motoring news

Headlight

welcome

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DOLMANS SOLICITORS

Updated Judicial College Guidelines

The 18th Edition of the Judicial College Guidelines was published on 9 April 2026.

The purpose of the Guidelines is to facilitate a more uniform and consistent approach to the assessment of damages. They are based on awards of damages made by the courts.

Figures in the 18th Edition have been uplifted from those in the 17th Edition by reference to the Retail Prices Index (RPI) for August 2025. In the main, this constitutes an uplift in the region of 8.26%. These figures would need to be increased by the appropriate index for inflation between August 2025 and the date of any assessment of damages.

As previously, the Guidelines' editorial team has given consideration to whether an index other than RPI should be used, but has concluded that it is not for them to prescribe a different inflationary index from that which is judicially approved and adopted by the courts dealing with personal injury claims. This is a matter for the court's adjudication. Nevertheless, the comment is made that it is '*important that the issue of the appropriate inflationary index to be applied to general damages is resolved. This is particularly so given the government's stated intention to replace RPI with the CPI/CPIH by the end of this decade*.'

There have been changes to the section on epilepsy in chapter 3, including the medical terminology used. In particular, the previously used terms established grand mal and established petit mal, which are no longer used in clinical practice or medical literature, have been replaced with reference to generalised motor or tonic-clonic seizures (formerly grand mal) and focal seizures (formerly petit mal). Further, the two categories have been merged to reflect that the factors influencing the level of award are likely to be similar in each case, such that there is now a single very wide bracket for established epilepsy.

Changes have also been made in the category of sexual and/or physical abuse in chapter 4 to reflect updated case law. There are more factors detailed to be taken into account in respect of assessing both general damage for the abuse and psychiatric injury and aggravating features that could lead to an additional sum for injury to feelings. Whilst the brackets in this section have largely been adjusted in line with inflation, it is notable that the top figure for the moderately severe category (and hence bottom figure of the severe category) has increased by c.18.29%.

A new section on miscarriage has been included in chapter 6.

As ever, the Introduction to the Guidelines reminds us that, whilst the Guidelines are persuasive authority, they are not binding and no two cases are likely to be the same in their effect. Interpretation and good judgement will always be needed to reach a just and fair award in any particular case.

Beckett v (1) Graham (2) Unite the Union

The first instance decision that, in the context of the Electronic Working Pilot Scheme, a sealed Claim Form, amended without permission under CPR 17.1(1), did not require re-sealing and filing prior to service has been upheld on appeal.

On 5 June 2024, the claimant filed a Claim Form in the Liverpool District Registry using Electronic Working. A PDF of the sealed Claim Form, bearing the court's seal dated 5 June 2024, was sent by the court to the claimant's solicitors by email on 6 June 2024. The Claim Form set out a claim for libel. The Claim Form was valid until 5 October 2024. Prior to service, the claimant amended the Claim Form by striking through the claim for libel in red and setting out instead, in red and underlined, a claim for misuse of private information. The words 'Amended Claim Form under CPR 17.1(1) dated 21 October 2024' were written across the top. The amended Claim Form and Particulars of Claim were sent to the defendant's solicitors by first class post on 2 October 2024 and were received the next day. On 4 October 2024, the claimant completed a Certificate of Service and uploaded this to CE File with copies of the amended Claim Form and Particulars of Claim. The defendant asserted that there had not been good service as the amended Claim Form had not been filed and/or re-sealed prior to service.

At first instance, the judge held that there was nothing in the CPR that required the claimant to re-file the amended version of the Claim Form with the court or have it re-sealed before service.

On appeal, the defendant did not pursue the first instance assertion that the amended Claim Form had to be re-sealed before service. The sole issue was whether the claimant was required to file the amended Claim Form with the court pre-service and have it accepted in order to effect valid service on the defendant. It was common ground that there was no explicit requirement to do so in the CPR and that there was no earlier appellate authority directly on the issue.

The defendant submitted that there was an implied requirement. The defendant relied upon the notes at para 17.1.2 of the 2024 edition of the White Book, which stated that a Statement of Case amended without permission should be filed as well as served. A similar expanded note appeared in the 2025 White Book. Further, the defendant relied upon PD17 para 2.1, which provides how an amended Statement of Case should be endorsed and refers to 'the amended Statement of Case and the court copy ...', which the defendant submitted envisaged the amended Statement of Case being filed at court.

The notes in the White Book did not cite any supporting authority.

Further, the judge noted that they did not distinguish between the situation herein and the different situation addressed by the Court of Appeal in *Ideal Shopping Direct Ltd v Mastercard Inc [2022]* where a claimant sets out their amended claim on a new unsealed Claim Form. In those circumstances, the amended Claim Form would have to be filed and issued by the court before service as the unsealed form is not a Claim Form.

The judge concluded that there was no clear or sufficient basis for implying a requirement that a claimant who amends their Claim Form without permission pursuant to CPR 17.1(1) before it is served, by making additions to the text of the sealed Claim Form, must file that amended Claim Form with the court before it can be validly served.

Accordingly, D's appeal was dismissed.

Burgess v Sikorski & Another

The high court has considered and determined whether professional deputyship fees are recoverable as damages under the Fatal Accidents Act (FAA) 1976.

Background

The deceased had been killed in a road traffic accident. Liability was admitted, with an agreed liability split of 70/30. The deceased left behind her husband and two adult children, both of whom had moderate learning difficulties and one also suffered from epilepsy. They both lacked capacity to manage their property affairs and finances.

The court awarded each son £70,448 for past services dependency and £969,708 for future services dependency. As they lacked capacity, the sons were classed as 'protected beneficiaries' under CPR Part 21. Under CPR r.21.11(9) where the amount awarded is more than £100,000, the court "shall direct the litigation friend to apply to the Court of Protection for the appointment of a deputy, after which the fund shall be dealt with as directed by the Court of Protection". The evidence of the deputyship experts was that professional, rather than lay deputies, should be appointed for each son.

The issue then arose as to whether those professional deputies' fees were recoverable under the FAA.

Claimant's Position

The claimant argued that deputy fees are a "necessary corollary" to an award for loss of services and are, therefore, recoverable. This is because, using the wording of Jay J in *Rupasinghe v West Hertfordshire Hospitals NHS Trust [2017] PIQRQ1*, what the Act is concerned with are losses which flow from what the deceased did when alive. Using this interpretation, the cost of appointing a financial deputy flows from the need to properly replace the services that the deceased would have provided.

Defendant's Position

It was the defendant's case that the fees were not recoverable as a matter of law. Under Section 3 of the FAA, the only damages recoverable are such damages, other than damages for bereavement, that "may be awarded as are proportioned to the injury resulting from the death to the dependants respectively". They highlighted that common law rules do not apply to the assessment of damages under the FAA and argued that whether a head of damage is recoverable is purely a matter of statutory construction.

The court noted an entry in *McGregor on Damages* (22nd Edition), which succinctly outlines, considering relevant case law, what this means in practice for what can be recovered in dependency claims: "*There remains the loss of the pecuniary benefit arising from the relationship which would be derived from the continuance of the life and which may consist of money, property or services: in other words, the value of the dependency. The dependant is entitled, by clear principle of law, to full compensation for the loss of this pecuniary benefit, but, except for funeral expenses since 1934, interest since 1970, and the limited entitlement for bereavement since 1982, to no more.*"

In other words, a dependent cannot claim losses which simply arise as the result of the death, but only those that represent the loss of any kind of future financial benefit the deceased would have provided, subject to specific statutory exceptions.

The defendant argued that the cost of employing a deputy does not itself represent the loss of a benefit that the deceased would have otherwise conferred on her dependents had she lived and instead arises as the result of her death.

As there is no statutory exception for deputyship fees, the defendant submitted that it followed that these fees were irrecoverable under the FAA.

Held

The judge accepted that he must identify a pecuniary loss to the dependents, which must be the loss of a benefit in money or money's worth which would have accrued if the deceased had survived; *Malyon v Plummer [1964] 1 Q.B. 330* followed.

The judge further accepted that the sons had suffered a pecuniary loss because they no longer benefitted from their mother's care and support and they were unable to apply those funds to replace her services unless a professional deputy was appointed, pursuant to CPR 21.11(9).

The judge highlighted that when compensating a dependent for losses they have been deprived of, the court must give "full compensation" for the loss of that benefit and nothing else (other than funeral expenses and bereavement). The professional administration of a fund awarded for the sons' benefit was not in itself a benefit that the deceased would have conferred on them had she lived.

However, the judge held that professional deputyship fees were recoverable as damages under the Act for the following reasons:

- The sons had been deprived of the benefits of the deceased's contribution to them as members of the household and the additional care for them by reason of their special needs. That benefit was capable of being estimated in money, or there would be no dependency award at all;
- In deciding what full compensation meant, the court must take a realistic view of what sum is needed to replace, in practical terms, the identified services that the deceased would otherwise have been providing;
- The sons would not be able to apply the sums awarded to them to replace the deceased's services unless they could also unlock those funds from the Court of Protection, which seemed unlikely to happen unless professional deputies were appointed;

- Given that full compensation appeared to include the costs of allowing dependants to make effective use of funds intended to finance replacement services, the deputy fees were a necessary corollary to ensure support workers were engaged in a way which properly replaced the services which the deceased would have provided;
- The sons' need for professional deputies arose because they had suffered a pecuniary loss, in excess of £100,000 each, by reason of them no longer benefitting from the care and support that the deceased would otherwise have provided; *Chouza v Martins [2021] EWHC 1669 (QB)* distinguished.

As there was no rule that deputyship fees had to stand in some percentage proportion to the fund to be administered and given that the defendant had not proposed any viable cheaper alternatives to administering the fund, no reduction was made to the deputyship fees on the grounds of proportionality.

Note: This was an issue that neither the parties nor the court could find previous authorities on, and so the judge has granted permission for the defendant to appeal.

Herrington v O'Boyle

This case concerned a personal injury claim arising from a road traffic accident in which liability had been admitted. The claimant contended that the accident had caused, or significantly accelerated, her Functional Neurological Disorder (FND), leaving her substantially disabled. The defendant argued that the collision caused only a short-lived soft tissue injury and that the claimant's ongoing disability was attributable to pre-existing medical conditions, including Postural Orthostatic Tachycardia Syndrome (POTS).

The insurer applied for permission to rely upon late cardiology expert evidence relating to the claimant's pre-accident diagnosis of POTS. The insurer argued that the condition was relevant to causation and the valuation of the claim, particularly in light of more recent care evidence which had expanded upon the impact of POTS on the claimant's functioning. The insurer also sought disclosure of unredacted medical records, contending that existing redactions were selective, unexplained and potentially relevant to the causation issues in dispute.

Sweeting J granted both applications. Although the court noted that the cardiology evidence could and should have been sought earlier, and that the expert had been instructed without prior court permission, the judge accepted that developments in the evidence meant the report was reasonably required under CPR 35.1 to properly understand the interaction between POTS and the claimant's other medical conditions.

The court also ordered further disclosure of the claimant's unredacted medical records. As the medical records formed a key part of the experts' opinions, procedural fairness required the defendant to understand the nature and extent of the redactions, particularly where they might affect causation and quantum.

As a consequence of the additional expert evidence and disclosure required, the existing trial date was vacated. The court held that the claimant needed an opportunity to obtain responsive cardiology evidence, the disclosure issues required resolution and aspects of the care evidence remained undeveloped. Proceeding to trial in those circumstances risked injustice.

McKinstry Skip Hire Ltd v Highway Insurance Co Ltd

This Northern Ireland High Court decision considered whether a VAT registered business could recover the VAT element of vehicle repair costs following a road traffic accident caused by a negligent driver. The defendant insurer admitted liability for the accident but argued that, because the claimant company was VAT registered and able to reclaim VAT from HMRC, it should only recover the net repair costs and not the VAT element. The claimant's skip lorry was damaged in the collision and the claim comprised repair costs, decommissioning/recommissioning charges and diminution in value.

During the appeal, the insurer ultimately accepted two key propositions:

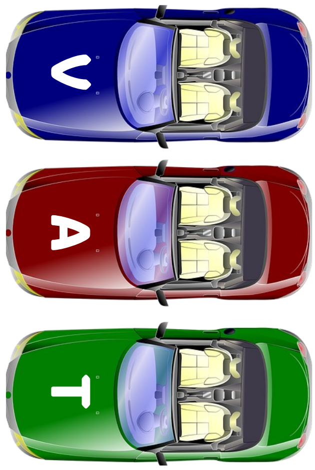
- the claim for vehicle damage was a claim for general damages, not special damages; and
- the claimant was, therefore, under no duty to mitigate its loss by reclaiming VAT or otherwise reducing the cost of repairs.

The dispute narrowed to whether VAT nevertheless formed part of the recoverable loss. Relying on authorities, including *Coles v Hetherton* and *Burdis v Livsey*, the claimant argued that the loss suffered when a vehicle is damaged is the immediate diminution in value of the vehicle, which is commonly measured by reference to the reasonable cost of repairs. The loss arises at the moment of damage and is not altered by subsequent events, such as whether repairs are carried out, whether they are obtained more cheaply, or whether the claimant later obtains a financial benefit from a third party.

The insurer argued that VAT was not truly part of the repair cost because it was a tax that could be reclaimed by the claimant. The insurer submitted that awarding VAT would overcompensate the claimant by allowing recovery both from the tortfeasor and from HMRC. Mr Justice O'Hara rejected that argument and allowed the appeal. He held that denying recovery of VAT would improperly reduce the claimant's general damages merely because it happened to be VAT registered.

The court emphasised that damages for vehicle damage are assessed by reference to the diminution in value caused by the tort, not by examining what the claimant later does with the vehicle or whether it obtains collateral benefits. The possibility that the claimant could reclaim VAT from HMRC was regarded as a matter between the claimant and HMRC, and not something from which the defendant should benefit.

The court, therefore, held that the claimant was entitled to recover the full VAT inclusive measure of its general damages, notwithstanding its ability to reclaim VAT. The appeal was allowed and the insurer was ordered to pay the VAT element of the claim.



If there are any topics you would like us to examine, or if you would like to comment on anything in this bulletin, please email the editor:

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