

SCHEDULE 1

Rule 11

PART I

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I – PROCEEDINGS TO WHICH SECTION 32A OF THE SUPREME COURT ACT 1981 OR SECTION 51 OF THE COUNTY COURTS ACT 1984 APPLIES”

PART II

“II – PERIODICAL PAYMENTS UNDER THE DAMAGES ACT 1996

**Scope and interpretation**

**41.—**(1) This Section of this Part contains rules about the exercise of the court’s powers under section 2(1) of the 1996 Act to order that all or part of an award of damages in respect of personal injury is to take the form of periodical payments.

(2) In this Section—

- (a) “the 1996 Act” means the Damages Act 1996(1);
- (b) “damages” means damages for future pecuniary loss; and
- (c) “periodical payments” means periodical payments under section 2(1) of the 1996 Act(2).

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(1) 1996 c. 48

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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Statement of case**

**41.—**(1) In a claim for damages for personal injury, each party in its statement of case may state whether it considers periodical payments or a lump sum is the more appropriate form for all or part of an award of damages and where such statement is given must provide relevant particulars of the circumstances which are relied on.

(2) Where a statement under paragraph (1) is not given, the court may order a party to make such a statement.

(3) Where the court considers that a statement of case contains insufficient particulars under paragraph (1), the court may order a party to provide such further particulars as it considers appropriate.

### **Court's indication to parties**

**41.6.** The court shall consider and indicate to the parties as soon as 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**

**41.7.** 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 41.6; 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 case and in particular the form of award which best meets the claimant's needs, having regard to the factors set out in the practice direction.

### **The award**

**41.8.—**(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 future—
  - (i) loss of earnings and other income; and
  - (ii) care and medical costs and other recurring or capital costs;
- (c) that the claimant's annual future pecuniary losses, as assessed by the court, are to be paid for the duration of the claimant's life, or 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 claimant's death, for the benefit of the claimant'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 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.
- (4) Where 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**

**41.9.**—(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 be satisfied that—
  - (a) the continuity of payment under the order is reasonably secure; and
  - (b) the criteria set out in the practice direction are met.
- (3) An order under paragraph (2) must specify the alternative method of funding.

#### **Assignment or charge**

**41.10.** Where the court under section 2(6)(a) of the 1996 Act is satisfied that special circumstances make 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 the factors set out in the practice direction.”