

### **Legal Update: Recoverability of other's care costs in personal injury claims**

It is accepted that when an individual sustains personal injuries as a result of the negligence of another, and requires additional help and support afterwards because of those injuries, the costs associated with the same will be recoverable. It is a cost which the individual would not have incurred but for the injuries being sustained.

The position is more complex when it is not the injured party (**Person A**) who requires the care, but another, perhaps a spouse, partner or relative (**Person B**). Is this cost recoverable?

Ordinarily the answer would be no as Person B would not have a valid claim against the entity which injured Person A. This position is different however where care was previously provided, or paid for, by Person A.

Where Person A cares for Person B, and is then unable to do so because of personal injuries which they sustain, the law recognises the cost in providing care to Person B as recoverable loss.

In [Lowe v Guise](#) [2002] EWCA Civ 197, the claimant had for 4 years been the sole carer for his brother who had Down's syndrome. It was estimated that he provided 77 hours of care per week before he suffering personal injury because of another. After then he was only able to provide 35 hours per week and contended that the cost of the additional 42 hours which would be needed was recoverable.

In dealing with this as a preliminary point of law the Court of Appeal agreed. Lord Justice Rix did confine his conclusions however to care which is provided to a relative living as part of the same household and which goes beyond the ordinary interactions of members of that household.

The claimant would have been able to recover the cost associated with now employing a gardener or a decorator, and so it seemed logical that he would also be able to recover the cost of care which he could no longer provide. The contrary position would, in the view of Rix, '*bring no credit on the law*'.

The position is more complex where, at the time of sustaining their injuries, Person A was not providing care for Person B but was then unable to provide the care he would have otherwise provided in the future. The difficulty here is one needs to look into the future and consider whether

the cost of any care would pass the legal test of remoteness. How would one know that care would be needed?

The position has not been tested either in England and Wales or the Isle of Man but logically, if Person B required care which Person A would have otherwise provided, then the cost should be recoverable. Person B would likely need to require the care during the course of any claim as once determined or settled, Person A could not go back for additional damages.

Such a conclusion would be within the logic and policy of the existing state of Manx common law. It is a loss incurred which, but for the injuries sustained by Person A, he would have not incurred.

***DQ's [Alexander Armstrong](#) has recently provided advice on this specific issue and, whilst not tested in Court, such losses were accepted as being recoverable and paid as part of a negotiated settlement. DQ's leading dispute resolution team acts in a number of personal injury and clinical negligence claims. For further information please contact [Alexander Armstrong](#), [Rose Kinrade](#) or [Jessica Cocker](#).***

***Disclaimer***

*The information and/or opinions contained in this article is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter. Any reliance on such information and/or opinions is therefore solely at the user's own risk and DQ Advocates Limited (and its associates and subsidiaries) is not responsible for, and does not accept any responsibility or liability in connection with any action taken or reliance placed upon such content.*