



Medical Negligence Claims: Damages Explained

When you are successful in a claim (either through a settlement or at trial) you will receive compensation, or damages.

You are entitled to receive two types of damages:

- general damages
- special damages

GENERAL DAMAGES

What are they?

- General or “injury” damages are intended to compensate you for your pain, suffering and loss of amenity (essentially, the impact upon your work, rest and play).

How do we prove your claim for general damages?

- We usually need to obtain medical evidence to prove your entitlement to compensation for your injuries. The timing for getting medical evidence and the type of expert we instruct usually depend upon the nature of your injuries, how and when you are treated, and how quickly you recover.
- Sometimes more than one type of expert is required (particularly if you have suffered multiple injuries).
- The medical expert will require sight of your medical notes and records to assist in preparing the report.

How are general damages calculated?

- The starting point for valuing general damages is usually the duration of the pain, suffering and disability experienced. In other words, the longer the injury affects you, the more compensation you are likely to receive. A court would also consider the following:



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- The severity of your injury
 - The extent of any disability (e.g. inability to work, pursue pre-accident hobbies etc)
 - The treatment required in the past and possibly in the future
 - The frequency of any continuing symptoms and
 - The possibility of deterioration.
- There is no definite tariff to assist us in valuing your case. General damages are usually assessed by considering judicial guidelines and comparing previous awards made involving injuries similar to your own. Usually we are able to establish a bracket within which we would expect your compensation to be assessed by a court.

Other types of general damages

- Other examples of general damages include:
 - Compensation for being disadvantaged on the job market
 - Loss of enjoyment of employment
 - Bereavement damages
 - Loss of partner's/parent's care and attention

SPECIAL DAMAGES

What are they?

- Special damages are intended to compensate you for your losses and expenses you have incurred as a result of your injury/condition. They represent the actual losses and expenses you have suffered or incurred to date and the potential future losses.

What can they include?

- Special damages can include (but are not limited to):
 - Lost earnings
 - Medication and treatment costs
 - Parking charges



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- Travel expenses
- The cost of care and assistance
- Aids and equipment
- Accommodation

How do we prove special damages?

- Even though you may not have been to blame for the accident/condition, you will need to prove your losses. One of the simplest ways to do this is to retain all receipts for any expenses. You can also make a detailed note of all expenses you incur as you go along, and keep all of the receipts in a safe place.

SOME BASIC PRINCIPLES

- The court will not allow any party to profit from a claim (i.e. be put in a better financial position than before the injury). The aim is to return you to the same financial position as if you had not suffered the injury.
- You have a duty to mitigate your loss which means that you must ensure that you keep your losses to a minimum. Essentially, you should ask yourself “*would I incur this cost if I knew that I could not recover it from the opponent in my claim?*”
- Damages will generally only be awarded where there is a clear link between your opponent’s failure to act properly and the loss or injury you have suffered. This is called causation. Sometimes we may need to refer to the medical expert to help confirm that certain types of expense or loss (for example, physiotherapy charges or lost earnings) have been incurred as a result of your condition/injury.
- Losses and expenses must be foreseeable. This means that they must be capable of being predicted as a loss that might reasonably be incurred as a result of your condition/injury. This is largely a matter of common sense.
- We can sometimes ask for interim payments to compensate you for certain losses and expenses as your claim progresses and before final settlement. Interim payments can cover treatment costs and lost earnings but we will usually require medical evidence supporting these losses before the paying party is prepared to issue a cheque.



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Settlement

- Except in very exceptional cases, a settlement of a clinical negligence claim (whether in or out of court) is full and final and you will not be permitted to reopen your claim later on, even if, for example, your injury does not improve as an expert might expect.
- The settlement of a claim for someone under the age of 18 will require specific court approval and the funds will be invested by the court and paid out to them at the age of 18.

If you need any further information about matters in this information sheet, please do not hesitate to contact us.

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