

PRACTICE DIRECTION- PROVISIONAL DAMAGES

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 41

CLAIMS FOR PROVISIONAL DAMAGES

- 1.1 CPR Part 16 and the practice direction which supplements it set out information which must be included in the particulars of claim if a claim for provisional damages is made.

JUDGMENT FOR AN AWARD OF PROVISIONAL DAMAGES

- 2.1 When giving judgment at trial the judge will:
 - (1) specify the disease or type of deterioration, or diseases or types of deterioration, which
 - (a) for the purpose of the award of immediate damages it has been assumed will not occur, and
 - (b) will entitle the claimant to further damages if it or they do occur at a future date,
 - (2) give an award of immediate damages,
 - (3) specify the period or periods within which an application for further damages may be made in respect of each disease or type of deterioration, and
 - (4) direct what documents are to be filed and preserved as the case file in support of any application for further damages.
- 2.2 The claimant may make an application or applications to extend the periods referred to in paragraph 2.1(3) above¹.
- 2.3 A period specified under paragraph 2.1(3) may be expressed as being for the duration of the life of the claimant.
- 2.4 The documents to be preserved as the case file (“the case file documents”) referred to in paragraph 2.1(4) will be set out in a schedule to the judgment as entered.
- 2.5 Causation of any further damages within the scope of the order shall be determined when any application for further damages is made.
- 2.6 A form for a provisional damages judgment is set out in the Annex to this practice direction.

¹ See CPR rule 41.2(3)

THE CASE FILE

- 3.1 The case file documents must be preserved until the expiry of the period or periods specified or of any extension of them.
- 3.2 The case file documents will normally include:
 - (1) the judgment as entered,
 - (2) the statements of case,
 - (3) a transcript of the judge's oral judgment,
 - (4) all medical reports relied on, and
 - (5) a transcript of any parts of the claimant's own evidence which the judge considers necessary.
- 3.3 The associate/court clerk will:
 - (1) ensure that the case file documents are provided by the parties where necessary and filed on the court file,
 - (2) endorse the court file
 - (a) to the effect that it contains the case file documents, and
 - (b) with the period during which the case file documents must be preserved, and
 - (3) preserve the case file documents in the court office where the proceedings took place.
- 3.4 Any subsequent order:
 - (1) extending the period within which an application for further damages may be made, or
 - (2) of the Court of Appeal discharging or varying the provisions of the original judgment or of any subsequent order under sub-paragraph (1) above,will become one of the case file documents and must be preserved accordingly and any variation of the period within which an application for further damages may be made should be endorsed on the court file containing the case file documents.
- 3.5 On an application to extend the periods referred to in paragraph 2.1(3) above a current medical report should be filed.
- 3.6 Legal representatives are reminded that it is their duty to preserve their own case file.

CONSENT ORDERS

- 4.1 An application to give effect to a consent order for provisional damages should be made in accordance with CPR Part 23. If the claimant is a child or patient² the approval of the court must also be sought and the application for approval will normally be dealt with at a hearing.
- 4.2 The order should be in the form of a consent judgment and should contain;
 - (1) the matters set out in paragraph 2.1(1) to (3) above, and
 - (2) a direction as to the documents to be preserved as the case file documents, which will normally be
 - (a) the consent judgment,
 - (b) any statements of case,
 - (c) an agreed statement of facts, and
 - (d) any agreed medical report(s).
- 4.3 The claimant or his legal representative must lodge the case file documents in the court office where the proceedings are taking place for inclusion in the court file. The court file should be endorsed as in paragraph 3.3(2) above, and the case file documents preserved as in paragraph 3.3(3) above.

DEFAULT JUDGMENT

- 5.1 Where a defendant:
 - (1) fails to file an acknowledgment of service in accordance with CPR Part 10, and
 - (2) fails to file a defence in accordance with CPR Part 15,within the time specified for doing so, the claimant may not, unless he abandons his claim for provisional damages, enter judgment in default but should make an application in accordance with CPR Part 23 for directions.
- 5.2 The Master or district judge will normally direct the following issues to be decided:
 - (1) whether the claim is an appropriate one for an award of provisional damages and if so, on what terms, and
 - (2) the amount of immediate damages.
- 5.3 If the judge makes an award of provisional damages, the provisions of paragraph 3 above apply.

² see CPR Part 21 for the definitions of child and patient.

ANNEX

(EXAMPLE OF AN AWARD OF PROVISIONAL DAMAGES AFTER TRIAL)

(Title of proceedings)

THIS CLAIM having been tried before *[title and name of judge]* without a jury at *[the Royal Courts of Justice or as may be]* and *[title and name of judge]* having ordered that judgment as set out below be entered for the claimant

IT IS ORDERED —

- (1) that the defendant pay the claimant by way of immediate damages the sum of £..... (being (i) £..... for special damages and £..... [agreed interest][interest at the rate of from.....to.....] (ii) £..... for general damages and £..... [agreed interest][interest at the rate of 2% from..... to.....] and (iii) £..... for loss of future earnings and/or earning capacity) on the assumption that the claimant would not at a future date as a result of the act or omission giving rise to the claim develop the following disease/type of deterioration namely *[set out disease or type of deterioration]*
- (2) that if the claimant at a further date does develop that *[disease][type of deterioration]* he should be entitled to apply for further damages provided that the application is made on or before *[set out period]*
- (3) that the documents set out in the schedule to this order be filed on the court file and preserved as the case file until the expiry of the period set out in paragraph (2) above or of any extension of that period which has been ordered
- (4) (costs)

SCHEDULE

(list documents referred to in paragraph (3))