VALUATION OF CLAIMS FOR DENTAL NEGLIGENCE

II. Negligent Failure to Detect/Treat Periodontal Disease

INTRODUCTION

1. Periodontal disease is a disease affecting the tissues which support the teeth including the bone around the tooth. Untreated such disease can progress to cause loosening and eventual loss of the affected teeth.

2. Negligent/sub-standard dental treatment will not cause the disease, to which some people are more susceptible than others.

3. However, it has been established for many years that dentists should routinely monitor the tissues around the teeth by way of probing and/or x-rays and keep a record of their findings.

4. A failure to do this, or to heed and act upon the results should they indicate the presence of the disease, is likely to lead to a finding of negligent treatment.

5. In cases of this type the establishing of a breach of duty will often be the most straightforward part of the claim as, because of the constitutional nature and unpredictable progress of periodontal disease, questions of causation can be complex and will require detailed input from periodontal specialists.

6. Defendants are likely to argue that, where there is bone loss and numbers of teeth are not viable, this would have occurred in any event (or at least some of it would).

THE VALUATION PROCESS

7. Cases of the type tend to fall into one of two categories. Either the period of neglect has been lengthy or the disease particularly aggressive and a large number of teeth are affected or the disease has been spotted relatively early and only a few teeth are affected.

8. Valuation will depend upon the prognosis for the affected teeth. At one end of the scale it may be that no teeth are likely to be lost although a number may require treatment and at the other can be a case where all the teeth in the mouth will be lost.
   i) Pain Suffering and Loss of Amenity

9. The sources of comparable cases and guidance as to brackets are, as suggested in the first Article in this series, the JSB Guidelines (now in their 10th Edn.) section 7 Facial Injuries A(f)(i) to (iv), Kemp (section D7 Volume III) and Lawtel.

10. The JSB Guidelines figures are primarily set by the number and position of the affected, with the highest bracket being for loss of (or serious damage to) several front teeth (£5,750 to £7,500). Should the damage be to back teeth, then the guidelines suggest a simple evaluation per tooth (£720 to £1,125).

11. However, note should be taken of the rider included in the notes to this section of the Guidelines to the effect that “Awards may be greater where the damage results in or is caused by protracted dentistry”. Whilst periodontal disease is unlikely to be “caused by” protracted dentistry (which no doubt has in mind cases of the type where there has been a long period of often expensive, unnecessary and negligent treatment) such cases are very likely
to “cause” a long period of dental treatment as the viability of the various teeth is assessed, those which are not viable are removed and, where appropriate, implant surgery (often requiring preliminary bone grafting) takes place. Lawtel is, again, useful as a source of comparable cases, although the number of these which have settled without a full admission of breach/ causation makes setting generalised brackets difficult and dangerous.

12. One area which needs consideration in cases of this type is the psychological impact of the breach of duty. In such claims a regular attender at their GDP may, on transferring to another dentist, be informed that they have advanced periodontal disease and that they are at risk of losing large numbers of teeth.

13. Such a realisation can, on occasion, generate a psychological condition which of itself needs to be addressed by an appropriate expert report (ideally a consultant psychiatrist with experience in cases of this type). The findings of that expert need to be reflected in the pain suffering and loss of amenity award. In this respect helpful guidance can be found in the JSB Guidelines Chapter 3 (A). Most such conditions will fall within sections (c) “moderate” or (d) “minor” (£3,875 to £12,500 and £1,000 to £3,875 respectively).

14. It needs to be borne in mind that the Guidelines brackets and the comparable cases tend to include some element reflecting the psychological impact of the injury so care must be taken when considering the extent of any overlap between the physical and psychological injuries.

ii) Treatment Costs

15. These will also be dictated by the degree of progress of the disease and the prospects in relation to tooth loss.

16. The costs for implants are set out in the previous article on Negligent Extraction of Teeth, but there is an increased likelihood that additional surgery by way of bone grafting will be required (which is likely to increase those costs).

17. Where there has been bone loss, but not to the extent that teeth are overtly not viable, thought needs to be given to the cost of long term maintenance, perhaps the charges in respect of attending a specialist periodontist in order to achieve the best long-term prognosis for the remaining teeth (some £360 per annum). More difficult to justify would be the costs of hygienist therapy (perhaps 4 sessions per annum costing £240) as this is susceptible to an argument that vulnerable patients would have required such therapy in any event.

18. However, when a life, or even a more restricted, multiplier is applied in cases where the claimant is relatively young, these costs can add up to several thousand pounds.

19. If there is psychological injury the expert may advise a course of therapy (often Cognitive Behavioural Therapy or CBT). Such courses often consist of 10 to 12 sessions at a cost of £100 to £150 per session.

iii) Consequential Losses

20. These are unlikely to be significant save in cases where there is an extreme psychological reaction which may affect the Claimant’s ability to work.

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