

A GUIDE TO THE CONDUCT OF CASES INVOLVING SERIOUS INJURY



INTRODUCTION

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This best practice Guide is designed to assist with the conduct of personal injury cases involving complex injuries, specifically cases with a potential value on a full liability basis of £250,000 and above and that are likely to involve a claim for an element of future continuing loss. If the parties agree, the Guide can also be followed – in spirit if not to the letter - in lower value multi track cases with an element of future continuing loss. The Guide excludes clinical negligence and asbestos related disease cases.

The Guide is intended to help parties involved in these multi track claims resolve any/all issues whilst putting the claimant at the centre of the process. It puts in place a system that meets the reasonable needs of the injured claimant whilst ensuring the parties work together towards resolving the case by cooperating and narrowing the issues.

This Guide creates an environment that encourages positive collaborative behaviour from both sides, and will work in parallel with the Civil Procedure Rules.

Nothing within this document affects a solicitor’s duty to act in the best interests of the client and upon their instructions.

It is recognised that there will be occasions when the defendant¹ insurer and or agent cannot commit a commercial client for whom they are handling agents to comply with the Guide. The claimant representative will be notified of this issue immediately.

It is recognised that there will be occasions where either the claimant or the defendant insurer /and or the claims handling agent are unable to comply with the Guide. Where this occurs it is expected that notification of this fact to the opposing party should be made immediately.

This Guide comprises the following:

- ❖ Objectives
- ❖ Guidance
 - Collaboration
 - Early notification
 - First contact
 - Rehabilitation
 - Ongoing review and case planning
 - Dispute resolution and escalation
 - Costs

¹ Any reference to defendant or defendant insurer can be taken to be singular or plural when more than one defendant or insurer is involved or potentially involved.

OBJECTIVES

The principal aims are as follows:

- to resolve liability as quickly as possible;
- where beneficial to the claimant to provide early access to rehabilitation to maximise their recovery;
- to resolve claims in a cost appropriate and proportionate manner;
- to resolve claims within an appropriate agreed time frame;
- resolution through an environment of mutual trust, transparency and collaboration;

To achieve the above the parties agree to work collaboratively bringing tangible benefits to all parties.

The key objectives are:

i. **Notification**

Early notification of claims to defendants and their insurers when known, with a view to achieving resolution of the case as quickly as possible and where liability is admitted or established, providing compensation.

ii. **Case planning**

Collaboration and dialogue are a central objective to achieve efficient case progression through an agreed action plan, dealing with but not limited to liability resolution, rehabilitation, quantum evidence and overall settlement.

iii. **Liability**

In all cases handled under the Guide a commitment to resolve liability by agreement, with a view to this being finalised within a maximum period of six months from the date of first notification. Where this is not possible, to identify the barriers that are stopping liability being resolved and to agree an action plan to conclude the issue at the earliest opportunity. The plan can include trial or alternative dispute resolution as appropriate.

For cases handled in accordance with this Guide the withdrawal of an admission would only be in exceptional circumstances and an admission made by any party may well be binding on that party in the litigation. The rules concerning admissions at CPR 14.1A continue to apply.

iv. **Considerations on resolution of liability**

A commitment to an early interim payment of disbursements (the subject matter of which has been disclosed) in addition to base costs related to liability once resolved. If the parties are unable to agree the amount of contribution an action plan will be developed to conclude the issue at the earliest opportunity.

The objectives and processes set within the Guide do not prevent the parties agreeing to additional items such as payment of interest on general damages, stay of proceedings or on any other issue in the course of the claim, all such discussions being in the spirit of the Guide.

v. **Rehabilitation**

Discussion at the earliest opportunity by all parties to consider effective rehabilitation where reasonably required.

Appointment, where necessary, of an independent clinical case manager instructed by the claimant, or subject to the claimant's agreement, on a joint basis.

vi. **Interim damages**

A willingness to make early and continuing interim payments where appropriate.

vii. **Part 36/Calderbank offers**

No Part 36/Calderbank offers unless or until the parties have tried to agree an issue through dialogue and negotiation but cannot do so.

viii. **Documents**

Commitment by all parties to obtain and disclose promptly all relevant documents, such as

- a. liability documents
- b. police reports in road accident cases (police guidance on disclosure of information to third parties in relation to civil claims can be found at www.seriousinjuryguide.co.uk and at [National Police Library Online](#))
- c. accident report documentation
- d. medical notes and records
- e. documents relating to past loss
- f. case manager records
- g. other relevant non-privileged material

Where possible, all parties are to obtain evidence in such a way as to avoid duplication of effort and cost.

GUIDANCE: ACHIEVING THE OBJECTIVES

1. COLLABORATION AND CASE PLANNING

- 1.1. The aims and objectives of this Guide will be achieved through the parties working together, allocating tasks where appropriate, narrowing the issues throughout the claim, leading to resolution at the earliest time.
- 1.2. Collaboration begins with a commitment to early notification of a claim to the potential defendant.

Collaborative working between the parties should continue throughout the life of the claim with the objective of achieving:

- early liability resolution
 - maximising rehabilitation opportunities
 - making provision for early interim payments
 - emphasising restitution and redress, (rather than just compensation)
 - early identification of issues not in dispute
 - flexible approaches to resolution of issues in dispute
- 1.3. The parties should aim to agree a framework/timetable for engaging on a regular basis in order to bring the case to conclusion.

2. EARLY NOTIFICATION

- 2.1. The claimant's solicitor should ensure that the defendant and their insurers / handling agents are given early notification of the claim. The recommended contents of the early notification letter are set out below. The early notification point for each insurer can be found at www.seriousinjuryguide.co.uk.
- 2.2. A full formal detailed letter of claim is not expected (in the first instance). The aim is to alert the proposed defendant and insurer / handling agent to the potential claim, applicability of this Guide and to enable:
 - an initial view for the purpose of understanding the nature of the claim and severity of injuries
 - allocation of the case to an appropriate level of file handler within their organisation
 - liability to be resolved promptly without further investigation by the proposed claimant.
- 2.3. The claimant's solicitors should aim to send a written notification within 7 calendar days of instruction. This should include where available but not be limited to:

- Name, address, date of birth and NI number of claimant (Such personal data should not be sent in one letter because of the risk of fraud.)
 - Date, time and place of accident or date of onset of condition giving rise to the claim
 - Factual outline of accident and injury if available
 - Who is said to be responsible and relationship to claimant
 - Any other party approached
 - Occupation and approximate income
 - Name and address of employer if there is one
 - Current medical status in summary form (e.g. inpatient or discharged)
 - Any immediate medical or rehabilitation needs if known
 - The identity of the firms' escalation point of contact (see escalation section) and email address
 - Protected party status on a without prejudice basis.
 - A reference to the claim being conducted within the Guide
- 2.4. In the notification letter, the name of file handler with conduct at the claimant's solicitor's firm and immediate line manager/supervisor should be identified. Relevant e-mail addresses and telephone numbers should also be included.
- 2.5. The solicitors representing the claimant should take all reasonable steps to locate and notify the appropriate insurer / handling agent. Where known the letter should be sent to an established address to enable the file to be allocated at the correct handling level within the insurance company / handling agents.
- 2.6. If an insurer or handling agent is unknown, a short notification letter should be sent to the proposed defendant with a request to pass it on to any relevant insurer. In RTA cases, the MIB should be approached in the absence of an alternative insurer.
- 2.7. In the event that more than one potential defendant is identified details should be communicated to all other defendants (see section 4 below).
- 2.8. The reasonable costs of the solicitor in complying with this section will not be challenged for the lack of a retainer at this point in time.

3. FIRST CONTACT

3.1. At the earliest opportunity but no later than:

3.1.1. 14 calendar days of receipt of the notification letter, the defendant insurer / handling agent must acknowledge the correspondence in writing and confirm it is with the correct handler, confirming the name of the file handler, escalation contact point, as well as e-mail addresses and telephone numbers of the same.

3.1.2. 28 calendar days of receipt of the notification letter, the defendant insurer shall make contact with the claimant solicitor. The purpose of this first contact is to establish lines of communication between the parties, to include but not limited to:

- the parties' views on liability
- update on injuries
- any rehabilitation needs identified
- other potential defendants
- agreement as to when to hold further discussions.

4. CLAIMS INVOLVING MULTIPLE DEFENDANTS

4.1. The claimant solicitor must be kept informed in the event that additional defendants are identified.

4.2. In the event that there is more than one potential defendant it is expected that one defendant will coordinate correspondence with the claimant representatives. The identity of the coordinating party in such cases ought to be communicated within 28 calendar days of the last letter of claim where more than one is sent.

4.3. Where a coordinating contact point is offered the claimant representative shall restrict communication to that party, save that in the event that they consider there is a failure to make satisfactory progress in accordance with this Guide, all other known defendants should be alerted to the concern(s) raised. It is expected that this step will not be taken unless the escalation procedure has been tried first.

4.4. The defendants should confer within a maximum of 28 days in order to agree a response or to appoint a replacement coordinating defendant.

4.5. It may be that a coordinating defendant cannot be agreed between the defendants. In such cases the claimant must be notified of the fact immediately. However there is a continuing expectation that the defendants will, as soon as possible, agree a coordinating defendant.

5. ONGOING REVIEW AND FORWARD PLANNING

- 5.1 Regular on-going dialogue should take place between the parties with a view to agreeing the next steps required to progress the case. Material changes in circumstances should be communicated immediately (e.g. death of the claimant, loss of capacity, significant medical deterioration, material change in care regime costs, risk of loss of employment etc).
- 5.2 The claimant solicitor should give reasonable access for medical facilities when requested by the defence insurer. The parties should liaise on the issue of selection of any expert and the status thereof as part of the planning process.

6. REHABILITATION

- 6.1. One of the overriding aims of the Guide is to help claimants to access rehabilitation when appropriate. At the earliest practical stage the parties should, in consultations with the claimant and/or the claimant's family, consider whether early intervention, rehabilitation or medical treatment would improve the present or long term situation. Defendants should reply promptly to any request to rehabilitation, and in any event within 21 days.
- 6.2. Further guidance can be found in the following material:
- 6.2.1. **APIL's Think Rehab! Best Practice Guide** on rehabilitation and the parties
<https://www.apil.org.uk/files/members/best-practice-guide-on-rehabilitation-2015.pdf>
 - 6.2.2. The **Guide to Best Practice at the Interface Between Rehabilitation the Medico-legal Process** endorsed by BSRM, APIL and the Royal College of Physicians published November 2006,
<https://www.apil.org.uk/files/members/pdf/SearchableDocuments/3675.pdf>
 - 6.2.3. The Rehabilitation Code 2015 (official implementation 1 December 2015)
<http://iual.informz.ca/IUAL/data/images/2015%20Circular%20Attachments/067%20REHAB%20CODE.pdf>
 - 6.2.4. The Guide to Case Managers 2015 (official implementation 1 December 2015)
<http://iual.informz.ca/IUAL/data/images/2015%20Circular%20Attachments/067%20CM%20GUIDE%20MASTER2.pdf>
- 6.3. The parties are encouraged to try to agree the selection of an appropriately qualified case manager best suited to the claimant's needs.
- 6.4. The insurer and/or appointed solicitor will be kept up to date with rehabilitation progress as part of the case planning process, by whatever means is agreed between the parties or generally.

- 6.5. Rehabilitation reports and case management material should be provided to the insurer on a regular basis.
- 6.6. The parties should seek to agree the frequency with which records and documents should be disclosed.
- 6.7. The parties should seek to agree the frequency of meetings or conference calls with the case manager (if such meetings or calls are appropriate).

7. ESCALATION PROCEDURE

- 7.1. In the event that either party feels that the opposing handler is not acting in accordance with the spirit of the Guide the first step must always be to exhaust attempts to resolve the point of concern by dialogue or a meeting.
- 7.2. If such dialogue still fails to allay the concerns, contact should be made with the nominated contact point at the firm/insurer/handling agent (see notification stage above) in order to try to deal with the issue.
- 7.3. In circumstances where a defendant solicitor has been instructed, the signatory insurer escalation point will remain the nominated contact point for the purposes of the Serious Injury Guide. The claimant solicitor should contact the signatory insurer escalation point directly with any escalation procedure issues, and in doing so, there will be no issue raised in relation to the Code of Conduct. The defendant solicitor should be notified of the intention to escalate, and should be copied into the correspondence sent to the insurer escalation contact point.
- 7.4. All parties are expected to adhere to the objectives set out above.

8. DISPUTE RESOLUTION

- 8.1. Ongoing dialogue is fundamental to the process. The parties will continue to discuss the case on a regular basis and at the times agreed. Disagreement on one or more issue, however important, should not limit dialogue or discourage the parties from seeking agreement on those issues that might be agreed upon or narrowed. The aim in each case should be to reduce the areas and scope of any disagreement so far as dialogue permits.
- 8.2. There may be occasions when issues arise that cannot be resolved through discussion. Here, the parties should consider and agree if possible how they will approach such disputes. Such an approach should be adopted when any dispute emerges in the case, whether it relates to a discrete issue or resolution of the dispute generally.
- 8.3. All methods of dispute resolution should be considered. Including:
 - Stocktake/cooling off period before the parties re-engage
 - Early Neutral Evaluation
 - Joint Settlement Meeting
 - Mediation
 - Arbitration
- 8.4. Considering other methods of dispute resolution does not prevent the parties from starting legal proceedings including Detailed Assessment if needed.

9. COSTS

- 9.1. Where the stage has been reached in the case where it looks like there stands a good prospect of resolution, the parties should also consider how to resolve costs promptly. For example, if there is a Joint Settlement Meeting, then the Defendants are entitled to expect the Claimant to provide cost details to be served 7 days prior to the JSM; the parties should agree the manner in which the cost details will be given (by way of a schedule, some other form or draft Bill of costs). The parties should agree whether cost lawyers need to be available at the meeting in order to facilitate resolution of costs. If it is not possible to resolve costs at the meeting, the parties should agree a 28 day period following the meeting to enable without prejudice discussions with a view to finalising the costs issues.
- 9.2. Where the case is resolved by acceptance of written offer, the parties should be prepared to engage immediately in discussion concerning costs. Agreement should focus on the information that is to be provided by the receiving party to the paying party, and a without prejudice timescale established, normally 28 days after acceptance of offer, to try and resolve costs once and for all prior to commencing the costs procedure.
- 9.3. Following resolution of liability, the Guide recognises an early commitment to pay an interim payment towards disbursements and a contribution towards base costs. See objective (iv) above.

Serious Injury Guide Appendix – what can be achieved?

“Open book” rehabilitation best practice

Effective dialogue concerning rehabilitation progress and related challenges are a central part of case planning under the SIG.

The defence insurer / lawyer should be encouraged to attend periodic meetings/ conference calls with the case manager and claimant lawyer to provide an oral update on rehabilitation progress and current rehabilitation goals and objectives.

What are the benefits of such a level of access and transparency?

1. Improved dialogue around rehabilitation may serve to control the amount of case reporting obligations on the case manager, over and above what is clinically required on good rehabilitation practice.
2. Interim funding requests can be discussed and understood (or even volunteered by the defence insurer) and agreed promptly.
3. Delays in funding can be avoided.
4. The environment encourages fact to replace perception and the case manager gains first-hand experience understanding of any areas of concern.
5. Medico legal assessments can be planned and programmed to dovetail with the rehabilitation work.
6. Medico legal driven case manager reporting time can be minimised.
7. A forum is created that enables views and suggestions from experienced medical legal experts can be fed into the case manager in a timely manner to the benefit of the claimant.

Insurers who are given this high level of access to the rehabilitation should always act in the best interests of the rehabilitation; if they disagree with the plans or actions the meetings are a perfect opportunity to air these in an open and transparent manner in order to try to resolve the concerns by dialogue.

This approach improves the way the rehabilitation process dovetails with the claim process and is just another example of the way that route mapping and collaborative working has developed over time as the Guide has been applied in practice.

Many claimant lawyers and defence insurers successfully progress cases on this basis. At the Serious Injury Guide participant workshop on 21 November 2018 there was universal support for this approach to rehabilitation, if it could be achieved.

21 January 2019

Signatories:

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See www.seriousinjuryguide.co.uk for a full and up-to-date list of signatories. All named firms commit that all handlers within their organisations will follow the Guide in all respects including the escalation process.