

## PRACTICE DIRECTION

# PERIODICAL PAYMENTS UNDER THE DAMAGES ACT 1996

**This Practice Direction supplements CPR Part 41**

## FACTORS TO BE TAKEN INTO ACCOUNT (RULE 41.7)

- 1.** The factors which the court shall have regard to under rule 41.7 include –
  - (1)** the scale of the annual payments taking into account any deduction for contributory negligence;
  - (2)** the form of award preferred by the claimant including –
    - (a)** the reasons for the claimant's preference; and
    - (b)** the nature of any financial advice received by the claimant when considering the form of award; and
  - (3)** the form of award preferred by the defendant including the reasons for the defendant's preference.

## THE AWARD (RULE 41.8)

- 2.1** An order may be made under rule 41.8(2) where a dependant would have had a claim under section 1 of the Fatal Accidents Act 1976 if the claimant had died at the time of the accident.
- 2.2** Examples of circumstances which might lead the court to order an increase or decrease under rule 41.8(3) are where the court determines that –
  - (1)** the claimant's condition will change leading to an increase or reduction in his or her need to incur care, medical or other recurring or capital costs;
  - (2)** gratuitous carers will no longer continue to provide care;
  - (3)** the claimant's educational circumstances will change;
  - (4)** the claimant would have received a promotional increase in pay;
  - (5)** the claimant will cease earning.

## CONTINUITY OF PAYMENT (RULE 41.9)

- 3.** Before ordering an alternative method of funding under rule 41.9(1), the court must be satisfied that the following criteria are met –
  - (1)** that 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;
  - (2)** 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
  - (3)** that the proposed method of funding will meet the level of payment ordered by the court.

## ASSIGNMENT OR CHARGE (RULE 41.10)

4. The factors which the court shall have regard to under rule 41.10 include –
- (1) whether the capitalised value of the assignment or charge represents value for money;
  - (2) 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
  - (3) how the claimant will be financially supported following the assignment or charge.

## VARIATION

5. The Damages (Variation of Periodical Payments) Order 2004 sets out provisions which enable the court in certain circumstances to provide in an order for periodical payments that it may be varied.

## SETTLEMENT

6. Where the parties settle a claim to which rule 36.5 applies, any consent order, whether made under rule 40.6 or on an application under Part 23, must satisfy the requirements of rules 41.8 and 41.9.

## SETTLEMENT OR COMPROMISE ON BEHALF OF CHILD OR PATIENT

7. Where a claim for damages for personal injury is made by or on behalf of a child or patient and is settled prior to the start of proceedings or before trial, the provisions of the Practice Direction which supplements Part 21 must be complied with