

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 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.