

Rehabilitation Cost Report or Early Intervention Report - do you need the latter, the former or both?

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As a company we have considerable experience of providing rehabilitation cost services (quantum services, for short). More recently we have developed a service providing early intervention, or immediate needs assessments, to address the requirements of the Rehabilitation Code. It has become clear to me that there is considerable confusion about when and how to apply the Code and where it fits within the litigation process. Jacqueline Webb & Co have spent many hours considering the differences and aims of the two services. Elizabeth would like to share some of their conclusions.

One of the themes of the Code is that all lawyers should consider with their clients, at an early stage, whether they have immediate needs that could be addressed via the Code. By comparing and contrasting the two types of services I intend to show the importance of considering the need for early intervention as soon as you receive a new instruction, this is not just because it is in the Code, but it is common sense as well.

What are the aims of the services?

An early intervention service should assess and then implement the claimant's immediate needs for rehabilitation and intervention with the aim of helping to ensure that the injured person makes the best and quickest possible medical, social and psychological recovery. From the therapist's perspective, the sooner an individual's rehabilitation commences the better the outcomes that can be expected. In contrast a quantum report's primary concern is to quantify costs that would "as nearly as possible put the party who has suffered in the same position as he would have been in if he had not sustained the wrong".

Who instructs the provider of the services?

The Code states that the provider of an early intervention service will normally be jointly instructed and copies of all communications from the provider will be sent to both sides simultaneously. In practice we find

that sometimes instructions are received on a single basis from lawyers who presumably have been unable to secure the agreement of the opposing solicitor. If the instructions come solely from the claimant's solicitor the assessment and recommendations can be made, but unless funding is available from another source little real progress can be made. A big plus factor for the claimant lawyer gaining the agreement of the defendant for a joint instruction is that under the terms of the Code the defendants agree to pay for the assessment. In addition the insurer is 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. In contrast quantum reports can be instructed singly or jointly or by direct appointment by bodies such as the Criminal Injuries Compensation Authority.

Diagnosis of claimants assessed

Both services are available to all claimants whatever the severity of their injury.

Time frame of and content of reports

These are quite different. Early intervention is concerned with the claimant's immediate needs and what can be done to speed up their rehabilitation and improve their general wellbeing in, say, the next six months. The earlier the intervention

the better the outcome. I see it as a service that coordinates whatever is needed to maximise rehabilitation. Rehabilitation could range from co-ordination of a graded return to employment to recruiting a long term case manager for the most severely injured claimants.

A quantum report usually identifies the additional past, present and future needs arising from the disability for the duration of the person's life. Unless the instructing solicitor wants an interim report giving an estimate of the cost of the claimant's needs at an early stage it is best for the assessment to be completed when the injured person has reached a plateau in his/her rehabilitation. The assessor is not usually asked to do 'hands on' work with the claimant. He or she just provides his or her expert opinion. It is not generally prepared immediately following the accident and would not include 'hands on' work with the claimant.

Assessing care - beware of the differences!

In early intervention reports there is no evaluation of past care. Current care input from the family is described to set the scene but it will not be valued. The cost of paid care to the assessment date will not be included unless relevant to the action recommended in the report. The cost of long term future care will not be addressed. However, an estimate of the costs for providing immediate and short term care needs would be provided. For example, the cost of

childcare to allow a mother to receive an intensive course of physiotherapy treatment.

This is in direct contrast to a quantum report where one would expect to see all these costs identified. This should act as a warning to the unwary not to be persuaded to allow a report prepared under the Code to be used in litigation.

Case management – what will the services provide?

In a quantum report appropriate case management needs would be described and costed, but they would rarely be implemented by the expert. If money was available, for example to set up a care regime, a separate case manager normally takes on the role.

In a report under the terms of the Code the care professional would expect to assess and then with approval implement the emergency needs of the claimant. Some early intervention service providers would see this as the first step of a long term strategy to recruit a more specialist long term case manager to support the claimant and his/her family and others would go on to provide longer term case management in house.

How does consideration of equipment needs differ?

A cost report provides a comprehensive analysis of equipment that would enhance the independence of the claimant throughout his/her life. The ongoing as well as the capital costs of the equipment would be provided, for example the costs of servicing, maintenance and insurance. In a report prepared under the Code the health professional is concerned with assessing the immediate need for equipment. What would improve the claimant's ability to carry out daily living tasks? An estimate of the time it would take the assessor to assist the claimant to find and purchase the equipment would also be included by some early intervention service providers.

What consideration is given to transport needs?

Quantum reports will address extra transport costs incurred to date and the cost of enabling the claimant to return to the same or equivalent level of autonomy in travel that he enjoyed before the accident.

In a report prepared under the Code solutions will be identified and costed if the claimant has immediate transport needs which are preventing him/her accessing a destination which will assist him/her to reach an optimum outcome or rehabilitation quicker. For example, funding for a taxi to enable him/her to attend physiotherapy or return to work.

Where does therapy fit in?

In a quantum report the writer will provide the likely cost of therapy that they have the appropriate expertise to cost and draw the attention of the reader to the long term needs for other therapies. In an early intervention report the assessor will identify which therapies are needed immediately to ensure possible improvements in the quality of life, and the present and long term physical and mental well being of the claimant. The assessor should provide an estimate of his/her time to organise the therapy sessions and other related issues such as access to suitable transport.

What consideration is given to medical intervention?

If an expert identifies a need for medical intervention during the course of their assessment this will be mentioned in a quantum report then often be drawn to the instructing solicitors attention in a letter. In a report prepared under the terms of the Code the assessor will consider the claimant's immediate need for surgery, medical treatment or medical investigation and the likely cost. Once agreed the health professional will help the claimant access the treatment identified.

When are miscellaneous costs included?

In a quantum report the reader's attention is drawn to the activities in the claimant's life which are more costly post accident, for example diet, holidays, heating and leisure. When possible an estimate of these extra costs is provided. In a report

prepared under the terms of the Code miscellaneous costs will not be included unless the need to finance the need is having an immediate and serious impact on the claimant's wellbeing.

How is housing need addressed?

In a quantum report comments on the short and long term suitability of the claimant's housing are considered together with a description of what housing adaptations are necessary to make the existing house suitable. If accommodation is found to be unsuitable a list of considerations for alternative housing will be provided. In an early intervention report only recommendations for basic home adaptations that are needed immediately will be included. For example provision of a temporary ramp for a claimant who is likely to be in a wheelchair for six months to allow access and egress to their home.

Are employment issues a key factor?

Quantum reports often describe the needs of catastrophically injured people who are unlikely to return to employment. This important aspect of the individual's life is often confined to a description of changes in occupational status since injury a number of years before. If extra expenses associated with existing or potential work are identified they are provided.

Reports prepared under the Code often describe people who will or should return to work. Employment issues will be addressed in as much detail as is appropriate given the claimant's injuries and stage of rehabilitation. For example what assistance could be given to help a claimant retain his existing job or obtain a different job with the same employer or, if this is not feasible, what retraining opportunities might be suitable?

What is the ongoing involvement with the client?

For a quantum report only one assessment visit will be made unless there is a long time lapse between the initial assessment and the case coming to court or there have been significant changes in the claimant's

circumstances. For early intervention instructions there will be one visit to prepare the report then, if or when some or all of the recommendations are accepted, there will be further visits to implement the recommendations. Continuing 'hands on' contact with the claimant will last from about two weeks to six months depending on need.

How does involvement in the litigation process differ?

Quantum reports are prepared specifically for use in litigation and should therefore comply with all the regulations outlined in the Civil Procedure Rules. The expert who has written the report then completes any further work on request, such as answering opposing side's questions, participating in joint meetings of experts or case conferences. If settlement of the claim is not reached the report writer provides oral evidence about any part of his or her involvement with the case.

As stated in the Rehabilitation Code the health personnel involved in providing an early intervention service will expect that their initial assessment and report will be treated as outside the litigation system but any intervention carried out will be treated as inside the litigation system. The health professional might therefore have to provide factual evidence in court and or disclose their notes or documents that they have issued during the intervention process.

In conclusion

A rehabilitation cost report and the service which flows from it provides the Court with a broad overview of the financial impact of the financial loss that the claimant has suffered as a result of his or her injuries or disabilities. The emphasis is on the accuracy, persuasiveness and credibility of the report and if the case comes to trial the oral evidence.

In contrast, the early intervention report tells the reader what the claimant needs now. The emphasis should not be on the report but on the 'hands on' work with the claimant which will help him/her recover as fast and as well as possible from his/her injuries.