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Reaney Discounts in Maximum Value Claims

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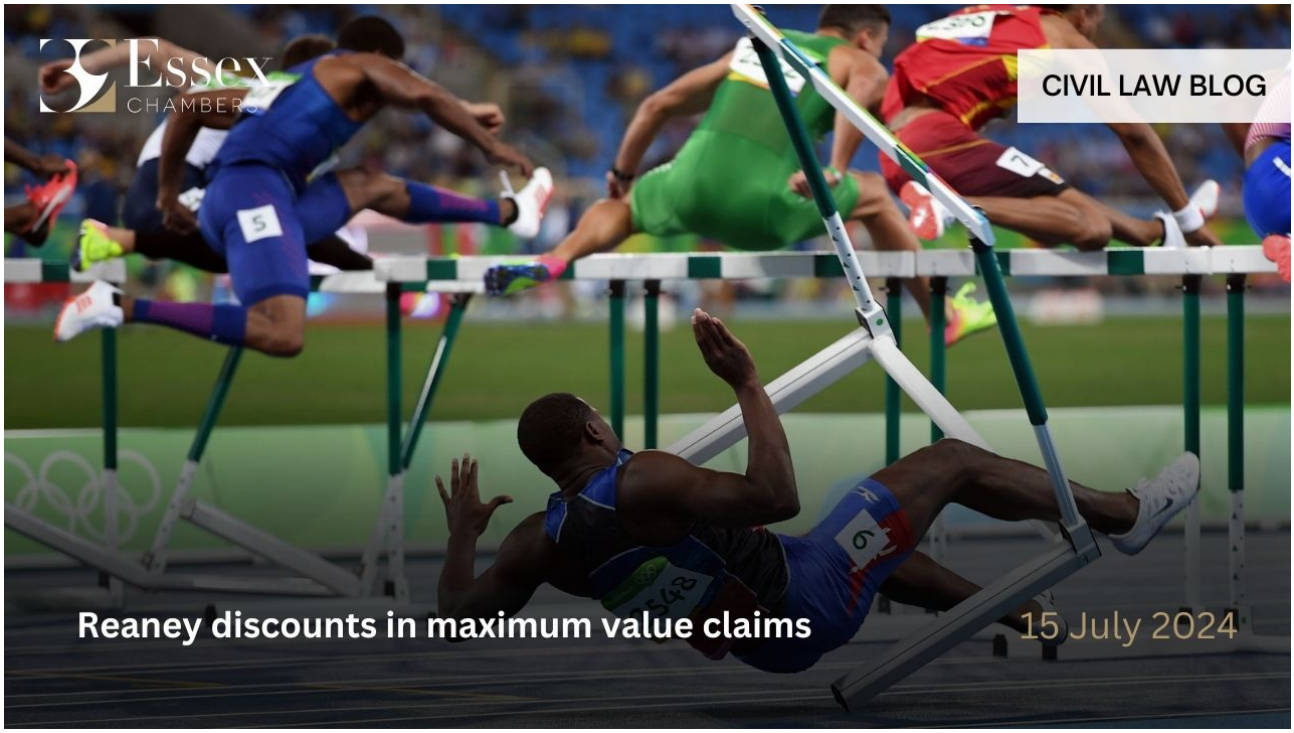

39 Essex Chambers member James Todd KC discusses the Reaney argument and his experience in the case of PHJ v. HMA, dealing with pre-accident medical conditions

Sometimes, a very badly injured claimant has a significant pre-accident medical condition. Occasionally, because of that condition, the claimant would be receiving, or will have needed, care and assistance before the accident. In such a case, a defendant might wish to run a 'Reaney' argument, relying on the Court of Appeal decision in Reaney v. North Staffs NHS (2015).

In Reaney v. North Staffs NHS, the court upheld the principle that a tortfeasor must compensate the victim for her condition only to the extent that it has been worsened by the negligence. An easy example would be where a paralysed individual suffers a further injury to the spine in the accident and the hours of daily care, equipment needs and other requirements, all increase following the accident in comparison with the position before. The decision in Reaney confirms that it is only the *additional* needs for which the defendant must compensate the claimant.

Such straightforward cases are rare, although it is far from unusual to come across a claimant with a serious pre-accident medical history, giving rise to disabilities and care needs. It might be expected that discounting future care claims, to take account of pre-existing needs, would be a routine feature of high value personal injury claims. The but-for position is after all a standard consideration in lower value claims. The fact that reported instances of successful Reaney arguments are thin on the ground suggests that the principle is of limited practical application in the real world of catastrophic claims. Why is that?

First, while the defendant takes its victim as it finds her, before a Reaney subtraction exercise can take place, it must be shown that the claimant's post-accident, negligence-related needs are 'substantially of the same kind' as her pre-existing needs. In the jargon that has developed from Reaney, that means the needs must be 'qualitatively' of the same kind. If they are not, the argument will fail. A recent example can be found in the case of PHJ v. HMA (2024 Manchester District

Registry, unreported). PHJ's pre-accident medical records were voluminous. They showed that she had significant mental health difficulties in the years before the accident and had been receiving support and assistance from her partner, family, social services and her GP.

The defendant's case was that a proportion of the claimant's care needs before the accident were qualitatively the same as those resulting from her catastrophic head injury, although lesser in extent – 'quantitatively' – given her admittedly very severe brain injury. At trial, the defendant's family witnesses were cross-examined at length by reference to the medical records in an attempt to establish the similarity between the pre- and post-accident needs. The judge rejected the argument, finding that although, but for the accident, the claimant would have been reliant on her partner for continuing emotional support, this was not comparable with the care she needed as a brain damaged individual. The case merits careful reading to see how the judge dealt with the evidence. It illustrates not only the factual sensitivity of the exercise but also the relatively wide ambit of the concept of qualitative difference and therefore the ease with which the judge was able to prefer the claimant's case.

Next, in a case where a defendant believes that a qualitative similarity can be made out, it must be careful to ensure that the judge is provided with good evidence to quantify the additional care needs. In a catastrophic injury case with care experts, that normally means that the Reaney point must have been clearly pleaded and raised at the interlocutory stage so that both parties are given the opportunity to prepare for it through their expert evidence. The defendant's expert should assess the pre-accident needs and analyse them in terms of the precise nature of the care and the number of hours per day for which it was being provided. The care and medical evidence must also satisfy the judge that but for the accident the same level of care would have continued. Post-accident care must be analysed in a sufficiently clear and comprehensible way that the necessary subtraction exercise can be carried out. A defendant would be wise not to expect much help from the claimant's care and medical evidence: where qualitative similarity is in issue, it may be in the claimant's tactical interests to instruct her experts simply to decline to attempt any quantitative analysis or comparison.

If the defendant fails to adduce the necessary evidence, or its expert care evidence suffers damage in cross-examination, the defendant may be forced to abandon a purely arithmetic approach and resort to arguing for a broad-brush percentage discount on the award for post-accident care. Such percentage discounts are common in the personal injury field and, it might be thought, not objectionable. However, in PHJ, the court said that even had it found for the defendant on the issue of qualitative similarity, it would not have been attracted by any sort of broad-brush discount, which it deprecated as 'little more than a guess'.

As a principle of compensation, a Reaney discount sounds simple enough. However, the court will naturally be disinclined to make a reduction in compensation that could leave the claimant short of the care that she needs. Save in the clearest cases, these are tricky hurdles for a defendant to surmount. As ever, preparation is everything.

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