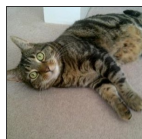


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Assistance Animals: a Common Future Head of Loss? - Thomas Crockett, 1 Chancery Lane



17/01/13. On 30th November 2012, The Times carried an article entitled "NHS will cough up for music lessons and manicures." It was referring to the three year trial of personal health budgets, whereby people in the NHS Continuing Care programme are able to determine themselves, how best to spend the money allocated to them.

Their budgets are of course typically spent on many items one routinely sees in schedules of loss, namely: carers, mobility aids, domestic assistance and medical expenses. However, the article makes reference to less usual expenses, such as manicures, hairdressing, musical instruments, theatre trips, craft materials and cooking utensils. The article mentions one woman with depression, using some of her budget to learn dress-making; another with chronic lung disease, using theirs for singing lessons; and another with multiple sclerosis, having used theirs to purchase a cat and reflexology sessions.

It is clear that such disparate, diverse and unusual uses for the personal health budgets were considered greatly therapeutic by the individual patients. However some such means of coping with an illness or injury are rarely seen claimed in personal injury cases. Particularly, the use of 'assistance animals' beyond guide and hearing dogs is something which is not as broadly appreciated in the UK as it is in other parts of the world.

Certainly in the USA animals (specifically trained or otherwise) are medically-recommended by physicians to help temper the symptoms of a range of physical and psychological illnesses. These can range from the use of cats to provide emotional support and companionship to people suffering from depression, anxiety or PTSD; to the use of monkeys by quadriplegics to undertake manual tasks.

Dogs can provide an array of services. Their assistance can range from the more conventional guiding of people with mobility problems or sensual disability; to providing physical support or bringing people necessary medicines, telephones or other items in a medical crisis. Some dogs can be trained to actually dial the emergency services or a suicide hotline using specially designed dog telephones, or run Lassie-like for help. Dogs and other animals can even be trained to provide a warning to diabetics upon sensing changes in their blood sugar or to epileptics of impending seizures.

The author has had some experience of observing a case in the Florida Middle District Federal Court, in Tampa in May of last year. This involved a plaintiff suffering from clinical depression allegedly caused following a personal injury. The plaintiff had a rather fine Airedale terrier which was trained to demand attention when it sensed his mistress was feeling low, thus distracting her from her condition. She described the dog as being essential to her health and wellbeing and hinted that he had prevented several suicide attempts.

Should personal health budgets become the norm, the range of expenditures is likely to broaden away from the more conventional expenses associated with long term care. This will undoubtedly affect the range of heads of loss litigators are likely to come to have to consider. In time with a cultural shift and as such potential heads of claim become undeniably more foreseeable, this is likely to lead to such heads of loss being routinely accepted by the courts.

Often where the USA leads, the UK and Europe follows. Should assistance animals become to be more recognised as an effective non-medical or therapeutic means of mitigating the symptoms of both physical and psychological injuries, and/or akin to mobility aids, lawyers can expect to increasingly come across claims for the same.

However this potential development in the law of personal injury litigation need not necessarily be viewed with any trepidation. For example, a claimant suffering from low mood and personality changes caused by a head injury, may feel able or be considered to be more likely to be able to cope with life should that claimant be provided with the companionship and responsibility of keeping a cat. This can only be a good thing as regards that claimant's quality of life, and ability to manage his or her injury. However it is also likely to reduce the quantum of both general damages and special damages for – say – future loss of earnings, and thus the outlay for any compensating party.

Perhaps in time, it will be necessary to have Ogden Tables for the life expectancy of different types and/or breeds of animals, and other such actuarial tables relating to the cost of their keep. Such reference guides are likely to be considered to be desirable as the costs of providing, maintaining and periodically replacing suitable service animals are likely to be significant for certain animals, such as the highly trained dogs.

The UK Charity Guide Dogs states that it costs £28,000 to train a guide dog for the blind. The cost may be higher for another type of specialist assistance dog. The typical large dog breeds used as assistance dogs have a working life expectancy of about 8 years. Thus compensating parties may be facing a significant cost of purchasing and replacing such a dog over the course of the claimant party's life. This would be in addition to the costs of keeping it, which is widely reported to be in the region of £2,500 per year.

By way of an example, a blinded claimant with a whole life multiplier of 45 who requires a guide dog, would require 5.25 dogs over the course of his or her life at a cost of £147,000 plus upkeep of £105,000, making a total head of loss of £252,000. It can be imagined that the costs of an assistance monkey may be higher still.

Such costs for animals trained to undertake specific tasks may prove to be inescapable for compensating parties, with evidence that the use of such an animal is reasonable to assist the claimant party. However, claims for animals for purely therapeutic reasons may be challenged on the grounds of causation, unless it can be shown. Even a cat may arguably cost £1,000 per year in food, veterinary bills and insurance.

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