

In the mean-time

Karamjit Singh delves into the details of interim payments



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Interim payments are an important consideration for claimant and defendant representatives. This is particularly so for claimants who are unable to pay for equipment or adaptations that might be necessary following an accident. The defendant's solicitor or insurer should consider such a request carefully. This article brings together the essential elements of what both parties will need to take into account when an interim payment is being sought.

Application

CPR 25.1(1)(k) defines an interim payment as an order for payment by a defendant on account of:

... damages, debt or other sum (except costs) which the court may hold the defendant liable to pay.

The most obvious circumstances in which an application will be considered are when:

- (1) judgment has been obtained against a defendant for damages to be assessed or for a sum of money to be assessed;
- (2) liability is not in issue as the defendant has admitted liability; or
- (3) the court is satisfied that if the case went to trial one of the conditions in CPR 25.7(c) would be satisfied.

No application can be made until the period for filing the acknowledgement of service has expired (see CPR 25.6(1)). CPR 25.6(2) provides for more than one application for an interim payment to be made. This allows representatives to make more than one application in the light of the applicants' changing circumstances.

The procedure for making an application is in accordance with Part 23. CPR 25.6(3) amplifies the requirements, making it clear

that an application for an interim payment should be made on notice and must be served at least 14 days before the hearing scheduled to consider the matter. The application must be supported by evidence. In particular, the evidence must address the following matters (see practice direction 25B 2.1):

- (1) the sum of money sought by way of an interim payment;
- (2) the items or matters in respect of which the interim payment is sought;
- (3) the sum of money for which final judgment is likely to be given;
- (4) the reasons for believing that the conditions set out in CPR 25.7 are satisfied;
- (5) any other relevant matters;
- (6) in claims for personal injuries, details of special damages and past and future loss; and
- (7) in a claim under the Fatal Accidents Act 1976, details of the person(s) on whose behalf the claim is made and the nature of the claim.

Paragraph 2.2 of the practice direction makes it clear that any documents in support of the application should be exhibited, including medical reports in personal injury claims.

In personal injury claims a certificate of recoverable benefit will also need to be obtained and filed with the other evidence (see practice direction 25B 4.1-4.4).

If a respondent to an application wishes to rely on evidence then it needs to be filed and served on all the parties and the court at least seven days before the hearing (see CPR 25.6(4)).

A claim's success

It is apparent from practice direction 25B 2.1 referred to above that the applicant must state its reasons for believing that the conditions set out in CPR 25.7 are satisfied. CPR 25.7 is at

'The key point to consider is the strength of the case against the party from whom the payment is being sought. If it is sufficiently strong, then the presence of other defendants is of little concern.'