
Pre-Action Protocol for Personal Injury Claims

Contents

- 1 Introduction
 - 2 Notes of guidance
 - 3 The protocol
 - 4 Rehabilitation
 - 5 Resolution of issues
 - A Letter of claim
 - B Pre-action personal injury protocol standard disclosure lists
 - C Letter of instruction to medical expert
 - D The rehabilitation code
-

1 Introduction

- 1.1** Lord Woolf in his final Access to Justice Report of July 1996 recommended the development of pre-action protocols:
To build on and increase the benefits of early but well informed settlement which genuinely satisfy both parties to dispute.
- 1.2** The aims of pre-action protocols are:
- more pre-action contact between the parties
 - better and earlier exchange of information
 - better pre-action investigation by both sides
 - to put the parties in a position where they may be able to settle cases fairly and early without litigation
 - to enable proceedings to run to the court's timetable and efficiently, if litigation does become necessary
 - to promote the provision of medical or rehabilitation treatment (not just in high value cases) to address the needs of the claimant
- 1.3** The concept of protocols is relevant to a range of initiatives for good litigation and pre-litigation practice, especially:
- predictability in the time needed for steps pre-proceedings
 - standardisation of relevant information, including documents to be disclosed.

- 1.4 The Courts will be able to treat the standards set in protocols as the normal reasonable approach to pre-action conduct. If proceedings are issued, it will be for the court to decide whether non-compliance with a protocol should merit adverse consequences. Guidance on the court's likely approach will be given from time to time in practice directions.
- 1.5 If the court has to consider the question of compliance after proceedings have begun, it will not be concerned with minor infringements, e.g. failure by a short period to provide relevant information. One minor breach will not exempt the 'innocent' party from following the protocol. The court will look at the effect of non-compliance on the other party when deciding whether to impose sanctions.

2 Notes of guidance

- 2.1 The protocol has been kept deliberately simple to promote ease of use and general acceptability. The notes of guidance which follows relate particularly to issues which arose during the piloting of the protocol.

Scope of the Protocol

- 2.2 This protocol is intended to apply to all claims which include a claim for personal injury (except those claims covered by the Clinical Disputes and Disease and Illness Protocols) and to the entirety of those claims: not only to the personal injury element of a claim which also includes, for instance, property damage.
- 2.3 This protocol is primarily designed for those road traffic, tripping and slipping and accident at work cases which include an element of personal injury with a value of less than £15,000 which are likely to be allocated to the fast track. This is because time will be of the essence, after proceedings are issued, especially for the defendant, if a case is to be ready for trial within 30 weeks of allocation. Also, proportionality of work and costs to the value of what is in dispute is particularly important in lower value claims. For some claims within the value 'scope' of the fast track some flexibility in the timescale of the protocol may be necessary, see also paragraph 3.8.
- 2.4 However, the 'cards on the table' approach advocated by the protocol is equally appropriate to higher value claims. The spirit, if not the letter of the protocol, should still be followed for multi-track type claims. In accordance with the sense of the civil justice reforms, the court will expect to see the spirit of reasonable pre-action behaviour applied in all cases, regardless of the existence of a specific protocol. In particular with regard to personal injury cases worth more than £15,000, with a view to avoiding the necessity of proceedings parties are expected to comply with the protocol as far as possible e.g. in respect of letters before action, exchanging information and documents and agreeing experts.
- 2.5 The timetable and the arrangements for disclosing documents and obtaining expert evidence may need to be varied to suit the circumstances of the case. Where one or both parties consider the detail of the protocol is not appropriate to the case, and proceedings are

subsequently issued, the court will expect an explanation as to why the protocol has not been followed, or has been varied.

Early Notification

- 2.6** The claimant's legal representative may wish to notify the defendant and/or his insurer as soon as they know a claim is likely to be made, but before they are able to send a detailed letter of claim, particularly for instance, when the defendant has no or limited knowledge of the incident giving rise to the claim or where the claimant is incurring significant expenditure as a result of the accident which he hopes the defendant might pay for, in whole or in part. If the claimant's representative chooses to do this, it will not start the timetable for responding.

The Letter of Claim

- 2.7** The specimen letter of claim at Annex A will usually be sent to the individual defendant. In practice, he/she may have no personal financial interest in the financial outcome of the claim/dispute because he/she is insured. Court imposed sanctions for non-compliance with the protocol may be ineffective against an insured. This is why the protocol emphasises the importance of passing the letter of claim to the insurer and the possibility that the insurance cover might be affected. If an insurer receives the letter of claim only after some delay by the insured, it would not be unreasonable for the insurer to ask the claimant for additional time to respond.
- 2.8** In road traffic cases, the letter of claim should always contain the name and address of the hospital where the claimant was treated and, where available, the claimant's hospital reference number.
- 2.9** The priority at letter of claim stage is for the claimant to provide sufficient information for the defendant to assess liability. Sufficient information should also be provided to enable the defendant to estimate the likely size of the claim.
- 2.10** Once the claimant has sent the letter of claim no further investigation on liability should normally be carried out until a response is received from the defendant indicating whether liability is disputed.

Reasons for Early Issue

- 2.11** The protocol recommends that a defendant be given three months to investigate and respond to a claim before proceedings are issued. This may not always be possible, particularly where a claimant only consults a solicitor close to the end of any relevant limitation period. In these circumstances, the claimant's solicitor should give as much notice of the intention to issue proceedings as is practicable and the parties should consider whether the court might be invited to extend time for service of the claimant's supporting documents and for service of any defence, or alternatively, to stay the proceedings while the recommended steps in the protocol are followed.

Status of Letters of Claim and Response

- 2.12** Letters of claim and response are not intended to have the same status as a statement of case in proceedings. Matters may come to light as a result of investigation after the letter of claim has been sent, or after the defendant has responded, particularly if disclosure of documents takes place outside the recommended three-month period. These circumstances could mean that the 'pleaded' case of one or both parties is presented slightly differently than in the letter of claim and response. It would not be consistent with the spirit of the protocol for a party to 'take a point' on this in the proceedings, provided that there was no obvious intention by the party who changed their position to mislead the other party.

Disclosure of Documents

- 2.13** The aim of the early disclosure of documents by the defendant is not to encourage 'fishing expeditions' by the claimant, but to promote an early exchange of relevant information to help in clarifying or resolving issues in dispute. The claimant's solicitor can assist by identifying in the letter of claim or in a subsequent letter the particular categories of documents which they consider are relevant.

Experts

- 2.14** The protocol encourages joint selection of, and access to, experts. The report produced is not a joint report for the purposes of CPR Part 35. Most frequently this will apply to the medical expert, but on occasions also to liability experts, e.g. engineers. The protocol promotes the practice of the claimant obtaining a medical report, disclosing it to the defendant who then asks questions and/or agrees it and does not obtain his own report. The Protocol provides for nomination of the expert by the claimant in personal injury claims because of the early stage of the proceedings and the particular nature of such claims. If proceedings have to be issued, a medical report must be attached to these proceedings. However, if necessary after proceedings have commenced and with the permission of the court, the parties may obtain further expert reports. It would be for the court to decide whether the costs of more than one expert's report should be recoverable.
- 2.15** Some solicitors choose to obtain medical reports through medical agencies, rather than directly from a specific doctor or hospital. The defendant's prior consent to the action should be sought and, if the defendant so requests, the agency should be asked to provide in advance the names of the doctor(s) whom they are considering instructing.

Negotiations/Settlement

- 2.16** Parties and their legal representatives are encouraged to enter into discussions and/or negotiations prior to starting proceedings. The protocol does not specify when or how this might be done but parties should bear in mind that the courts increasingly take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is in reasonable prospect.

Stocktake

- 2.17** Where a claim is not resolved when the protocol has been followed, the parties might wish to carry out a 'stocktake' of the issues in dispute, and the evidence that the court is likely to need to decide those issues, before proceedings are started. Where the defendant is insured and the pre-action steps have been conducted by the insurer, the insurer would normally be expected to nominate solicitors to act in the proceedings and the claimant's solicitor is recommended to invite the insurer to nominate solicitors to act in the proceedings and do so 7–14 days before the intended issue date.

3 The protocol

Letter of claim

- 3.1** The claimant shall send to the proposed defendant two copies of a letter of claim, immediately sufficient information is available to substantiate a realistic claim and before issues of quantum are addressed in detail. One copy of the letter is for the defendant, the second for passing on to his insurers.
- 3.2** The letter shall contain a **clear summary of the facts** on which the claim is based together with an indication of the **nature of any injuries** suffered and of **any financial loss incurred**. In cases of road traffic accidents, the letter should provide the name and address of the hospital where treatment has been obtained and the claimant's hospital reference number. Where the case is funded by a conditional fee agreement (or collective conditional fee agreement), notification should be given of the existence of the agreement and where appropriate, that there is a success fee and/or insurance premium, although not the level of the success fee or premium.
- 3.3** Solicitors are recommended to use a **standard format** for such a letter – an example is at Annex A: this can be amended to suit the particular case.
- 3.4** The letter should ask for **details of the insurer** and that a copy should be sent by the proposed defendant to the insurer where appropriate. If the insurer is known, a copy shall be sent directly to the insurer. Details of the claimant's National Insurance number and date of birth should be supplied to the defendant's insurer once the defendant has responded to the letter of claim and confirmed the identity of the insurer. This information should not be supplied in the letter of claim.
- 3.5** **Sufficient information** should be given in order to enable the defendant's insurer/solicitor to commence investigations and at least put a broad valuation on the 'risk'.
- 3.6** The **defendant should reply within 21 calendar days** of the date of posting of the letter identifying the insurer (if any) and, if necessary, identifying specifically any significant omissions from the letter of claim. If there has been no reply by the defendant or insurer within 21 days, the claimant will be entitled to issue proceedings.

- 3.7 The **defendant** ('s insurers) will have a **maximum of three months** from the date of acknowledgment of the claim **to investigate**. No later than the end of that period the defendant (insurer) shall reply, stating whether liability is denied and, if so, giving reasons for their denial of liability including any alternative version of events relied upon.
- 3.8 Where the accident occurred outside England and Wales and/or where the defendant is outside the jurisdiction, the time periods of 21 days and three months should normally be extended up to 42 days and six months.
- 3.9 Where **liability is admitted**, the presumption is that the defendant will be bound by this admission for all claims with a total value of up to £15,000. Where the claimant's investigation indicates that the value of the claim has increased to more than £15,000 since the letter of claim, the claimant should notify the defendant as soon as possible.

Documents

- 3.10 If the **defendant denies liability**, he should enclose with the letter of reply, **documents** in his possession which are **material to the issues** between the parties, and which would be likely to be ordered to be disclosed by the court, either on an application for pre-action disclosure, or on disclosure during proceedings.
- 3.11 Attached at Annex B are **specimen**, but non-exhaustive, **lists** of documents likely to be material in different types of claim. Where the claimant's investigation of the case is well advanced, the letter of claim could indicate which classes of documents are considered relevant for early disclosure. Alternatively these could be identified at a later stage.
- 3.12 Where the defendant admits primary liability, but alleges contributory negligence by the claimant, the defendant should give reasons supporting those allegations and disclose those documents from Annex B which are relevant to the issues in dispute. The claimant should respond to the allegations of contributory negligence before proceedings are issued.
- 3.13 No charge will be made for providing copy documents under the Protocol.

Special damages

- 3.14 The claimant will send to the defendant as soon as practicable a Schedule of Special Damages with supporting documents, particularly where the defendant has admitted liability.

Experts

- 3.15 Before any party instructs an expert he should give the other party a list of the **name (s) of one or more experts** in the relevant speciality whom he considers are suitable to instruct.
- 3.16 Where a medical expert is to be instructed the claimant's solicitor will organise access to relevant medical records – see specimen letter of instruction at Annex C.
- 3.17 **Within 14 days** the other party may indicate **an objection** to one or more of the named experts. The first party should then instruct a mutually acceptable expert (which is not the

same as a joint expert). It must be emphasised that if the Claimant nominates an expert in the original letter of claim, the defendant has 14 days to object to one or more of the named experts after expiration of the period of 21 days within which he has to reply to the letter of claim, as set out in paragraph 3.6.

- 3.18** If the second party objects to all the listed experts, the parties may then instruct **experts of their own choice**. It would be for the court to decide subsequently, if proceedings are issued, whether either party had acted unreasonably.
- 3.19** If the **second party does not object to an expert nominated**, he shall not be entitled to rely on his own expert evidence within that particular speciality unless:
- (a) the first party agrees,
 - (b) the court so directs, or
 - (c) the first party's expert report has been amended and the first party is not prepared to disclose the original report.
- 3.20** **Either party may send to an agreed expert written questions** on the report, relevant to the issues, via the first party's solicitors. The expert should send answers to the questions separately and directly to each party.
- 3.21** The cost of a report from an agreed expert will usually be paid by the instructing first party: the costs of the expert replying to questions will usually be borne by the party which asks the questions.

4 Rehabilitation

- 4.1** The claimant or the defendant or both shall consider as early as possible whether the claimant has reasonable needs that could be met by rehabilitation treatment or other measures.
- 4.2** The parties shall consider, in such cases, how those needs might be addressed. The Rehabilitation Code (which is attached at Annex D) may be helpful in considering how to identify the claimant's needs and how to address the cost of providing for those needs.
- 4.3** The time limit set out in paragraph 3.7 of this Protocol shall not be shortened, except by consent to allow these issues to be addressed.
- 4.4** The provision of any report obtained for the purposes of assessment of provision of a party's rehabilitation needs shall not be used in any litigation arising out of the accident, the subject of the claim, save by consent and shall in any event be exempt from the provisions of paragraphs 3.15 to 3.21 inclusive of this protocol.

5 Resolution of issues

- 5.1** Where the defendant admits liability in whole or in part, before proceedings are issued, any medical reports obtained under this protocol on which a party relies should be disclosed to the other party. The claimant should delay issuing proceedings for 21 days from disclosure of the report (unless such delay would cause his claim to become time-barred), to enable the parties to consider whether the claim is capable of settlement.
- 5.2** The Civil Procedure Rules Part 36 permit claimants and defendants to make offers to settle pre-proceedings. Parties should always consider before issuing if it is appropriate to make Part 36 Offer. If such an offer is made, the party making the offer must always supply sufficient evidence and/or information to enable the offer to be properly considered.
- 5.3** Where the defendant has admitted liability, the claimant should send to the defendant schedules of special damages and loss at least 21 days before proceedings are issued (unless that would cause the claimant's claim to become time-barred).

A Letter of claim

To

Defendant

Dear Sirs

Re: Claimant's full name

Claimant's full address

Claimant's Clock or Works Number

Claimant's Employer (name and address)

We are instructed by the above named to claim damages in connection with an **accident at work/road traffic accident/tripping accident**

on _____ day _____ of _____ (year) at **(place of accident which must be sufficiently detailed to establish location)**

Please confirm the identity of your insurers. Please note that the insurers will need to see this letter as soon as possible and it may affect your insurance cover and/or the conduct of any subsequent legal proceedings if you do not send this letter to them.

The circumstances of the accident are:-

(brief outline)

The reason why we are alleging fault is:

(simple explanation e.g. defective machine, broken ground)

A description of our clients' injuries is as follows:-

(brief outline)

(In cases of road traffic accidents)

Our client (state hospital reference number) received treatment for the injuries at name and address of hospital).

Our client is still suffering from the effects of his/her injury. We invite you to participate with us in addressing his/her immediate needs by use of rehabilitation.

He is employed as **(occupation)** and has had the following time off work **(dates of absence)**.

His approximate weekly income is (insert if known).

If you are our client's employers, please provide us with the usual earnings details which will enable us to calculate his financial loss.

We are obtaining a police report and will let you have a copy of the same upon your undertaking to meet half the fee.

We have also sent a letter of claim to **(name and address)** and a copy of that letter is attached.

We understand their insurers are **(name, address and claims number if known)**.

At this stage of our enquiries we would expect the documents contained in parts **(insert appropriate parts of standard disclosure list)** to be relevant to this action.

Please note that we have entered into a conditional fee agreement with our client dated _____ in relation to this claim which provides for a success fee within the meaning of section 58(2) of the Courts and Legal Services Act 1990. Our client has taken out an insurance policy with [name of insurance company] of [address of insurance company] to which section 29 of the Access Justice Act 1999 applies. The policy number is _____ and the policy is dated _____. Where the funding arrangement is an insurance policy, the party must state the name and address of the insurer, the policy number and the date of the policy, and must identify the claim or claims to which it relates (including Part 20 claims if any).

A copy of this letter is attached for you to send to your insurers. Finally we expect an acknowledgment of this letter within 21 days by yourselves or your insurers.

Yours faithfully

B Pre-action personal injury protocol standard disclosure lists

FAST TRACK DISCLOSURE

RTA CASES

SECTION A

In all cases where liability is at issue –

- (i) Documents identifying nature, extent and location of damage to defendant's vehicle where there is any dispute about point of impact.
- (ii) MOT certificate where relevant.
- (iii) Maintenance records where vehicle defect is alleged or it is alleged by defendant that there was an unforeseen defect which caused or contributed to the accident.

SECTION B

Accident involving commercial vehicle as defendant –

- (i) Tachograph charts or entry from individual control book.
- (ii) Maintenance and repair records required for operators' licence where vehicle defect is alleged or it is alleged by defendant that there was an unforeseen defect which caused or contributed to the accident.

SECTION C

Cases against local authorities where highway design defect is alleged.

- (i) Documents produced to comply with Section 39 of the Road Traffic Act 1988 in respect of the duty designed to promote road safety to include studies into road accidents in the relevant area and documents relating to measures recommended to prevent accidents in the relevant area.

HIGHWAY TRIPPING CLAIMS

Documents from Highway Authority for a period of 12 months prior to the accident –

- (i) Records of inspection for the relevant stretch of highway.
- (ii) Maintenance records including records of independent contractors working in relevant area.
- (iii) Records of the minutes of Highway Authority meetings where maintenance or repair policy has been discussed or decided.
- (iv) Records of complaints about the state of highways.
- (v) Records of other accidents which have occurred on the relevant stretch of highway.

WORKPLACE CLAIMS

- (i) Accident book entry.
- (ii) First aider report.
- (iii) Surgery record.
- (iv) Foreman/supervisor accident report.

- (v) Safety representatives accident report.
 - (vi) RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) report to HSE.
 - (vii) Other communications between defendants and HSE.
 - (viii) Minutes of Health and Safety Committee meeting(s) where accident/matter considered.
 - (ix) Report to DSS.
 - (x) Documents listed above relative to any previous accident/matter identified by the claimant and relied upon as proof of negligence.
 - (xi) Earnings information where defendant is employer.
- Documents produced to comply with requirements of the Management of Health and Safety at Work Regulations 1992 –
- (i) Pre-accident Risk Assessment required by Regulation 3.
 - (ii) Post-accident Re-Assessment required by Regulation 3.
 - (iii) Accident Investigation Report prepared in implementing the requirements of Regulations 4, 6 and 9.
 - (iv) Health Surveillance Records in appropriate cases required by Regulation 5.
 - (v) Information provided to employees under Regulation 8.
 - (vi) Documents relating to the employees health and safety training required by Regulation 11.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

SECTION A – Workplace (Health Safety and Welfare) Regulations 1992

- (i) Repair and maintenance records required by Regulation 5.
- (ii) Housekeeping records to comply with the requirements of Regulation 9.
- (iii) Hazard warning signs or notices to comply with Regulation 17 (Traffic Routes).

SECTION B – Provision and Use of Work Equipment Regulations 1998

- (i) Manufacturers' specifications and instructions in respect of relevant work equipment establishing its suitability to comply with Regulation 5.
- (ii) Maintenance log/maintenance records required to comply with Regulation 6.
- (iii) Documents providing information and instructions to employees to comply with Regulation 8.
- (iv) Documents provided to the employee in respect of training for use to comply with Regulation 9.
- (v) Any notice, sign or document relied upon as a defence to alleged breaches of Regulations 14 to 18 dealing with controls and control systems.
- (vi) Instruction/training documents issued to comply with the requirements of regulation 22 insofar as it deals with maintenance operations where the machinery is not shut down.
- (vii) Copies of markings required to comply with Regulation 23.
- (viii) Copies of warnings required to comply with Regulation 24.

SECTION C – Personal Protective Equipment at Work Regulations 1992

- (i) Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 6.
- (ii) Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7.

- (iii) Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7.
- (iv) Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7.
- (v) Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 9.
- (vi) Instructions for use of Personal Protective Equipment to include the manufacturers' instructions to comply with Regulation 10.

SECTION D – Manual Handling Operations Regulations 1992

- (i) Manual Handling Risk Assessment carried out to comply with the requirements of Regulation 4(1)(b)(i).
- (ii) Re-assessment carried out post-accident to comply with requirements of Regulation 4(1)(b)(i).
- (iii) Documents showing the information provided to the employee to give general indications related to the load and precise indications on the weight of the load and the heaviest side of the load if the centre of gravity was not positioned centrally to comply with Regulation 4(1)(b)(iii).
- (iv) Documents relating to training in respect of manual handling operations and training records.

SECTION E – Health and Safety (Display Screen Equipment) Regulations 1992

- (i) Analysis of work stations to assess and reduce risks carried out to comply with the requirements of Regulation 2.
- (ii) Re-assessment of analysis of work stations to assess and reduce risks following development of symptoms by the claimant.
- (iii) Documents detailing the provision of training including training records to comply with the requirements of Regulation 6.
- (iv) Documents providing information to employees to comply with the requirements of Regulation 7.

SECTION F – Control of Substances Hazardous to Health Regulations 1999

- (i) Risk assessment carried out to comply with the requirements of Regulation 6.
- (ii) Reviewed risk assessment carried out to comply with the requirements of Regulation 6.
- (iii) Copy labels from containers used for storage handling and disposal of carcinogenics to comply with the requirements of Regulation 7(2A)(h).
- (iv) Warning signs identifying designation of areas and installations which may be contaminated by carcinogenics to comply with the requirements of Regulation 7(2A)(h).
- (v) Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 7(3A).
- (vi) Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7(3A).
- (vii) Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7(3A).
- (viii) Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7(3A).

- (ix) Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 7(3A).
- (x) Instructions for use of Personal Protective Equipment to include the manufacturers' instructions to comply with Regulation 7(3A).
- (xi) Air monitoring records for substances assigned a maximum exposure limit or occupational exposure standard to comply with the requirements of Regulation 7.
- (xii) Maintenance examination and test of control measures records to comply with Regulation 9.
- (xiii) Monitoring records to comply with the requirements of Regulation 10.
- (xiv) Health surveillance records to comply with the requirements of Regulation 11.
- (xv) Documents detailing information, instruction and training including training records for employees to comply with the requirements of Regulation 12.
- (xvi) Labels and Health and Safety data sheets supplied to the employers to comply with the CHIP Regulations.

SECTION G – Construction (Design and Management) (Amendment) Regulations 2000

- (i) Notification of a project form (HSE F10) to comply with the requirements of Regulation 7.
- (ii) Health and Safety Plan to comply with requirements of Regulation 15.
- (iii) Health and Safety file to comply with the requirements of Regulations 12 and 14.
- (iv) Information and training records provided to comply with the requirements of Regulation 17.
- (v) Records of advice from and views of persons at work to comply with the requirements of Regulation 18.

SECTION H – Pressure Systems and Transportable Gas Containers Regulations 1989

- (i) Information and specimen markings provided to comply with the requirements of Regulation 5.
- (ii) Written statements specifying the safe operating limits of a system to comply with the requirements of Regulation 7.
- (iii) Copy of the written scheme of examination required to comply with the requirements of Regulation 8.
- (iv) Examination records required to comply with the requirements of Regulation 9.
- (v) Instructions provided for the use of operator to comply with Regulation 11.
- (vi) Records kept to comply with the requirements of Regulation 13.
- (vii) Records kept to comply with the requirements of Regulation 22.

SECTION I – Lifting Operations and Lifting Equipment Regulations 1998

- (i) Record kept to comply with the requirements of Regulation 6.

SECTION J – The Noise at Work Regulations 1989

- (i) Any risk assessment records required to comply with the requirements of Regulations 4 and 5.
- (ii) Manufacturers' literature in respect of all ear protection made available to claimant to comply with the requirements of Regulation 8.

- (iii) All documents provided to the employee for the provision of information to comply with Regulation 11.

SECTION K – Construction (Head Protection) Regulations 1989

- (i) Pre-accident assessment of head protection required to comply with Regulation 3(4).
- (ii) Post-accident re-assessment required to comply with Regulation 3(5).

SECTION L – The Construction (General Provisions) Regulations 1961

- (i) Report prepared following inspections and examinations of excavations etc. to comply with the requirements of Regulation 9.

SECTION M – Gas Containers Regulations 1989

- (i) Information and specimen markings provided to comply with the requirements of Regulation 5.
- (ii) Written statements specifying the safe operating limits of a system to comply with the requirements of Regulation 7.
- (iii) Copy of the written scheme of examination required to comply with the requirements of Regulation 8.
- (iv) Examination records required to comply with the requirements of Regulation 9.
- (v) Instructions provided for the use of operator to comply with Regulation 11.

C Letter of instruction to medical expert

Dear Sir,

Re: **(Name and Address)**

D.O.B. –

Telephone No. –

Date of Accident –

We are acting for the above named in connection with injuries received in an accident which occurred on the above date. The main injuries appear to have been **(main injuries)**.

We should be obliged if you would examine our Client and let us have a full and detailed report dealing with any relevant pre-accident medical history, the injuries sustained, treatment received and present condition, dealing in particular with the capacity for work and giving a prognosis.

It is central to our assessment of the extent of our Client's injuries to establish the extent and duration of any continuing disability. Accordingly, in the prognosis section we would ask you to specifically comment on any areas of continuing complaint or disability or impact on daily living. If there is such continuing disability you should comment upon the level of suffering or inconvenience caused and, if you are able, give your view as to when or if the complaint or disability is likely to resolve.

Please send our Client an appointment direct for this purpose. Should you be able to offer a cancellation appointment please contact our Client direct. We confirm we will be responsible for your reasonable fees.

We are obtaining the notes and records from our Client's GP and Hospitals attended and will forward them to you when they are to hand/or please request the GP and Hospital records direct and advise that any invoice for the provision of these records should be forwarded to us.

In order to comply with Court Rules we would be grateful if you would insert above your signature a statement that the contents are true to the best of your knowledge and belief.

In order to avoid further correspondence we can confirm that on the evidence we have there is no reason to suspect we may be pursuing a claim against the hospital or its staff.

We look forward to receiving your report within _____ weeks. If you will not be able to prepare your report within this period please telephone us upon receipt of these instructions.

When acknowledging these instructions it would assist if you could give an estimate as to the likely time scale for the provision of your report and also an indication as to your fee.

Yours faithfully

D The rehabilitation code

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.