



NINESTJOHNSTREET
PERSONAL INJURY

15th Edition of the Judicial College Guidelines Published

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On 26th November 2019 the 15th Edition of the Judicial College Guidelines for the assessment of general damages in personal injury cases was published. The new guidelines are now available online to those who subscribe to either Lexis Nexis or Lawtel.

Jamie Hill, barrister specialising in personal injury and motor insurance fraud, has reviewed the 15th Edition and comments on the principal changes.

7% increase

The most obvious and significant change is the amount of damages that are likely to be recoverable. Between May 2017 and June 2019 there has been a continued period of inflation.

Accordingly, nearly all the brackets have been increased by a factor of circa 7% to take account of RPI over the same period.

There is continued discussion as to whether adjusting the guidelines in accordance with RPI is the most appropriate measure, and this will be reviewed before the 16th Edition is published.

My view is that the increase of 7% is justified given that RPI, CPI and the average salary index all rose between 6.59% and 6.94% over the same period.

Practically, offers and opinions on general damages should be reviewed in light of the new guidelines.

Hand Injuries

The guidelines for hand injuries have seen the most reform. There is a new bracket for 'Severe Fracture to Fingers' for cases where there may have been partial amputations or other deformity. This is a helpful addition as previously such injuries fell awkwardly between the 'Serious Hand Injuries' and 'Less Serious Hand Injuries' bracket, with little guidance on how to differentiate between awards.

There is also a new bracket for ‘Total and Partial Loss of Index Finger’. Again this is useful for similar reasons.

Finally the ‘Trivial Thumb Injuries’ bracket has been removed. Such injuries will now be assessed in accordance with the new ‘Minor Hand, Finger and Thumb Injuries’ bracket. One might imagine a slight increase in awards for the most minor thumb injuries as a result of this change.

The Civil Liability Act 2018

The guidelines note that Part 1 of the Civil Liability Act 2018 is due to come into force in April 2020. However Parliament is currently dissolved for a general election campaign and there is accordingly considerable uncertainty around this date.

In any event, the newly published guidelines for whiplash injuries are likely to apply for some time given the new tariff scheme will only apply to accidents which occur after the implementation date. Further, it is noteworthy that even after implementation the guidelines rather than the tariff will continue to apply to claims brought by motorcyclists or their passengers, cyclists, pedestrians, or other road users who are not using a mechanically propelled motor vehicle.

Tinnitus

There has been a slight reform to the Deafness / Tinnitus guidelines with a new bracket for ‘Mild tinnitus alone or mild NIHL alone’. Awards of around £11,000 are now to be expected.

It is likely that claimants who will now fall within this bracket would have had their general damages assessed in accordance with the slight NIHL without tinnitus bracket (or vice versa) where awards were up to £6,140. Therefore although the change is slight the effects may be significant for such claimants.

Faecal urgency

There is a new bracket within the Bowels guideline for ‘Faecal urgency and passive incontinence persisting after surgery’. Such injuries most commonly arise where there has been an obstetric anal sphincter injury and may be of interest to those who practise in this area.

Reported cases

The guidelines are intended to reflect the law, not set it. Each time the guidelines are updated, a comprehensive review of reported decisions is undertaken.

It is noted within the introductory pages of the 15th Edition that there have been relatively few reported decisions over the last 2 years, and this is seen as a sign of how successful the guidelines have now become.

However individual quantum reports are still useful, and practitioners should consider reporting cases, particularly where a judge has not strictly followed the guidelines. Not only will this assist with the interpretation of the current edition, it could well directly shape the next one.

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