

4.11 The revised Rehabilitation Code

THE REHABILITATION CODE **(Code of Best Practice on Rehabilitation, Early Intervention and Medical Treatment in** **Personal Injury Claims)**

The main aim of this Code, first introduced in 1999, is to promote the use of rehabilitation and early intervention in the claims process so that the injured person makes the best and quickest possible medical, social and psychological recovery. This objective applies whatever the severity of the injury sustained by the claimant. The Code provides a framework supported by all the main associations for insurers and personal injury lawyers in the UK, but is neither compulsory nor the only way to approach rehabilitation. The objectives of the Rehabilitation Code will be met whenever the parties co-operate to assess and then provide for the claimant's rehabilitation needs.

1. INTRODUCTION

- 1.1 It is recognised that, in many claims for damages for personal injuries, the claimant's current medical situation, and/or the long-term prognosis, may be improved by appropriate medical treatment, including surgery, being given at the earliest practicable opportunity, rather than waiting until the claim has been settled. Similarly, claims may involve a need for non-medical treatment, such as physiotherapy, counselling, occupational therapy, speech therapy and so forth ("rehabilitation"): again, there is a benefit in these services being provided as early as practicable.
- 1.2 It is also recognised that (predominantly in cases of serious injury) the claimant's quality of life can be immediately improved by undertaking some basic home adaptations and/or by the provision of aids and equipment and/or appropriate medical treatment as soon as these are needed ("early intervention"), rather than when the claim is finally settled.
- 1.3 It is further recognised that, where these medical or other issues have been dealt with, there may be employment issues that can be addressed for the benefit of the claimant, to enable the claimant to keep his/her existing job, to obtain alternative suitable employment with the same employer or to retrain for new employment. Again, if these needs are addressed at the proper time, the claimant's quality of life and long-term prospects may be greatly improved.
- 1.4 Solicitors acting for claimants understand that, taking all these matters into account, they can achieve more for the claimant - by making rehabilitation available - than just the payment of compensation. The insurance industry realises that great benefit may be had in considering making funds available for these purposes.

- 1.5 The aim of this Rehabilitation Code is therefore to ensure that the claimant's solicitor and the insurer (and the insurer's solicitor or handling agent) both actively consider the use of rehabilitation services and the benefits of an early assessment of the claimant's needs. The further aim is that both should treat the possibility of improving the claimant's quality of life and their present and long-term physical and mental well-being as issues equally as important as the payment of just, full and proper compensation.
- 1.6 The report mentioned in section 6 of the Code focuses on the early assessment of the claimant's needs in terms of treatment and/or rehabilitation. The assessment report is not intended to determine the claimant's long-term needs for care or medical treatment, other than by way of general indication and comment.

2. THE CLAIMANT'S SOLICITOR'S DUTY

- 2.1 It shall be the duty of every claimant's solicitor to consider, from the earliest practicable stage, and in consultation with the claimant and/or the claimant's family, whether it is likely or possible that early intervention, rehabilitation or medical treatment would improve their present and/or long-term physical or mental well-being. This duty is ongoing throughout the life of the case but is of most importance in the early stages.
- 2.2 It shall be the duty of a claimant's solicitor to consider, with the claimant and/or the claimant's family, whether there is an immediate need for aids, adaptations or other matters that would seek to alleviate problems caused by disability, and then to communicate with the insurer as soon as practicable about any rehabilitation needs, with a view to putting this Code into effect.
- 2.3 It shall not be the responsibility of the solicitor to decide on the need for treatment or rehabilitation or to arrange such matters without appropriate medical consultation. Such medical consultation should involve the claimant and/or the claimant's family, the claimant's primary care physician and, where appropriate, any other medical practitioner currently treating the claimant.
- 2.4 Nothing in this Code shall in any way affect the obligations placed on a claimant's solicitor by the Pre-Action Protocol for Personal Injury Claims ("the Protocol"). However, it must be appreciated that very early communication with the insurer will enable the matters dealt with here to be addressed more effectively.
- 2.5 It must be recognised that the insurer will need to receive from the claimant's solicitor sufficient information for the insurer to make a proper decision about the need for intervention, rehabilitation or treatment. To this extent, the claimant's solicitor must comply with the requirements of the Protocol to provide the insurer with full and adequate details of the injuries sustained by the claimant, the nature and extent of any, or any likely, continuing disability and any suggestions that may already have been made concerning rehabilitation and/or early intervention. There is no requirement under the Protocol, or

this Code, for the claimant's solicitor to have obtained a full medical report. It is recognised that many cases will be identified for consideration under this Code before medical evidence has actually been commissioned.

3. THE INSURER

- 3.1 It shall be the duty of the insurer to consider, from the earliest practicable stage in any appropriate case, whether it is likely that the claimant will benefit in the immediate, medium or longer term from further medical treatment, rehabilitation or early intervention. This duty is ongoing throughout the life of the case but is of most importance in the early stages.
- 3.2 If the insurer considers that a particular claim might be suitable for intervention, rehabilitation or treatment, the insurer will communicate this to the claimant's solicitor as soon as practicable.
- 3.3 On receipt of such communication, the claimant's solicitor will immediately discuss these issues with the claimant and/or the claimant's family pursuant to his duty as set out above and, where appropriate, will seek advice from the claimant's treating physicians/surgeons.
- 3.4 Nothing in this or any other Code of Practice shall in any way modify the obligations of the insurer under the Protocol to investigate claims rapidly and in any event within three months (except where time is extended by the claimant's solicitor) from the date of the formal claim letter. It is recognised that, although the rehabilitation assessment can be done even where liability investigations are outstanding, it is essential that such investigations proceed with the appropriate speed.

4. ASSESSMENT

- 4.1 Unless the need for intervention, rehabilitation or treatment has already been identified by medical reports obtained and disclosed by either side, the need for and extent of such intervention, rehabilitation or treatment will be considered by means of an independent assessment.
- 4.2 "Independent assessment" in this context means that the assessment will be carried out by either:
 - a. One or more of the treating physicians/surgeons, or
 - b. By an agency suitably qualified and/or experienced in such matters, which is financially and managerially independent of the claimant's solicitor's firm and the insurers dealing with the claim.

- 4.3 It is essential that the process of assessment and recommendation be carried out by those who have an appropriate qualification (to include physiotherapists, occupational therapists, psychologists, psychotherapists and so forth). It would be inappropriate for assessments to be done by someone who does not have a medical or other appropriate qualification. Those doing the assessments should not only have an appropriate qualification but should have experience in treating the type of disability from which the individual claimant suffers.

5. THE ASSESSMENT PROCESS

- 5.1 Where possible, the agency to be instructed to provide the assessment should be agreed between the claimant's solicitor and the insurer. The instruction letter will be sent by the claimant's solicitor to the medical agency and a copy of the instruction letter will be sent to the insurer.
- 5.2 The medical agency will be asked to interview the claimant at home (or in hospital, if the claimant is still in hospital, with a subsequent visit to the claimant's home) and will be asked to produce a report, which covers the following headings:
1. The injuries sustained by the claimant
 2. The claimant's present medical condition (medical conditions that do not arise from the accident should also be noted where relevant to the overall picture of the claimant's needs)
 3. The claimant's domestic circumstances (including mobility, accommodation and employment), where relevant
 4. The injuries/disability in respect of which early intervention or early rehabilitation is suggested
 5. The type of intervention or treatment envisaged
 6. The likely cost
 7. The likely short/medium-term benefit to the claimant
- 5.3 The report will not deal with diagnostic criteria, causation issues or long-term care requirements.

6. THE ASSESSMENT REPORT

- 6.1 The reporting agency will, on completion of the report, send copies to both the instructing solicitor and the insurer simultaneously. Both parties will have the right to raise queries on the report, disclosing such correspondence to the other party.

- 6.2 It is recognised that for this independent assessment report to be of benefit to the parties, it should be prepared and used wholly outside the litigation process. Neither side can therefore rely on its contents in any subsequent litigation. With that strict proviso, to be confirmed in writing by the individual solicitor and insurer if required, the report shall be disclosed to both parties.
- 6.3 The report, any correspondence relating to it and any notes created by the assessing agency will be covered by legal privilege and will not under any circumstances be disclosed in any legal proceedings. Any notes or documents created in connection with the assessment process will not be disclosed in any litigation, and any person involved in the preparation of the report or involved in the assessment process shall not be a compellable witness at court.
- 6.4 The provision in paragraph 6.3 above as to treating the report, etc. as outside the litigation process is limited to the assessment report and any notes relating to it. Once the parties have agreed, following an assessment report, that a particular regime of rehabilitation or treatment should be put in place, the case management of that regime falls outside this Code and paragraph 6.3 does not therefore apply. Any notes and reports created during the subsequent case management will be governed by the usual principles relating to disclosure of documents and medical records relating to the claimant.
- 6.5 The insurer will pay for the report within 28 days of receipt.
- 6.6 The need for any further or subsequent assessment shall be agreed between the claimant's solicitor and the insurer. The provisions of this Code shall apply to such assessments.

7. RECOMMENDATIONS

- 7.1 When the assessment report is disclosed to the insurer, the insurer will be under a duty to consider the recommendations made and the extent to which funds will be made available to implement all or some of the recommendations. The insurer will not be required to pay for intervention or treatment that is unreasonable in nature, content or cost. The claimant will be under no obligation to undergo intervention, medical investigation or treatment that is unreasonable in all the circumstances of the case.
- 7.2 Any funds made available shall be treated as an interim payment on account of damages. However, if the funds are provided to enable specific intervention, rehabilitation or treatment to occur, the insurers warrant that they will not, in any legal proceedings connected with the claim, dispute the reasonableness of that treatment nor the agreed cost, provided of course that the claimant has had the recommended treatment.