

A Guide to the Conduct of Cases Involving Serious Injury

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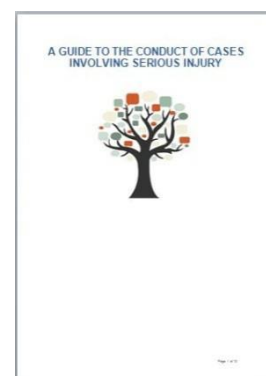
Q & A

This document has been created as a collaboration between the representatives of APIL, FOIL and insurers who currently sit on the steering committee of the Serious Injury Guide

Q1) Why should my firm sign up to the Guide to the Conduct of Cases Involving Serious Injury?

There are many advantages to following the process outlined in the Serious Injury Guide. The guide represents best practice in cases involving serious injury, and we appreciate that, for many members, the approach is already very similar to that which is followed by their firm. The main benefits of the guide include:

- Early contact between claimant and defendant insurer/representatives;
- Early disclosure of documents;
- Securing early interim payments for rehabilitation;
- A commitment from the parties to negotiate before making Part 36 offers;
- An opportunity to resolve matters outside of proceedings. This is particularly important given the increase in court fees, and the delays currently being experienced in the courts.



Notification

Q2) The requirement to send written notification of a claim to an insurer within 7 calendar days of instruction is onerous. What happens if not all of the information can be obtained within those 7 days?

The notification letter is not the same as a Letter of Claim. If a Claimant's representatives do not have all of the information required within 7 days, they can send the information that they do have and explain that they have not yet been able to obtain the rest. Participating insurers have indicated that they would prefer to know of the existence of a claim at the earliest opportunity, even if they are provided with limited information only. The contact that is then established enables dialogue on when the additional information can be provided and any reasons for delay.

Q3) Should the written notification be sent to the early notification point at the participating insurer (listed on the Guide website)?

Yes. Insurers have also committed to early meaningful contact on cases but to achieve this, the claim will need to be allocated to the appropriate handling team from the outset. The response time set out in the Guide may not be met if the notification is sent to a different point of contact, and then has to find its way to the correct handling team within the insurer.

Q4) Should the early written notification indicate that the claim is one being made under the Serious Injury Guide ?

Again, this will help facilitate early contact and response from insurers, if it is believed at an early stage by the Claimant's representatives that the claim is of sufficient seriousness to be dealt with under the Guide.

Q5 *Should a claim be notified to an insurer using the Guide's written notification process if it is known already to the insurer but there has then been a change of circumstances and potential value?*

If circumstances change and a Claimant's representative considers that the claim should be dealt with under the Serious Injury Guide, then it would be good practice to write to the current handler at the insurer setting out the Claimant's representative's view and at the same time copying the letter to the insurer's early notification point.

Disclosure

Q6) *The disclosure of documents within 7 calendar days of instruction is too onerous. What happens if the Claimant's representative cannot obtain all of that information within 7 days?*

The letter of notification is not the same as a Letter of Claim. If you do not have all of the information required within 7 days, you can send the information that you do have, and state that you have not yet been able to obtain the other information/documents.

Q7) *Is there anything in the Serious Injury Guide which affects the disclosure of otherwise privileged documents or evidence?*

Nothing within the Serious Injury Guide alters the usual rules on privilege, which remain unchanged. It is for the parties to determine through discussion whether they wish to alert the other as to the existence of privileged evidence and whether or not (or when) to disclose it. This applies to all such documents including witness statements, medical reports, and any surveillance evidence.

Case Planning

Q8) *Is it still expected that the insurer will be involved in joint case planning?*

While the Serious Injury Guide envisages a less prescriptive approach than the Multi-track Code, it promotes forward planning of claims through on-going dialogue between the parties. Regular contact, even as simple as one party emailing, or speaking to the other, to agree an action to move the case forward, will be beneficial for both sides. For example, in addition to helping to ensure goodwill on both sides, this collaborative approach will be beneficial for claimant representatives at the budget stage. Costs will be scrutinised by the judge and if there is early constructive engagement and the defendant has agreed actions, the scope for disagreement and objection is reduced.

Rehabilitation

Q9) *How does the guide fit with the Rehabilitation Code?*

The Rehabilitation Code, APIL's Best Practice Guide on Rehabilitation and the Serious Injury Guide should all be considered when discussing the most suitable approach to rehabilitation in consultation with the claimant and/or the claimant's family.

Q10) *Does the guide require joint appointment of case managers?*

Joint appointment of a case manager is not an obligation on either party. Nothing in the Guide affects the parties' representatives' obligations to act in the best interests of their clients or insureds. The Guide simply recognises that there may be occasions when it is suitable to instruct a case manager on a joint basis, as this helps promote transparency and can assist with the funding of rehabilitation

Interim Payments

Q11) Objective iv on early interim payments is vague. Can you clarify what it means?

Insurers participating in the Guide have expressed a willingness to make early and continuing interim payments of damages where appropriate in cases where liability has been admitted. Those participating in the Guide also recognise the benefits of making interim payments of disbursements and base costs relating to liability once that issue is resolved. This approach has also been endorsed by the courts and it is therefore expected that parties operating under the Guide will be able to co-operate fully in this regard without the need for an application to court.

Part 36/Calderbank offers

Q12) The Guide prohibits any Part 36 offers before negotiations. What happens if it is in the best interests of a party's client or insured to make a Part 36 offer before such a time?

Both parties' representatives would be expected to attempt to negotiate, through full and frank discussions, (and for those to have been exhausted) before making an offer with costs consequences. However, nothing in the Guide prevents either party from acting in the best interests of their client or insured. If, in the particular circumstances of the case, a party considers that it is not in the best interests of their client or insured to follow the Guide (including the making of Part 36 offers), then it should be made clear to the other party why this is being done. It is recognized that persistent use of Part 36/Calderbank offers for this reason will undermine the effectiveness of the Guide, an explanation should therefore be given, and a discussion take place as to whether it is still appropriate for the claim to continue to be progressed using the Guide .

Q13) Does the prohibition on Part 36 offers cover time limited offers?

The prohibition covers all forms of offer carrying costs consequences. If a time limited offer is made that carries no costs consequences, it is allowable, but should be preceded by discussion. The key is encouraging open discussion, and the defendant's representative should consider whether making an offer will, in the circumstances, undermine the working relationship between the parties.

Relationship with pre-action protocols

Q14) What is the relationship between the Guide and the Pre-action Protocols?

The Pre-action Protocol for Personal Injury claims is designed primarily for claims likely to be allocated to the fast track but its spirit is expected to be followed in multi-track cases. In keeping with that spirit, paragraph 1.1.2 of the Pre-action Protocol states that "All parties are expected to consider the Serious Injury Guide in any claim to which that Guide applies."

On-going review and oversight

Q15) How will the operation of the Guide be overseen? How will complaints be dealt with?

A number of insurers have committed to training their case handlers on the process outlined in the Guide, so that they are knowledgeable and able to run cases through the guide with a minimum of difficulty. There is an escalation procedure outlined within the Guide, which

requires the case to be passed to a more senior case handler should there be any issues. Should the senior case handler be unable to deal with the issue, or if there are recurring issues of a similar nature, the senior case handler will be able to flag these up with (in the case of APIL members) a representative at the APIL office. The representative will take those queries to the claimant/insurer User Group (formerly the working group) for consideration. In addition, APIL, FOIL and the insurer User Group will have regular review meetings to maintain communication, discuss how to rectify any problems that arise, and ensure the Guide is kept up to date. The Guide will be kept under review to make sure that it is achieving its aims.

Miscellaneous

Q16) Which insurers have committed to following the Guide?

In relation to insurer signatories, at present, AXA, Aviva, Direct Line Group, Hastings, Esure, LV/Highway, RSA, Admiral, Allianz, QBE, NFU Mutual, Acromas and the MIB have all signed up. It is expected that other insurers will sign up in due course.

Q17) What is the contractual status of the Serious Injury Guide?

The Guide to the Conduct of Cases Involving Serious Injury is not a contractual document. The Guide is intended as an indicator of the best practice process in serious injury cases. "Signing up" to the Guide simply signifies a commitment by the firm to follow the best practice process in all cases valued at or above £250,000, excluding clinical negligence and asbestos related disease cases. Nothing in the guide prevents the solicitor from acting in the best interests of their client. A breach of the Guide is not actionable by other signatories.

Q18) I'd like further information, or would like to sign up to the Guide – who should I contact?

If you would like further information or would like to offer commitment to the Guide, please contact:

APIL - Alice Warren, alice.warren@apil.org.uk,

FOIL - Laurence Besemer, Laurence.besemer@foil.org.uk

Insurers – David Fisher, david.fisher@axa-insurance.co.uk