

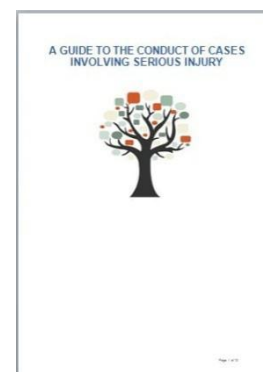
## A Guide to the Conduct of Cases Involving Serious Injury

### Q & A

*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 with defendants;
- Early disclosure of documents;
- Securing early interim payments for rehabilitation;
- A commitment from the defendant 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.



### Disclosure

*Q2) The disclosure of documents within 7 calendar days of instruction is too onerous. What happens if we 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.

*Q3) Is there anything in the Serious Injury Guide to require defendants to disclose surveillance evidence?*

Surveillance evidence is still privileged, and the usual rules on privilege remain unchanged by the guide.

### Case Planning

*Q4) Is it still expected that the insurer will be involved in joint case planning?*

The detailed route mapping from the Multi-track Code is no longer required. The Serious Injury Guide requires a less prescriptive approach, but one which still requires early engagement with insurers in the pre-action stage. This could, however, be as simple as emailing the defendant to agree an action. As well as helping to ensure good will 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 engagement and the defendant has agreed actions, there will be little room for the defendant to then raise concerns.

### Rehabilitation

*Q5) 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.

*Q6) Does the guide require joint appointment of case managers?*

Joint appointment of a case manager is not an obligation. Nothing in the guide affects the claimant solicitor's obligation to act in the best interests of their client. The guide simply recognises that there may be occasions when it is suitable to instruct a case manager on a joint basis.

### **Interim Payments**

*Q7) Objective iv on early interim payments is vague. Can you clarify what it means?*

The defendant commits to provide early interim payments towards disbursements incurred, and a contribution towards base costs. Early interim payments towards disbursements will help to aid cash flow. The current wording was agreed during Multi-track Code negotiations.

### **Part 36/Calderbank offers**

*Q9) The guide prohibits any Part 36 offers before negotiations. What happens if it is in the best interests of my client for us to make a Part 36 offer before such a time?*

The claimant's representative would be expected to try and make some attempt to negotiate before making an offer. However, nothing in the guide prevents claimant solicitors from acting in the best interests of their client. If, in the particular circumstances of the case, it is not in the best interests of your client to follow the process set out in the guide, there is no onus to do so.

*Q10) Does the prohibition on Part 36 offers cover time limited offers?*

Yes. The prohibition covers all forms of offer including Part 36, Calderbank and time limited offers.

### **Relationship with pre-action protocols**

*Q11) How will the guide be more widely publicised? Will the guide be referenced in the Pre-action Protocols?*

APIL and FOIL have previously written to the Civil Procedure Rules Committee to obtain endorsement for the Multi-track Code, but as the Jackson reforms were just bedding down, this was unsuccessful. Realistically, there is little appetite at present to further amend the pre-action protocols, as the pre-action protocol for personal injury claims and the pre-action protocol for clinical disputes have just been revised and re-published. Instead, we would hope that the guide could be linked on the Civil Justice Council website. We would also hope that in time, the guide will be referred to by judges as best practice.

### **On-going review and oversight**

*Q12) How will APIL oversee the operation of the guide? 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 Committee (formerly the working group) for consideration. In addition, APIL and FOIL 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

*Q13) 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, Acromas and the MIB have all signed up. It is expected that other insurers will sign up in due course.

*Q14) 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.

*Q15) 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 Alice Warren, Legal Policy Officer at [alice.warren@apil.org.uk](mailto:alice.warren@apil.org.uk).