

# Resolving higher value cases

A new pilot scheme is to be launched shortly

Discussions between the Forum of Insurance Lawyers, the Association of Personal Injury Lawyers, the Motor Insurers' Bureau, the Royal Bank of Scotland Insurance, AXA, Zurich and Norwich Union have culminated in an agreement on a new code of behaviour that will work in parallel with the Civil Procedure Rules.

The code is aimed at dealing with personal injury cases (excluding clinical negligence and asbestos-related disease cases) valued at over £250,000. It encourages co-operative behaviour and gives helpful guidelines setting out a standard that will generally be expected of the parties. The intention is that the parties work towards settlement using case planning to narrow the issues and to establish a system that will meet the claimant's needs. Early notification will also allow claims to be reserved and valued (as appropriate) at the outset of a claim.

Both claimant and defendant lawyers hope that this will encourage a climate of trust and transparency, enabling claims to be dealt with quickly and economically.

## Key objectives

The key objectives are as follows:

- early notification of claims to insurers/defendants
- prompt dialogue to investigate liability
- admissions binding except in cases of fraud
- discussions to agree rehabilitation and funding
- resolve liability by agreement or at trial within six months
- willingness to make early interim payments
- no Part 36 offers until parties have tried to agree an issue through negotiations
- appointment of an independent clinical case manager by claimant
- prompt disclosure of relevant information
- obtaining evidence in such a way as to avoid duplication of effort and cost
- challenges to enforceability of retainer to be made within 28 days of letter of claim
- early interim payment of disbursements and base costs relating to liability

## Mapping process

Once a claim has been notified, the parties must agree a case-specific route map. Ideally, the parties should meet to agree the route planning. However, this can be done over the telephone or through correspondence. This mapping process includes establishing regular case review dates, for which there should be a predetermined agenda, as well as a mechanism for resolving disputes over the case planning. The agreed timetable of case reviews should provide frequent opportunities for stocktaking and looking at the steps required to progress the claim. In addition, there will be regular exchanges of correspondence to record the agreed steps and issues involved.

### Are there any downsides?

There are naturally some concerns within the insurance camp. The six-month deadline for resolving liability - running from receipt of a detailed letter of notification (the "trigger" date) - is one of them. This deadline may be too ambitious in circumstances where accident reconstruction experts are needed or where criminal proceedings are pending. While the guidelines recognise that it may not be possible to complete liability inquiries in such situations, insurers are advised not to regard any outstanding criminal prosecutions as a bar to making a decision about liability. A culture of never admitting anything is no longer acceptable.

The restriction on making any Part 36 offers until all lines of negotiation have been exhausted may result in claimants' costs increasing while their solicitors carry on investigating the claim. There is therefore a risk of losing the opportunity of making a protective Part 36 offer early on, and reducing the value of such an offer to an insurer. However, the longer the shelf-life of a claim, the more expensive it becomes. Early settlements will ultimately provide costs savings which should balance out any front-loaded costs.

### Will extra work be required?

The six-month timetable is arguably tight and will require specialised teams to handle such claims efficiently. Many insurers already have dedicated large loss teams in place. However, those that do not have such resources will struggle to cope with dealing with claims. Claimants' costs arrangements will also need to be looked at promptly. Failure to challenge the enforceability of a retainer within 28 days of the trigger date will mean that it is presumed enforceable - there will be no other opportunity to challenge it. Claims handlers may therefore require training in this area or, alternatively, consideration should be given to retaining a costs draftsman.

There is no doubt that this initiative is a step in the right direction, despite some valid concerns mentioned above. The main focus of the code is to achieve a cost-proportionate, claimant-centred claim resolution, and to move away from adversarial behaviour and scoring points. We are actually being encouraged to talk to each other.

So far, approximately 25 claimant firms have signed up to the pilot scheme. Only time will tell if the sector as a whole is ready for a shift in attitude towards the collaborative approach that is now being recommended.

Jay Surti  
London  
[j.surti@kennedys-law.com](mailto:j.surti@kennedys-law.com)

Richard West  
Chelmsford  
[r.west@kennedys-law.com](mailto:r.west@kennedys-law.com)