



APIL Transport SIG

**A defendant Insurer's experience of
handling RTA claims – November 2019**

Background

- Manage small team handling mainly:
 - TBI
 - SCI
 - Lower limb amputations
- Team has c 200 years experience ; I have 37 years (EL, PL and RTA)
- Personal involvement in Serious Injury Guide steering group
- Presented at one of Lord Jackson's 'consultative seminars' that were undertaken as part of his review
- Evidence PSC on RTA and whiplash claims
- Prepared AXA's response to most of recent MOJ consultation papers
- Previously member of ABI Personal Injury Panel
- Editorial Board of JPIL
- Member of 'Rehab Working Party'

An Insurer's perspective of handling RTA cases

What do we want to achieve?

- *'A happy claim is a settled claim'*
- *No surprises*
- *Certainty*

In short – a fair and prompt settlement.

An insurer being fair?

- *It's a small world*
- *What goes round, comes round*



Approach

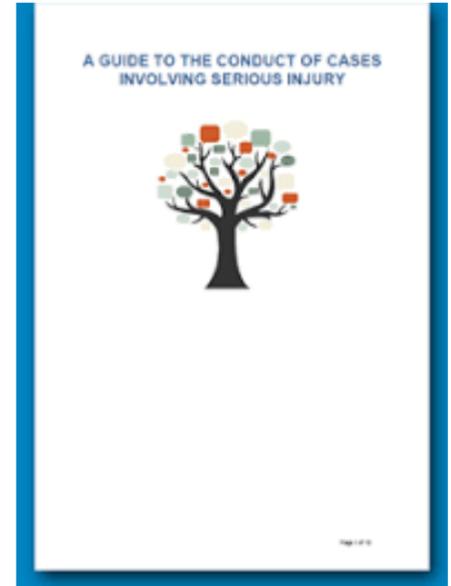
Consensual not adversarial

- Personal Injury PAP
 - ‘1.1.2 If at any stage the claimant values the claim at more than the upper limit of the fast track, the claimant should notify the defendant as soon as possible. However, the “cards on the table” approach advocated by this Protocol is equally appropriate to higher value claims. The spirit, if not the letter of the Protocol, should still be followed for claims which could potentially be allocated multi-track. All parties are expected to consider the Serious Injury Guide in any claim to which that Guide applies (<http://www.seriousinjuryguide.co.uk/>).’

Approach

Consensual not adversarial

- Serious Injury Guide:
 - This Guide creates an environment that encourages positive collaborative behaviour from both sides, and will work in parallel with the Civil Procedure Rules.
 - The principal aims are as follows:
 - to resolve liability as quickly as possible;
 - where beneficial to the claimant to provide early access to rehabilitation to maximise their recovery;
 - to resolve claims in a cost appropriate and proportionate manner;
 - to resolve claims within an appropriate agreed time frame;
 - resolution through an environment of mutual trust, transparency and collaboration



Approach

Consensual not adversarial

1.2 Collaboration begins with a commitment to early notification of a claim to the potential defendant.

Collaborative working between the parties should continue throughout the life of the claim with the objective of achieving:

- early 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

5.2 The claimant solicitor should give reasonable access for medical facilities when requested by the defence insurer. The parties should liaise on the issue of selection of any expert and the status thereof as part of the planning process.

Approach

Consensual not adversarial

8. DISPUTE RESOLUTION 8.1. Ongoing dialogue is fundamental to the process. The parties will continue to discuss the case on a regular basis and at the times agreed. There may be occasions when issues arise that cannot be resolved through discussion.

8.2. On those occasions the parties should consider and agree if possible how they will approach such disputes. Such an approach should be adopted when any dispute emerges in the case, whether it relates to a discrete issue or resolution of the dispute generally.

8.3. All methods of dispute resolution should be considered. Including:

- Stocktake/cooling off period before the parties re-engage
- Early Neutral Evaluation
- Joint Settlement Meeting
- Mediation
- Arbitration

Approach

- Serious Injury Guide cont:

Serious Injury Guide Appendix – what can be achieved?

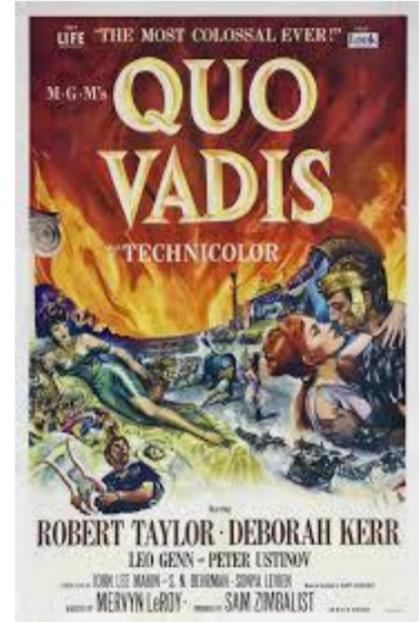
“Open book” rehabilitation best practice

Effective dialogue concerning rehabilitation progress and related challenges are a central part of case planning under the SIG.

The defence insurer / lawyer should be encouraged to attend periodic meetings/ conference calls with the case manager and claimant lawyer to provide an oral update on rehabilitation progress and current rehabilitation goals and objectives.

Rehabilitation

- *Wright v Sullivan* [2005] EWCA Civ 656
 - *Sole v Joint* ?
 - *Joint keeps the parties 'honest'*
- *Butrehabilitation – Quo Vadis?*
 - *Ownership*
 - *Cost*
 - *Self-perpetuating*
 - *Effectiveness*
- *However, I would not return to the days of 'my client is interested in compensation not rehabilitation.'*



Bug Bears

- *Claims starting in the Portal inappropriately*
 - CABLE v LIVERPOOL VICTORIA INSURANCE COMPANY LIMITED
- *Letters of Claim*
 - *Poor description of injuries*
- *Medical records and facilities – or rather lack of them*
- *Reluctance to engage in ADR*



Dilemmas

