

Understanding personal injury claims – a guide for rehabilitation



Background

Injured people often benefit from remedial treatment, whether from an osteopath, chiropractor or physiotherapist. However, many struggle to afford this valuable treatment, particularly over a long period of time.

The Rehabilitation Code was first introduced in 1999 and revised in 2007. Its aim was to promote the use of rehabilitation and early intervention, within the claims process, ensuring that the injured person would have the best and quickest possible access to recovery. The Code encourages insurance companies to co-operate with accident victims and their solicitors and to devise a treatment plan and/or pay for any required treatment.

Can all types of injury include claims for rehabilitation?

In outline, yes. The Code is designed to ensure that whether we're talking about simple fractures or life-changing, catastrophic injuries like brain and spinal damage, everyone has the opportunity to get the best treatment as quickly as possible.

Even where only moderate injuries have been suffered it's likely that only a complete denial of liability will prevent a defendant's insurer from considering the use of rehabilitation.

What is the role of your solicitor in this?

The Rehabilitation Code requires your solicitor, as the injured party, to consider whether early intervention, rehabilitation or medical treatment will improve your wellbeing. It also requires your solicitor to consult with you and your family, as well as your treating physician, to establish the benefits you might gain from this. This includes considering whether aids, adaptations and adjustments might help you to remain in employment.

Who makes the decision?

The Code encourages an assessment of your needs by an appropriately qualified, independent person, if you have not already agreed this with the compensator (the insurers of the person

against whom you have brought a claim). This assessment is likely to be conducted by one or more of your treating physicians/surgeons, or an independently appointed expert.

Both parties must agree the person or organisation carrying out the assessment as well as the way in which the results will be presented. You have 21 days to object to the choice of person and, once an objection has been made, the other party cannot insist on it being that individual/organisation.

How does the assessment process work?

The assessor will interview you at your home (or in hospital if you're still there) and produce a report. If it's a simple case this may be conducted over the phone. The report will include:

- the nature and extent of the injury
- any relevant medical background
- family circumstances
- immediate home adaptation needs
- steps to improve your quality of life and support for family carers
- how, and at what cost, recommendations can be implemented

This will normally take place within 14 days, at which point both parties will receive it and have the option to comment or ask questions of the assessor.

The compensator is expected to inform your solicitor whether they accept or refuse to meet the cost of the recommendations within 21 days of the date of the report.

Who pays?

The compensator is expected to pay for the report within 28 days of receiving it. They are also under a duty to consider any recommendations within it and make available any funds relating to these. They will usually deal with your solicitor to ensure that funds are made available for your treatment.

The compensator isn't required to pay for treatment that is unreasonable (either in terms of time or cost) or that can be replaced by other adequate and timely treatment. Neither are you required to undergo any treatment that's unreasonable.

How does this affect the personal injury claim I may be bringing?

The Code is clear that it is not compulsory, nor should obtaining a report, with respect to rehabilitation, affect or be used in any litigation arising out of the accident or injury. Successful rehabilitation could reduce your ultimate compensation award but the Code works on the basis that suffering less trauma and pain, as well as recovering and returning to work, should be the main priority.

Further guidance

At Wards Solicitors, we encourage injured people to seek treatment as early as possible. We can help claimants find appropriate methods of treatment and make their claims, so that they obtain compensation damages and, hopefully, secure a full return to pain-free living.

For further information on this matter contact Alison Underhill on 0117 943 4800.