VALUATION OF CLAIMS FOR DENTAL NEGLIGENCE

III. Extreme Cases

INTRODUCTION

1. This third of three articles looks at some instances where comparatively high awards by way of pain suffering and loss of amenity and other related non-financial damages have been awarded.
2. It should be borne in mind that cases of this type are, thankfully, uncommon and that many practitioners will come across them rarely if at all.
3. However it is important that those working in this field are aware of the quantum issues in such cases.

NERVE DAMAGE

4. Such damage may arise in cases of dental surgery such as the removal of wisdom teeth. In such cases the lingual nerve may be damaged which can lead to an almost complete loss of the sense of taste, numbness of the tongue and persistent pain (damage to the inferior dental nerve and the mental nerve is also possible during extractions).
5. Lingual nerve damage may occur during extraction of a lower molar tooth where the lingual soft tissues are trapped in the forceps or by being caught up with the burr during the removal of bone.
6. Claims in this respect generally arise from the failure to warn of the risk prior to extraction of such teeth.
7. Awards can be considerable, examples are Christie v Somerset Health Authority where an award was made of £14,000 in 1991, now worth some £25,155 and Heath v West Berkshire Health Authority where the award was £10,000 in 1996, now worth some £15,586.

THE "COURSE OF TREATMENT" CASES

8. The most “extreme” of the dental negligence claims, these are cases where a dentist/practice has carried out lengthy courses of often unnecessary treatment upon unsuspecting patients with the primary aim of maximising their earnings.
9. Frequently the treatment which has been carried out is also sub-standard and potential claimants will often be left with large amounts of restorative work being required, long term pain or sensitivity and pronounced psychological damage.
10. The most striking reported example is the series of cases reported as Appleton v Garrett [1996] PIQR Q1.
11. Here Dyson J found that the dentist, who had since been struck off the Dental Register after findings of gross overtreatment of many patients, had failed to give information upon which informed consent could have been made which went as far as the deliberate withholding of information in bad faith. This, he found, was exceptional and contumelious conduct leading to trespass to the person and causing pain and damage to patients who had placed their trust in him resulting in personal financial profit.
12. The significance of this case is that, whilst the approach taken to aspects of the valuation might now be seen as out of step with current practice – for example in calculating future losses where expenditure will be required on a regular basis into the future, the Judge took the view that it was appropriate to award aggravated damages of 15% of the pain and suffering award. In order to do so the Judge had to, and did, find that there had been a trespass to the person in these cases.

13. Such awards are uncommon in personal injury claims and are only likely to be made in cases where there is the combination of the trespass to the person element and such “bad faith conduct”. Arguably such conduct, where there is a calculated intentional breach of duty in order to make a profit, could give rise to an award of exemplary damages as well, but the writer is unaware of any reported cases where such an award has been made.

14. The pain and suffering award in Mrs Appleton’s case was £10,000 and the aggravated damages sum £1,500. That would now be worth some £18,339. The highest award in this group of 8 cases was one of £18,400 (including £2,400 aggravated damages) in Mrs Eling’s case. That would now be worth some £29,884. The pain and suffering figure in that case allowed some £6,000 for psychological damage.

15. The bulk of such “course of treatment” cases do not attract aggravated damages, see for example Hadjiyianni v Craven (1996) where an award of £10,000 for pain and suffering was made (now worth some £15,586) for a two year course of “extensive treatment which caused pain and discomfort with all work being carried out without consent and negligently” and which required extensive remedial treatment and left the Claimant with an inability to eat hard foods or to drink hot or cold liquids.