefore, be necessary for the injured person to look at investing the lump sum to ensure that some or all of it will cover any future losses they may have for the rest of their lives. It is these types of awards that are subject to the discount rate.

It is worth knowing that payments can also be made by Defendants throughout the life of the case by way of 'interim payments' so Claimants can commence rehabilitation and move into suitable accommodation, where appropriate. This will usually be paid as separate individual payments, the value of which will be subtracted from the total damages paid by the Defendant to the Claimant at the end of the case.

What is the discount rate?

When a case is settled, a Claimant will have received the monies for future losses ahead of the time that they are required to be spent. For that reason, a Claimant might decide to invest that money immediately meaning that it could gain interest or increase in value before it needs to be spent. It could, of course, work the other way where inflation rates mean that the award, even if invested, is quickly worth less than intended at the time it needs to be spent.

A discount rate is therefore applied to lump sum payments to account for the investment of monies and the potential fluctuations in value following investment.

What is the discount rate today?

On 5 August 2019, the discount rate was set at -0.25% and this is still the single rate applied today.

The discount rate has remained low over the past few years as a result of high inflation and low-interest rates. This is because a low discount rate means less money will be "discounted" from the Claimant's award and the more value they retain into the future when they will need to spend it.

Future proposals

Under the Civil Liability Act 2018, the discount rate is meant to be reviewed every five years to ensure that the calculation remains fit for purpose. This means that by 15 July 2024, the review of the discount rate must begin. The review will last up to 180 days from the date the Lord Chancellor announces the commencement date of the review.

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

Dual Rate

There have been talks about moving away from the current single discount rate and adopting a dual discount rate for calculating future losses. A dual rate would mean multiple discount rates would apply to different parts of the settlement. The financial impact on the adoption of a dual rate would ultimately depend on three factors: the rate to apply in the short term, the rate to apply in the long term, and the rules for determining which of the two rates apply at any particular duration.

Advantages of the adoption of a dual-rate include:

- Fairer compensation for claimants investing over different periods may reduce under compensation.
- More stability of the discount rate long term.

Disadvantages of the adoption of a dual rate include:

- A dual rate system is more complex and harder to understand.
- Claimants may be under-compensated if the dual rates are not calculated appropriately and/or not applied correctly.

Further updates will be provided on LA's website as developments are published by the Ministry of Justice.

For further information, please contact us at online.enquiries@la-law.com or call 01202 786260 to speak to our Personal Injury & Medical Negligence team.

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com