Civil Justice Council

Consultation Paper on the Costs of Care in Personal Injury Claims

A response by the Association of Personal Injury Lawyers

8 March 2010

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has around 4,600 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:
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Jo Chapman – Co-ordinator of APIL's Special Interest Group for Brain Injury and APIL Member; and
Nicola Mooney – Secretary of APIL's Special Interest Group for Child Injury and APIL member.

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Introduction

APIL welcomes the opportunity to respond to the Civil Justice Council's (CJC) consultation on the cost of care in personal injury claims and provide comments on the draft guidance.

We have provided general comments on each of the documents provided in the consultation pack for the purposes of this consultation exercise

Executive Summary

Whilst APIL supports the broad aim of the guidance which is designed to assist in the preparation and presentation of claims for past and future care in personal injury and clinical negligence claims, this is not (in our view) achieved by the guidance as it stands. APIL recognises the intention to try to streamline the process for obtaining expert evidence on a claimant's care needs and to reduce the costs involved in that process, however, we are concerned that the approach as set out may not meet those objectives and may prejudice the claimant.

The starting point must be the common law position and the needs of the injured person. The burden of proof rests with the claimant to establish both the need for care and the cost of providing that care. Anything that prescribes how the claimant discharges that burden needs to be treated with caution. Care is usually one of the most contentious issues in a personal injury claim, particularly in those claims involving the most seriously injured claimant. Anything that seeks to restrict the ability of a claimant to present his case to best suit the particular circumstances of his cases and the particular care needs he faces may restrict his access to justice and prejudice his claim for care which can be the most fundamental element of a claim.

APIL notes that where the issue of care is relevant then the Rehabilitation Code[1] should be invoked at an early stage. The Rehabilitation Code already provides for an early assessment of care which benefits both parties. APIL has concerns that rather than seeking to introduce a supplementary process that runs alongside or parallel to the operation of the Rehabilitation Code, the best interests of claimants would be better served by resources being allocated to raising awareness of the Rehabilitation Code and ensuring that insurers and defendants do more than pay lip-service to it.

If defendants want early information on a claimant's care needs then they should co-operate with the Independent Needs Assessment provided for by the Rehabilitation Code, and then seek to implement the recommendations. Empirical evidence suggests that early and effective rehabilitation not only benefits the claimant but also the defendant through reducing the likely overall need for care in many cases.

In addition to the general observations above, APIL makes the following points and suggestions regarding the draft guidance and templates:

- APIL is concerned about how this document will be treated. There is no clear indication of the status of the document. Is the guidance intended to run along side Part 35 of the Civil Procedure Rules (CPR)? Is it intended to be incorporated into Part 35? Is it to be used as general guidance?
- The aim of the guidance purports to be nothing more or less than a restatement of Rule 1 of the CPR and many of the recommendations of the guidance appear to be statements of the common law.
- The civil justice system in England and Wales is an adversarial one and places on the claimant the burden of proving their case on a balance of probabilities. Within the current system, there already exists within the CPR well-defined checks and balances in terms of the overriding objective and the principle of proportionality exercisable and exercised by the judiciary. Adding a further layer of control in the

[1] Appendix A

form of guidance and templates could undermine rules already provided for in the CPR and the judiciary. It could also be a potential source of conflict that would increase rather than decrease the level of costs. There is also risk that the claimant's interests would be prejudiced.

- We agree that some of the difficulties identified by the guidance (care reports that cannot be compared easily, even after CPR 35.6 questions have been answered, statements of areas of agreement and disagreement that are difficult to produce when the starting points are different due to a lack of clarity in expression of points in issue) can be obstacles to access to justice, but that the solution lies in better training of care experts and lawyers.
- At no point in the draft guidance does it state that the expert instructed should have expertise relevant to the claimant's injuries for example, spinal cord injury, acquired brain injury and cerebral palsy. If these documents are to be introduced then APIL would suggest that they should be made fair to the claimant and that this should be listed as an aim of the guidance in Paragraph 9 of the best practice guidance.
- In seeking the completion of these documents, the guidance is requiring a duplication of efforts from solicitors, which ultimately results in a duplication of costs.
- A concern of APIL's regarding the care information schedule is the reference to volunteers and charities. This type of help is not always available and these organisations are not required by law to provide this care. A claimant is under no obligation to accept voluntary help or assistance and such organisations are under no duty to provide it. We would, therefore, suggest that this reference is removed.
- The templates within the document do not cover all eventualities. This is a concern, particularly where a claimant may be required to complete the documents personally without the aid of a solicitor to prompt alternative answers or requirements that the claimant might not have considered. This creates a real danger that anything not included within the templates will be excluded or forgotten.

General Comments

To view this guidance as a stand alone document will be difficult. APIL is concerned about how this document will be implemented. There is no clear indication of the status that the document is intended to hold. Is the guidance intended to run along side Part 35 of the CPR? Is it intended to be incorporated into Part 35? Is it to be used as general guidance?

Any claimant solicitor working in the best interest of their client will, from the outset, gather evidence and will provide this information to the defendant. It, therefore, is not necessary for the defendant to request information from the client or for the defendant to have such a deep insight into the claimant's life. Furthermore, this would amount to a change in the law which is unjustified, as the defendant has no right to request this depth of information.

Any solicitor will know that, especially in serious injury cases, it is impossible to know everything early on in a claim and that the seriousness of an injury cannot always be known. However, in the current system the defendant has the opportunity to question or criticise the claimant's evidence if they choose to do so and APIL believes that this system would not benefit from this new guidance as it is.

Best Practice Guidance

As stated previously, it is not clear from the text what status this guidance is intended to have. Does it accurately reflect current case law? Does it add anything to current case law? Will it be updated as current case law changes? Do the documents provide things very different to CPR Part 35? The provision of templates may suggest concerns over the experts' capability or of the legal professions confidence in expert evidence. APIL would suggest that, rather than imposing a prescribed and restrictive format on clients and experts, improvements in the training and accreditation of experts and lawyers may ultimately prove to be of greater benefit. APIL believes that this guidance is superfluous;

as a profession we should take account of Part 35 rather than add to it, or complicate it further.

APIL is also cautious about expanding the scope of Part 35 indirectly through this guidance. It can be argued that this guidance and the attached templates, rather than simplifying the process, will in fact add an additional layer of complexity and effectively regulation, which may serve to only increase costs, create tension and conflict between the parties and increase the risk of satellite litigation.

At no point in the draft guidance does it state that the expert instructed should have expertise relevant to the claimant's injuries. If these documents are to be implemented then APIL would seek to make the documents fair to the claimant and suggest that this should be listed as an aim of the guidance in paragraph 9 of the best practice guidance[2].

APIL submit that the reality of what happens is not as simple as paragraphs 12 and 13[3] suggest. There is often reliance upon agency staff and the hourly rate for agencies is always more, and is commonly notably more; this is not reflected in the guidance. The guidance also creates an assumption that the starting point should be local authority rates where in reality this is rarely the case. APIL believes that paragraphs 12 and 13 (c)[4] should allow the expert to continue to charge their hourly rate, but with justification for the charge if it is seen to be high. Practicalities that can be taken into account here include location, the nature of the injury, the expertise required and the experience of the expert.

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[2] Civil Justice Council Consultation on the Cost of Care, *Costs of Care in Personal Injury Claims: Best Practice Guidance, The aim of this Guidance,* Page 3 Paragraph 9

[3] Civil Justice Council Consultation on the Cost of Care, *Costs of Care in Personal Injury Claims: Best Practice Guidance, Guidance on claims for past care and domestic help provided by the family,* Page 5 Paragraphs 12 and 13.

[4] Civil Justice Council Consultation on the Cost of Care, *Costs of Care in Personal Injury Claims: Best Practice Guidance, Guidance on claims for past care and domestic help provided by the family,* Page 5 Paragraph 12.

Paragraph 9 (a) (The aim of this Guidance) [5]of the guidance suggests that it is not common for the claimant to provide the defendant with information early on. We would suggest that the timing which is requested by paragraph 9 (a) is not usual. The defendant usually wants the information immediately but this is not always possible.

Paragraph 10[6] suggests that the schedule of information about the claimant is intended to be a factual document but that it is not to be produced in evidence. We would suggest that a factual document should be produced in evidence. Paragraph 10[7] also states that no sanctions will be applied if the document is not completed in full; however, it does not state if any sanctions will apply if the document is not completed at all.

In seeking the completion of these documents, the guidance is requiring a duplication of efforts from solicitors, which ultimately results in a duplication of costs. The Rehabilitation Code (Annex A) requires that a care diary is kept and also that the claimant or carer keeps one too. APIL agrees that keeping a diary is a good method of keeping track; however it is not just a care diary, lots of information should be contained within this diary. Unless there is a legal aid certificate, there is no funding to carry out this task and a solicitor would not allow a claimant to complete a care diary alone in order to ensure that the contents are factually correct and consistent.

We do not agree with paragraph 13 (e)[8] of the best practice guidance. We suggest that this does not take into account the fact that engaging a carer to carry out this type of work would arguably and most probably cost more. It is wrong to categorise the provision of family care as equivalent to local authority home help as often the level and quality of care provided by a family member far exceeds that provided by a local authority home help

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[5] Civil Justice Council Consultation on the Cost of Care, *Costs of Care in Personal Injury Claims: Best Practice Guidance, The aim of this Guidance,* Page 3 Paragraph 9 (a).
[6] Civil Justice Council Consultation on the Cost of Care, *Costs of Care in Personal Injury Claims: Best Practice Guidance, The Guidance documents,* Page 4 Paragraph 10.
[7] Civil Justice Council Consultation on the Cost of Care, *Costs of Care in Personal Injury Claims: Best Practice Guidance, The Guidance documents,* Page 4 Paragraph 10.
[8] Civil Justice Council Consultation on the Cost of Care, *Costs of Care in Personal Injury Claims: Best Practice Guidance, Guidance on Claims for past care and domestic help provided by the family,* Page 5 Paragraph 13 (e).

service. A claimant is entitled to receive the value of the actual care undertaken, not a standardised value. Moreover, the local authority home help rate is not of an average value but at the bottom of the potential range.

APIL would suggest, when looking at paragraph 13 (g)[9], that it is not the role of the care expert to determine the level of deduction that should be applied. This is a matter for the Judge's judgement. We would also recommend that a set deduction of 25% would also be unfair as it is dependent upon the facts in each case, and upon current tax rates. As far as APIL is concerned, an expert should not be commenting upon this. When looking at road traffic accident cases a medical expert will not comment on the amount of contributory negligence for neglecting to wear a seatbelt and, therefore, an expert should not be able to comment upon the level of deduction.

Paragraph 16[10] raises a fairly contentious point as the history in these types of cases is that a "normal baseline" can never be agreed in court. Given the high value of care claims, what is at stake, and the complexities of individual cases; the question of what additional needs are required will need to be resolved on a case-by-case basis. The guidance implies that any care required in any event should be separated out for costings purposes but we do not think that this reflects the current case law and there have been many case reports indicating defendants who have agreed to pay for the whole of the care required rather than seek to divide it up.

Care Information Schedule

One of APIL's first concerns about this document is the reference to volunteers and charities in the third paragraph of the first page[11]. APIL would suggest that this would

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[9] Civil Justice Council Consultation on the Cost of Care, *Costs of Care in Personal Injury Claims: Best Practice Guidance, Guidance on Claims for past care and domestic help provided by the family,* Page 6 Paragraph 13 (g).

[10] Civil Justice Council Consultation on the Cost of Care, *Costs of Care in Personal Injury Claims: Best Practice Guidance, Care claims for children,* Page 7 Paragraph 16.

[11] Civil Justice Council Consultation on the Cost of Care, *Care Information Schedule, Introduction,* Page 1 Paragraph 3.

only really be relevant to clinical negligence cases when the discount will not allow the damages to fully recover the cost of care. If the Care Information Schedule is to point out all voluntary support that might be available to the claimant, this could go against the claimant's needs. A claimant is under no obligation to accept voluntary help or assistance and such organisations are under no duty to provide it. We would, therefore, suggest that this reference is removed. Following on from this point, APIL questions the relevance of welfare benefits[12] to the principle of restitution i.e. putting the claimant back in the position they were in prior to the negligence. We request that this bullet point is also removed.

APIL would suggest that it would be better for a care expert's opinion to be submitted at this point. Although the care expert is not a primary expert in the requirement of home adaptations, their opinion and guidance is often sought on this matter; and they may provide sound initial advice.

In the fourth paragraph of the first page[13] it states that the Care Information Schedule is intended to be a living document. APIL believes that this further duplicates work currently being carried out, and therefore costs. This type of detail and information would normally be included in the witness statements at a later stage. Including the information at this stage, and then again in the witness statements will duplicate the work required and ultimately costs. APIL believes that the defendant will try to evade paying any duplicate costs that may be incurred. However, with a duplication of the work there is likely to be duplication in costs. We believe that the Care Information Schedule provides a good baseline but that this should not be a living document.

Care Report Template

[12] Civil Justice Council Consultation on the Cost of Care, *Care Information Schedule, Introduction,* Page 1 Paragraph 3.
[13] Civil Justice Council Consultation on the Cost of Care, *Care Information Schedule, Introduction,* Page 1 Paragraph 4.

The templates within the document do not cover all eventualities. This is of concern, particularly where a claimant may be required to complete the documents personally without the aid of a solicitor to prompt alternative answers or requirements that the claimant might not have considered. This creates a real danger that anything not included within the templates will be excluded or forgotten. Elements not included include:

- Transport;
- Respite care;
- The experience, skills and training required of the carer/support worker;
- The ratio of carers needed in the home and in the community;
- Whether there will need to be a further review of care needs for example, after to move to new accommodation;
- Holiday care needs;
- Aids and equipment;
- Specialised Case Management (although it is mentioned briefly);
- Ongoing medical monitoring; and
- Additional care needed following any likely future medical procedures or intervention.

This template also assumes that any adaptations or accommodation requirements will be the subject of a separate report, but as expressed earlier APIL believes that a care expert should flag up any such needs.

We would suggest that due to the increase in documentation; the claimant's workload is guaranteed to increase. The papers appear to provide an easy to fill out form; however, to complete the whole document would provide an arduous and time consuming task upon the claimant and costs upon the defendant.

In section D future care paragraph 3[14] it states that the table should be complete for hours per week above that of an average child. APIL believes that it is not appropriate to express phrases in terms of a normal or average child. Following on in Section D Future Care at paragraph 8[15], we believe that at this stage the agency, if there was one involved, would not be known. It may also not be known where the claimant will be living in the future, which means that the care expert will certainly not know this at this stage.

In the template there is nothing to prompt the care expert as to what might be included under the general recommendations of paragraph 4 under page D Future Care[16]. We believe that what is provided is a very restrictive "dumbed-down" tick box which provides for limited responses.

Conclusion

We can understand that it can be hard to ensure that care experts all write about the same thing and that what they do provide is given in a readable format; however, we believe that it is not the answer therefore, to restrict the care expert in what they can and can't say. In terms of care, claimants should be assessed on an individual basis and each claimant should be viewed with the intention of the principle of restitution for them specifically.

However, when an expert is to be presented with a tick-box form to complete regarding the past, current and future care of claimants, it does raise questions as to the competency the profession is believed to hold. Such problems which may currently occur, as suggested by the MoJ and CJC in the drafting of these documents, could be due to the way in which care expert reports are compiled could be resolved with a good course of training rather than treating the profession patronisingly and anticipating what is required

[14] Civil Justice Council Consultation on the Cost of Care, *Care Report Template, Section D Future Care,* Page 4 Paragraph 3.
[15] Civil Justice Council Consultation on the Cost of Care, *Care Report Template, Section D Future Care,* Page 5 Paragraph 8.
[16] Civil Justice Council Consultation on the Cost of Care, *Care Report Template, Section D Future Care,* Page 4 Paragraph 4.

of them. By doing this, as seen in the templates provided, important factors are omitted such as transport and aids and equipment. APIL would suggest that rather than imposing a prescribed and restrictive format on clients and experts (which might prevent appropriate and full damages for the claimant), that improvements in the training and accreditation of experts may ultimately prove to be of greater benefit.

It also needs to be clear, prior to implementation, what status this document is to have.

Annex A

The Rehabilitation Code

The 2007 Rehabilitation Code

Introduction

The aim of this code is to promote the use of rehabilitation and early intervention in the compensation 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 injuries sustained by the claimant. The Code is designed to ensure that the claimant's need for rehabilitation is assessed and addressed as a priority, and that the process of so doing is pursued on a collaborative basis by the claimant's lawyer and the compensator.

Therefore, in every case, where rehabilitation is likely to be of benefit, the earliest possible notification to the compensator of the claim and of the need for rehabilitation will be expected.

1. Introduction

1.1 The purpose of the personal injury claims process is to put the individual back into the same position as he or she would have been in, had the accident not occurred, insofar as money can achieve that objective. The purpose of the rehabilitation code is to provide a framework within which the claimant's health, quality of life and ability to work are restored as far as possible before, or simultaneously with, the process of assessing compensation.

1.2 Although the Code is recognised by the Personal Injury Pre-Action Protocol, its provisions are not mandatory. It is recognised that the aims of the Code can be achieved without strict adherence to the terms of the Code, and therefore it is open to the parties to agree an alternative framework to achieve the early rehabilitation of the claimant.

1.3 However, the Code provides a useful framework within which claimant's lawyers and the compensator can work together to ensure that the needs of injured claimants are assessed at an early stage.

1.4 In any case where agreement on liability is not reached it is open to the parties to agree that the Code will in any event operate, and the question of delay pending resolution of liability should be balanced with the interests of the injured party. However, unless so agreed, the Code does not apply in the absence of liability or prior to agreement on liability being reached.

1.5 In this code the expression "the compensator" shall include any loss adjuster, solicitor or other person acting on behalf of the compensator.

2. The claimant's solicitor

2.1 It should be the duty of every claimant's solicitor to consider, from the earliest practicable stage, and in consultation with the claimant, the claimant's family, and where appropriate the claimant's treating physician(s), whether it is likely or possible that early intervention, rehabilitation or medical treatment would improve their present and/or long term physical and mental well being. This

duty is ongoing throughout the life of the case but is of most importance in the early stages.

2.2 The claimant's solicitors will in any event be aware of their responsibilities under section 4 of the Pre-Action Protocol for Personal Injury Claims.

2.3 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, adjustments to employment to enable the claimant to keep his/her existing job, obtain suitable alternative employment with the same employer or retrain for new employment, or other matters that would seek to alleviate problems caused by disability, and then to communicate with the compensators as soon as practicable about any such rehabilitation needs, with a view to putting this Code into effect.

2.4 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 or professional advice.

2.5 It is the intention of this Code that the claimant's solicitor will work with the compensator to address these rehabilitation needs and that the assessment and delivery of rehabilitation needs shall be a collaborative process.

2.6 It must be recognised that the compensator will need to receive from the claimants' solicitors sufficient information for the compensator 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 Pre-Action Protocol to provide the compensator 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 have already have been made concerning the rehabilitation and/or early intervention.

2.7 There is no requirement under the Pre-Action Protocol, or under 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 or obtained.

3. The Compensator

3.1 It shall be the duty of the compensator, from the earliest practicable stage in any appropriate case, to consider 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 most important in the early stages.

3.2 If the compensator considers that a particular claim might be suitable for intervention, rehabilitation or treatment, the compensator 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 set out above.

3.4 Where a request to consider rehabilitation has been communicated by the claimant's solicitor to the compensator, it will usually be expected that the compensator will respond to such request within 21 days.

3.5 Nothing in this or any other code of practice shall in any way modify the obligations of the compensator under the Protocol to investigate claims rapidly and in any event within 3 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 assessment by an appropriately qualified person.

4.2 An assessment of rehabilitation needs may be carried out by any person or organisation suitably qualified, experienced and skilled to carry out the task. The claimant's solicitor and the compensator should endeavour to agree on the person or organisation to be chosen.

4.3 No solicitor or compensator may insist on the assessment being carried out by a particular person or organisation if [on reasonable grounds] the other party objects, such objection to be raised within 21 days from the date of notification of the suggested assessor.

4.4 The assessment may be carried out by a person or organisation which has a direct business connection with the solicitor or compensator, only if the other party agrees. The solicitor or compensator will be expected to reveal to the other party the existence of and nature of such a business connection.

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 compensator. The method of providing instructions to that agency will be agreed between the solicitor and the compensator.

5.2 The assessment agency will be asked to carry out the assessment in a way that is appropriate to the needs of the case and, in a simple case, may include, by prior appointment, a telephone interview but in more serious cases will probably involve a face to face discussion with the claimant. The report will normally cover the following headings:-

1. The Injuries sustained by the claimant.

2. The current disability/incapacity arising from those Injuries. Where relevant to the overall picture of the claimant's needs, any other medical conditions not arising from the accident should also be separately annotated.

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 outcome of such intervention or treatment.

5.3 The report should not deal with issues relating to legal liability and should therefore not contain a detailed account of the accident circumstances.

5.4 In most cases it will be expected that the assessment will take place within 14 days from the date of the letter of referral to the assessment agency.

5.5 It must be remembered that the compensator will usually only consider such rehabilitation to deal with the effects of the injuries that have been caused in the relevant accident and will normally not be expected to fund treatment for conditions which do not directly relate to the accident unless the effect of such conditions has been exacerbated by the injuries sustained in the accident.

6. The Assessment Report

6.1 The report agency will, on completion of the report, send copies onto both the claimant's solicitor and compensator simultaneously. Both parties will have the right to raise questions on the report, disclosing such correspondence to the other party.

6.2 It is recognised that for this assessment report to be of benefit to the parties, it should be prepared and used wholly outside the litigation process. Neither side can therefore, unless they agree in writing, rely on its contents in any subsequent litigation.

6.3 The report, any correspondence related to it and any notes created by the assessing agency to prepare it, will be covered by legal privilege and will not be disclosed in any legal proceedings unless the parties agree. 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. This principle is also set out in paragraph 4.4 of the Pre-Action Protocol.

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. Any notes and reports created during the subsequent case management process will be covered by the usual principle in relation to disclosure of documents and medical records relating to the claimant.

6.5 The compensator will pay for the report within 28 days of receipt.

6.6 This code intends that the parties will continue to work together to ensure that the rehabilitation which has been recommended proceeds smoothly and that any further rehabilitation needs are also assessed.

7. Recommendations

7.1 When the assessment report is disclosed to the compensator, the compensator 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 compensator will not be required to pay for intervention treatment that is unreasonable in nature, content or cost or where adequate and timely provision is otherwise available. The claimant will be under no obligation to undergo intervention, medical or investigation treatment that is unreasonable in all the circumstances of the case.

7.2 The compensator will normally be expected to respond to the claimant's solicitor within 21 days from the date upon which the assessment report is disclosed as to the extent to which the recommendations have been accepted and rehabilitation treatment would be funded and will be expected to justify, within that same timescale, any refusal to meet the cost of recommended rehabilitation.

7.3 If funds are provided by the compensator to the claimant to enable specific intervention, rehabilitation or treatment to occur, the compensator warrants that they will not, in any legal proceedings connected with the claim, dispute the reasonableness of that treatment, nor the agreed costs, provided of course that the claimant has had the recommended treatment. The compensator will not, should the claim fail or be later discontinued, or any element of contributory negligence be assessed or agreed, seek to recover from the claimant any funds that they have made available pursuant to this Code.

The Rehabilitation Code is endorsed by many organisations, including:

Association of British Insurers
Association of Personal Injury Lawyers
Bodily Injury Claims Management Association
Case Management Society of the UK
Forum of Insurance Lawyers
International Underwriting Association
Motor Accident Solicitors' Society

To download the code, go to www.iua.co.uk/rehabilitationcode