

Care at what cost?

If you are injured, you are entitled to recover the cost of care provided to you as part of a claim for compensation from whoever is responsible for the accident.

What is care?

- Care that is over and above the ordinary call of duty in family life.
- Care claims are not limited to serious injury (e.g. symptoms of gastro-enteritis can require care beyond the ordinary call of duty) and can include emotional support.
- Includes unpaid care and there is no need for a contractual agreement. But if the party responsible for the accident provides the care free of charge you cannot recover compensation for it.
- Care and assistance while in hospital such as taking an injured person for an x-ray, going anywhere about hospital, feeding and taking the injured person for walks in a wheelchair are recoverable.

Can you claim for housekeeping?

An award for compensation was considered for 'loss of housekeeping capacity' where a woman with two children suffered serious injuries to her dominant arm. Her husband and daughter had to help with housework which she had previously done herself. The trial judge assessed the loss of her housekeeping capacity in terms of hours per day for both past and future loss regardless of the fact that there was no employed help.

Assistance in a family business?

You can only recover payment for a partner's services to your business whilst off sick if the business actually paid your partner or if it was expressed or implied in a contract. If you make a business choice not to charge the partnership for such services you cannot claim.

Permanent loss of care due to death

In 2002 a claim was made by the children of a deceased mother and by their father for the cost of caring for them. Prior to their mother's death they had been solely cared for by her. Upon appeal it was held that he was entitled to the cost of care but it was to be held in trust for the children. If it was likely that the money would not be used for the benefit of the children, the Court should take steps to enforce the trust.

Another claim was brought by the husband in relation to his deceased wife. He suffered from multiple sclerosis and after her accident had to go into a nursing home, paid for by the local authority. It was held that the cost of the nursing home was recoverable from the side responsible and not payable by the local authority.

Claims have also been considered for loss of care/services made by the father and child of a woman who died in childbirth. Past care of the child, provided by his grandparents and father, was reduced by 35% to reflect that it was given freely. Future care was reduced to reflect the fact that the child would need less care as he got older and also because there was evidence that the family had been thinking of employing a nanny in the future in any event, before the mother's death.

How are costs calculated?

The starting point is to look at the commercial cost of the services and discount them to reflect the fact that the care is given free of charge. But assessments cannot always be made by setting a conventional % as they are dependent on circumstances for instance:

- If the person gave up work to provide care, it may be relevant to look at their loss of earnings.
- You need to consider the cost of the type of care provided, e.g. nursing care, emotional support.

Case study 1

A man suffered arm and back injuries in a fall at work and developed reflex sympathetic dystrophy due to this. He became depressed and could not work or do anything for himself without assistance. The trial judge held that he required 24 hour care and used professional home and residential carer rates and reduced them by 25% to take account that it was unpaid care provided by his wife. The Judge also considered that his wife would need respite in the future and worked out the cost of residential care for 8 weeks a year.

The other side appealed saying that 24 hour care was excessive and suggested a deduction of a third as a lot of the time the wife was providing emotional support and this did not constitute care. The Court of Appeal made it clear that a claim should not be limited to actual nursing or physical activities. It was accepted that a discount of 20% from commercial rates reflected the tax and National Insurance contributions which would be deducted from a professional carer.

Case study 2

A claim was made for 10 hours care per day for 45 weeks. The claimant produced evidence to show that the commercial rate for an unqualified carer was £4.50 per hour. The trial judge made an overall reduction of a third to reflect 'the element of nursing which any member of a family would in any event be supplying'.

On appeal the other side argued that there should be a further reduction to reflect the fact that the family would not be providing actual care services for the full 10 hours per day. This argument was dismissed and the trial judge's findings upheld.

On balance the courts take a pragmatic approach. Although hourly rates are a good starting point, they also look at the overall care claim and consider whether it reflects the needs of the person making the claim and the care actually provided.

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