

# **PERSONAL INJURY MULTI-TRACK CODE**

## INTRODUCTION

The multi track code is designed for personal injury cases (excluding clinical negligence and asbestos related disease cases) within the multi track arena and will be piloted to capture claims with a predicted value of more than £250,000.

The code is intended to help parties involved in these multi track claims to resolve liability, put in place a system that meets the reasonable needs of the injured claimant and then work towards settling the case by narrowing the issues before either settlement or trial.

This code creates a new environment for case planning, encouraging changes in behaviour on both sides, and will work in parallel with the Civil Procedure Rules. This code does not change the law, which requires a claimant to prove his case, and failure to comply with the code should not in itself be taken into account by the court when considering the conduct of the parties. Furthermore, nothing in the code affects a solicitor's duties to act in the best interests of the client and upon their instructions.

This multi track code document comprises the following:

- ❖ Objectives – a summary of the key aims of the code and the key actions required to meet these
- ❖ The Code - the main text of the code focuses on the behaviour consistent with efficient, cost proportionate and “claimant centred”, subject to liability, claim resolution. It is not to be used as a tactical weapon to “score” points and promote adversarial behaviour.

The concept of “mapping” is introduced, which is central to the behaviours expected of the parties. As the type of claim that may be handled under the route map is very wide ranging, it is up to the parties to sensibly identify what steps are needed according to the facts and issues in a case. Parties must consider proportionality and the appropriateness of each step in the case being handled.

- ❖ Guidelines - these provide guidance on “behaviour” in certain areas which is seen as conducive with the aims of the code and set out a standard which will generally be expected of parties working under it. The guidelines cover:
  - Guideline A: Managing cases where criminal proceedings arise
  - Guideline B: Rehabilitation and funding
  - Guideline C: Schedules of Loss
  - Guideline D: Admissions
  - Guideline E: Checklists
  - Guideline F: Costs

- ❖ The Pilot – details of the pilot scheme to be operated to ascertain whether the multi track code will work in practice.

## **OBJECTIVES**

**The following is a summary of the key objectives which should be referred to in all cases to illustrate the behaviour that is expected under the code, but in respect of each one the detail is in the code.**

### **KEY OBJECTIVE:**

To resolve liability as quickly as possible, help claimants to access rehabilitation when appropriate and resolve their claims in a cost effective manner and within an appropriate time frame, meeting their individual needs, with all sides working together in an environment of mutual trust and collaboration.

The collaborative approach should produce a procedure and process for handling cases which bring tangible benefits to all sides. The key tenets of this approach are as follows:

- i. Early notification of claims to defendants or their insurers.
- ii. Prompt dialogue as to arrangements for the investigation of liability.
- iii. For cases handled within the pilot admissions to be binding except in the face of evidence of fraud which should not be determined differently from cases handled outside the pilot.
- iv. Discussion at the earliest opportunity by all parties to agree a care regime, accommodation, equipment and/or other forms of rehabilitation where reasonably required, and options for the funding thereof, to rehabilitate the injured person and resolve the case as quickly as possible, providing appropriate compensation.
- v. In all cases, a commitment to resolve liability by agreement or if necessary trial, with a view to being dealt with in a maximum period of six months from date of first notification.
- vi. A willingness to make early and continuing interim payments where appropriate.
- vii. 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. Appointment where necessary of an independent clinical case manager instructed by the claimant.
- ix. Commitment by all parties to obtain and disclose promptly all relevant information, i.e.

- a. liability documents disclosable under the pre action protocol
  - b. police reports in road accident cases
  - c. accident report documentation
  - d. notes and records
  - e. documents relating to schedule of loss
  - f. regular reports of case manager
- x. Commitment by all parties to obtain evidence in such a way as to avoid duplication of effort and cost, and sharing the evidence obtained as soon as practicable.
- xi. Agreement that any challenges to the enforceability of the retainer can only be made within 28 calendar days of letter of claim and any such challenges will be discussed constructively by the parties.
- xii. A commitment to an early interim payment of disbursements (the subject matter of which has been disclosed) and those base costs relating to liability, once this issue has been resolved, with any such payment to be an interim payment as to costs and to be taken in to account on conclusion of the case.

## THE CODE

### 1. THE COLLABORATIVE APPROACH – AN OUTLINE

- 1.1. The aims and objectives of this multi-track code will be achieved through the parties working together, allocating tasks and narrowing the issues throughout the claim, leading to a settlement or some means of dispute resolution at the earliest time.
- 1.2. Commencing with a commitment to early notification of a claim to the potential defendant, the parties will for each case agree a case specific 'route map' which will include a succession of review dates with a pre-defined agenda for each review, and mechanisms for resolving any disputes there may be as to the route map.
- 1.3. The route map should set out:-
  - 1.3.1. A resolution process in which there is a full and frank exchange of information as soon is practicable involving open exchange of information by both sides in accordance with the key objective
  - 1.3.2. An efficient and economical process that involves task allocation, avoids duplication of effort and expense wherever possible
  - 1.3.3. A process of case planning, agreed between the parties, and which is directed towards :-
    - 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.
  - 1.3.4. Throughout, an agreed timetable and action plan to resolve the case.
  - 1.3.5. Above all, a defined collaborative way of working between the parties that achieves the above.
- 1.4. The pre-defined agenda is to identify:
  - What issues are there?
  - What needs to be done to resolve them?
  - Who should take those steps?
  - By when should those steps be completed?
  - What was the outcome of any previous actions agreed?
  - What issues are capable of agreement?
  - What action needs to be taken over schedules of loss?
  - When should the parties meet/talk next/again?
  - Who will update and share the route map?

- If agreement is not possible, what steps need to be and have been taken to narrow down as far as possible the areas of disagreement?
  - The appropriate and most efficient way to resolve outstanding issues.
- 1.5. The collaborative approach is therefore one whereby the parties jointly agree a plan, a timetable and tasks, dates for review sessions with clear milestones for the progression of any claim towards resolution.
- 1.6. Parties will naturally continue contact between review dates. The reviews will be essential stock take and planning sessions which will define the way in which a case proceeds. In appropriate cases some or all of the reviews may take place face to face. In other cases, or on certain occasions, reviews by telephone will be acceptable.

## **2. DOCUMENTING THE PROCESS**

- 2.1. To promote the process the parties should exchange correspondence which:
- records agreed issues and identifies issues yet to be resolved
  - records which parties are tasked with what steps to progress the claim
  - records the timetable agreed for the resolution of those issues and steps.

## **3. THE “TRIGGER” PHASE – EARLY NOTIFICATION**

- 3.1. The claimant’s solicitor should ensure that defendants are given early notification of the claim. The benefits of the code can not apply until this step is taken – claimant representatives accept a commitment to trigger the code by making early contact with the defendant’s insurers. The recommended contents of this “trigger letter” are set out in 3.3 below. Compliance with paragraph 3.3 is fundamental to the code.
- 3.2. A full formal detailed letter of claim is not expected. The aim is to alert the proposed defendant or insurer to the potential claim and to enable:
- an initial view for the purpose of reserve
  - 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.
- 3.3. The claimant’s solicitors should aim to send a written notification within 7 calendar days of instruction. This should convey (on a ‘without prejudice’ basis):

- Name, address, date of birth and NI number of claimant
  - 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
  - Any other information the claimant solicitor feels comfortable to give in the spirit of the code.
- 3.4. In the trigger letter, the name of file handler and immediate line manager/supervisor conducting the claim should be identified. If it is practical relevant e-mail addresses and telephone numbers should also be included.
- 3.5. The solicitors representing the claimant should take all reasonable steps to locate the appropriate insurer, and notify that insurer. If unable to do so, 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.
- 3.6. 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.

#### **4. THE “RESPONSE” PHASE – ROUTE PLANNING COMMENCES.**

- 4.1. First contact call / meeting
- 4.1.1. Within 28 calendar days of receipt of the trigger letter, the defendant or insurer shall make contact with the claimant solicitor. Generally this will be by telephone, though in appropriate cases, and if time is available, such meeting might take place in person.
  - 4.1.2. For the purposes of this contact, the insurer should secure basic data regarding the claim from their insured. Both parties should consider what matters the case specific ‘route map’ should contain/address at this early stage.
  - 4.1.3. The defendant or insurer’s representative should also respond in writing, and this first response letter should include, the name of file handler and immediate line manager / supervisor conducting the claim should be identified. If it is practical relevant e-mail addresses and telephone numbers should also be included.

- 4.1.4. The first meeting or discussion should take place and cover the pre-defined agenda (see 1.4)

#### 4.2. Planned Review sessions

- 4.2.1. It is an important part of this Code that the parties agree review sessions within the route map at appropriate points to ensure:-
- outstanding and unresolved issues be the subject of periodic review and reconsideration; and
  - that the parties always have in mind a shared target date, by which the claim should reach claim conclusion whether negotiated or otherwise.
- 4.2.2. Accordingly resort to legal proceedings does not suspend this Code and it is recognised that it is proper for legal proceedings to be pursued so that a claim that has not settled under this Code, can be tried as promptly as the Court permits.
- 4.2.3. At each review session the pre-defined agenda should be reviewed and the route map developed in the light of the review session.

## 5. COSTS

- 5.1. The parties agree that any challenges to the enforceability of the retainer can only be made within 28 calendar days of letter of claim and any such challenges will be discussed constructively by the parties.
- 5.2. In the absence of any such challenges within the period of 28 calendar days it shall be conclusively and irrevocably presumed that the retainer is enforceable and will not be subject to challenge at any later stage of the claim.
- 5.3. The claimant's solicitors should accommodate all reasonable requests for information to enable the issue to be resolved conclusively within the longer of [a] 28 calendar days of the letter of claim, or [b] 14 calendar days after the challenge, recognising also that the claimant cannot be asked to disclose more than would be disclosable prior to a detailed assessment, and cannot disclose any information relating to risk assessment. In the event of a challenge remaining unresolved at the end of the stipulated period [a] or [b] the parties agree the case will not be dealt with, within the pilot.
- 5.4. Following resolution of liability a commitment to pay disbursements and base costs concerning liability and meet reasonable requests for interim payments to meet disbursements in relation to outstanding issues, with any such payments being made on an interim basis on account of costs.

## **GUIDELINE A**

### **MANAGING CASES WHERE CRIMINAL PROCEEDINGS ARISE**

- A.1 The parties recognise the seriousness of criminal proceedings against a potential defendant and the need to ensure that no action is taken which compromises the defendant's defence of them.
- A.2 It is also recognised that valuable information which is material to the assessment of civil liability may not become available until criminal proceedings (potential or otherwise) are completed. In such circumstances, the defendant (or insurer) may not be able to complete liability enquiries until that time.
- A.3 Those considerations aside, defendants undertake not to regard the existence of outstanding criminal prosecutions as a bar to making early decisions on liability so that progress can be made to resolve a valid claim from an injured claimant. Defendants will conduct a realistic assessment of the facts. Should the outcome of a criminal prosecution be irrelevant to the validity of the claim, then the defendant will make known their views to that effect at the earliest time.
- A.4 In any case where a defendant is not able to progress liability pending completion of criminal prosecutions, the reasons for this will be explained to the claimant's solicitor and, to the extent reasonable to do so, will not prevent taking of any other steps which might be reasonable to move the claim along.
- A.5 The defendant should where practicable comply with disclosure obligations as agreed within the route map.
- A.6 This approach applies to inquest proceedings as well as criminal prosecutions.

## **GUIDELINE B**

### **REHABILITATION AND FUNDING**

Whether the guidance contained herein applies will depend on the extent and nature of the injuries sustained.

- B.1 All parties will aim to work within the 2007 Rehabilitation Code
- B.2 All parties recognise that rehabilitation should meet the reasonable requirements (including social, domestic and vocational) of the claimant. The choices of the claimant should be taken in to account. It is important that the parties co-operate to identify the statutory obligations that are owed to the claimant at an early stage.
- B.3 Consideration should be given to obligations imposed under statute, whereby the consideration of PCT and LA obligations take place prior to the point of discharge. This will ensure no delay arises in achieving the benefits set out above. At all times the full and early rehabilitation of the claimant should be a priority, by whatever means is reasonably available.
- B.4 The claimant's representative should, as soon as is practicable, obtain records and as much information as possible regarding the claimant's condition and treatment and will share relevant information with the defendant's representative.
- B.5 The claimant's representative should establish liaison with the treating consultant, and identify likely date of discharge and share that information with the defendant's representative. At that stage the parties should:
- discuss whether to procure an immediate needs assessment,
  - if so discuss whether it should come from the treating consultant if possible or whether to seek it from another, and if so, what source
  - Otherwise, agree if possible on an appropriate course of action.
- B.6 If there is potential for involvement of social services and the National Health Service (NHS) and other agencies the parties or appointed representatives should give consideration to the involvement of these agencies and this may, where appropriate, include the instruction of a suitable expert for statutory services liaison
- B.7 If a clinical case manager is engaged by the claimant, whilst the parties should try to agree who that clinical case manager should be, it is recognised that ultimately it is the claimant who will finally decide who will be the clinical case manager and appoint direct.
- B.7.1 The case manager should provide records and regular reports to claimant's representative who, in turn, shall promptly disclose those documents that are not privileged to the defendant's representative.

Where any information has been removed because it is privileged, the claimant's representative will promptly tell the defendant's representative of the removal and the reason for this.

- B.7.2 Invitations will be made by the claimant's representative to the defendant's representative to regularly review and discuss rehabilitation.
- B.7.3 The defendant may retain someone to advise on the case management aspects of the case
- B.8 The insurers will agree to pay agreed service providers directly.

## **GUIDELINE C**

### **SCHEDULES OF LOSS**

- C.1 The parties should agree a timetable for the exchange of schedules of loss, counter schedule and reviews thereof.
- C.2 Exchange should not be deferred until all heads of claim can be quantified with accuracy.
- C.3 The defendant should respond in respect of each loss, identifying those which are agreed and those required to be proven or for which further evidence is required.
- C.4 Past losses should be particularised by the claimant as soon as possible and these should be endorsed by a statement of truth.
- C.5 If a head of claim cannot be particularised, the claimant should, where practicable, give an approximate value in order to inform the proportionality of enquiries to be pursued.
- C.6 Updated schedules should be served as necessary in accordance with the agreed timetable and route map.
- C.7 Further to C4 above, witness evidence should not be obtained on any item of loss unless the defendant has required it to be proven or unless the claimant's representative reasonably believes that such evidence or the cogency or potency of the evidence will, in the opinion of the claimant's solicitors, be adversely affected if not captured prior to the defendant's compliance with C3 above.
- C.8 In respect of gratuitous care the care provider should endorse the section dealing with the care they have provided and for which a claim is made with a statement of truth. Witness evidence with regard to such care is not required unless specifically required by the Defendant.

## **GUIDELINE D**

### **ADMISSIONS**

- D.1 Good relations between the parties and the process of continually narrowing issues (a key objective of the code) depend on admissions being made by either side when it is appropriate to do so. It is essential, therefore that both parties are able to confidently plan their involvement in a claim in the light of admissions conveyed to them.
- D.2 However, it is also recognised by all parties, that a fundamental tenet of the compensation system is the delivery of compensation only to those who are entitled to receive it. Accordingly compensation should not be paid where no entitlement exists.
- D.3 It is essential that the parties conduct themselves in a way that balances these two principles.
- D.4 The following are guidelines that seek to promote good practice in this area:
  - D.4.1 Admissions are central to the code and the parties should make them wherever and whenever able to – a culture of never admitting anything is not acceptable.
  - D.4.2 It is a matter for each party to ensure that it obtains and handles information competently and that it makes admissions at the appropriate time.

## **GUIDELINE E**

### **CHECKLISTS**

The following is intended as a guide to the issues that may be discussed at each route map review. It is not exhaustive, nor is it prescriptive and will need to be tailored in each case. When considering the checklists, thought should be given to the principles referred to in the introduction to the code, including considering each step being taken is proportionate.

#### **E.1 Insurance / indemnity issues**

E.1.1 The insurer should identify to the proposed claimant's solicitor any issues (subject to data protection and confidentiality issues) anticipated as to:

- Status of insurer
- Limit of indemnity
- MIB involvement
- Dual Insurance
- Doubtful / absence of policy cover.

E.1.2 If any of these issues are identified, the insurer should also detail:

- the steps that are proposed to resolve those issues
- the time scales proposed for resolution.

#### **E.2 Liability/Causation/Quantum**

E.2.1 Are immediate admissions/agreements possible in relation to:

- Primary breach of duty
- Causation
- Contributory negligence
- Quantum?

E.2.2 If such admissions are made or intimated, they should be put in writing.

E.2.3 If only a provisional concession is contemplated, this should be put in writing.

E.2.4 If such admissions are not made or intimated, the reasons are to be explained and put in to writing..

### **E.3 Factual liability and quantum evidence collection**

Parties should note objective ten, to obtain evidence in such a way as to avoid duplication of effort and cost. In order to achieve this, parties may wish to consider:

- What relevant factual information or evidence which is reasonably necessary to any outstanding liability issues in the case is or should be available?
- What steps should be taken to obtain or preserve that information / evidence?
- Who should take those steps?
- By when should those steps be taken? (usually before the next review date)
- Who should bear the costs of taking those steps?

### **E.4 Lay evidence regarding liability or quantum**

- Do the parties have material evidence that is considered decisive on any issue / issues?
- If so the parties should agree a timetable for exchange of evidence on an issue by issue basis as soon as exchange is practicable.
- If either party has access to documents which will come into the public domain (for example in criminal proceedings or an inquest), this evidence should be disclosed on a confidential basis, so as to encourage the parties to resolve liability issues as early as possible.

### **E.5 Expert evidence regarding liability or quantum**

- Parties will be at liberty to discuss how this evidence should be obtained
- Parties shall consider whether to agree to single joint instruction adopting CPR Part 35.8. If not, the parties should prepare a joint instruction letter to ensure all issues as identified by both parties are addressed by each expert instructed
- A timetable for exchange of information on a specialty by specialty basis should be agreed and should provide for exchange as soon as is practicable (usually before the review date);
- A timetable for asking and answering questions of experts pursuant to CPR Part 35 should be agreed and should allow for questions to be asked as soon as it is practicable.

### **E.6 Expert evidence regarding quantum alone**

E.6.1 Any party considering instructing an expert should consider whether evidence from that expert is appropriate, taking account of the principles set out in Parts 1 and 35 of the CPR. (Parties are at liberty to obtain own expert evidence)

E.6.2 Does either party intend to secure expert evidence on any issue(s)? If so the parties should consider a discussion and endeavour to agree:

- A timetable
- The relevant issues
- The relevant specialties
- At what approximate cost and how does this compare to the importance of the issue to the resolution of the claim and to the potential value of the claim?
- To consider possible joint examination by experts in the same speciality (failing which the entitlement of the insurer to facilities for medical examination of the claimant by an expert of its choice is acknowledged and to achieve the aims of the protocol facilities will be granted

## **GUIDELINE F**

### **COSTS**

- F.1 All parties acknowledge that mutual trust and collaboration between the parties is a key objective. The issue of Costs is no exception to this objective and part 5 of the code contains detailed provisions with regard to how any retainer challenges are to be resolved. The parties recognise that claimants who have been injured will be best served by being able to focus on recovery and receiving prompt compensation rather than having to be concerned about the complexities of legal costs throughout the duration of a claim.
- F.2 By way of further guidance however the parties acknowledge that challenges to the retainer should not be regarded as “normal procedure” and it is only if there are particular concerns about the retainer that a challenge should be made . Any such concerns will be identified as a pre condition of the particular challenge being considered.
- F.3 The parties also recognise that it is in keeping with the claimant centred philosophy of the Code that claimants should receive their compensation promptly and without unnecessary deductions. Objective 12 goes some way towards promoting this philosophy but by way of further guidance it is acknowledged by the parties that, when the final amount of the claimant’s compensation has been ascertained (whether by agreement or court order), reasonable requests for payments on account of legal fees and disbursements will be regarded as routine procedure and that such payments will be made without the necessity of incurring the costs of a contested court hearing.

## **THE PILOT**

For the purposes of the Pilot only designated representatives in participating solicitor firms and insurers shall have authority to enter the Pilot.