

SCHEDULE 1

Rule 4

“III. DAMAGES ACT 1996 – PERIODICAL PAYMENTS

Interpretation

11. In this Part—

“the 1996 Act” means the Damages Act 1996(1);

“damages” means damages for future pecuniary loss; and

“periodical payments” means periodical payments under section 2(1) of the 1996 Act(2).

Statement of claim

12.—(1) This rule applies to proceedings for damages for personal injury.

(2) The plaintiff in his statement of claim shall state whether he considers periodical payments or a lump sum to be the more appropriate form for all or part of an award of damages.

(3) Where the defendant admits to the whole of any cause, he shall, in his defence, state whether he considers periodical payments or a lump sum to be the more appropriate form for all or part of an award of damages.

(4) Where a statement is given under paragraphs (2) or (3), a party must provide relevant particulars of the circumstances which are relied on in support of the statement.

(5) Where a statement under paragraph (2) or (3) is not given, the court may order a party to make such a statement.

(6) Where the court considers that the statement of claim contains insufficient particulars under paragraph (2) and (3), the court may order a party to provide such further particulars as it considers appropriate.

Court’s indication to parties

13. The court shall consider and indicate to the parties as soon as is practicable whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages.

Factors to be taken into account

14.—(1) When considering

(a) its indication as to whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages under rule 3; or

(b) whether to make an order under section 2(1)(a) of the 1996 Act,

the court shall have regard to all the circumstances of the cases and in particular the form of award which best meets the plaintiff’s needs, having regard to the factors set out in paragraph (2).

(2) The factors referred to in paragraph (1) are:

(a) the scale of the annual payments taking into account any deduction for contributory negligence;

(1) 1996 c.48 to which the most recent relevant amendments were made by sections 100 and 101 of the Courts Act 2003 (c.39)

(2) Section 2 is substituted by section 100 of the Courts Act 2003 (c.39)

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- (b) the form of award preferred by the plaintiff including:—
 - (i) the reasons for his preference; and
 - (ii) the nature of any financial advice he received when considering the form of the award;
- (c) the form of award preferred by the defendant including the reasons for the defendant's preference.

The award

15.—(1) Where the court awards damages in the form of periodical payments, the order must specify:—

- (a) the annual amount awarded, how each payment is to be made during the year and at what intervals;
- (b) the amount awarded for the future—
 - (i) loss of earnings and other income; and
 - (ii) care and medical costs and other recurring or capital costs;
- (c) that the plaintiff's annual future pecuniary losses, as assessed by the court, are to be paid for the duration of the plaintiff's life, or for such other period as the court orders; and
- (d) that the amount of the payments shall vary annually by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

(2) Where the court orders that any part of the award shall continue after the plaintiff's death, for the benefit of the plaintiff's dependants, the order must also specify the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals.

(3) Where the court makes an order under paragraph (2), the order must also specify the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals.

(4) Where an amount awarded under paragraph (1)(b) is to increase or decrease on a certain date, the order must also specify—

- (a) the date on which the increase or decrease will take effect; and
- (b) the amount of the increase or decrease at current value.

(5) Where the damages for substantial capital purchases are awarded under paragraph (1)(b)(ii), the order must also specify—

- (a) the amount of the payments at current value;
- (b) when the payments are to be made; and
- (c) that the amount of the payments shall be adjusted by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

Continuity of payment

16.—(1) An order for periodical payments shall specify that the payments must be funded in accordance with section 2(4) of the 1996 Act, unless the court orders an alternative method of funding.

(2) Before ordering an alternative method of funding, the court must satisfy itself that:—

- (a) the continuity of payment under the order is reasonably secure;

- (b) a method of funding provided for under section 2(4) of the 1996 Act is not possible or there are good reasons to justify an alternative method of funding;
 - (c) that the proposed method of funding can be maintained for the duration of the award or for the proposed duration of the method of funding; and
 - (d) that the proposed method of funding will meet the level of payment ordered by the court.
- (3) An order under paragraph (2) must specify the alternative method of funding.

Assignment or charge

17. Where the court under section 2(6)(a) of the 1996 Act is satisfied that special circumstances makes an assignment or charge of periodical payments necessary, it shall in deciding whether or not to approve the assignment or charge, also have regard to;

- (a) whether the capitalised value of the assignment or charge represents value for money;
- (b) whether the assignment or charge is in the claimant's best interests, taking into account whether these interests can be met in some other way; and
- (c) how the claimant will be financially supported following the assignment of the charge."