

# Rehabilitation in claims in the Official Injury Claim Portal (OIC)

## Process and Documentation

This process is an addition to the Rehabilitation Code and is not intended to alter or replace any part of the existing Code. The use of this process is voluntary. The aim in including it as an addendum is for it to be used widely to provide rehabilitation in the majority of OIC claims, whether by represented or unrepresented claimants.

This process is intended to be used a basis for bilateral/trilateral agreements between defendant organisations and rehabilitation providers/claimant organisations. The process does not cover the preparation and provision of reports, and so any arrangements regarding these will be a matter for the parties to agreements to determine.

### Stage 1

Where the claimant representative (if any), the rehabilitation provider and the compensator agree this process will apply (usually by way of a pre-existing overarching agreement), Stage 1 will be an initial assessment of whether rehabilitation is likely to assist the claimant in making a recovery. The claimant to provide information by way of the current button within the OIC process asking if the claimant needs rehabilitation.

If the claimant is likely to benefit from any kind of rehabilitation, he or she will be referred to Stage 2.

An initial response from the claimant indicating that rehabilitation is not required will not preclude the claimant from seeking rehabilitation at a later stage; and, likewise, the claimant may decide before Stage 2 or 3 that they do not wish to receive treatment.

### Stage 2

A video consultation with the claimant (or a telephone consultation where video is not practicable) to ascertain what form of rehabilitation the claimant requires, to be conducted by a clinically qualified or non-clinically qualified individual. The individual carrying out the consultation will consider an appropriate route for the claimant, whether:

- No rehabilitation required
- Self-help signposting (the use of printed or on-line materials, an app or video which the claimant uses without further clinical support);
- Self-help with guidance (the use of printed or on-line materials, an app or video with support and/or encouragement given to the claimant by clinical staff);
- Remote clinical treatment (treatment delivered one-to-one on screen); or
- Face to face clinical treatment (treatment delivered one-to-one in person)

Good clinical practise already requires there to be a written record of the number of sessions recommended at the outset.

If treatment is recommended, the claimant representative and defendant representative to be notified.

### Stage 3

If treatment is recommended, the appropriate treatment pathway identified in Stage 2 to be implemented. If self-help or remote treatment is provided initially, it may be followed by face-to-face treatment.

If face to face treatment is recommended, in accordance with good clinical practice an initial assessment to be undertaken.

Up to six treatment sessions (either remote or face to face, or a combination of both,) to be permitted, in addition to the initial assessment, without further reference to the paying party. If the injury is not resolved following the six treatment sessions, the claim will drop out of this process.

The provider of the treatment will maintain all necessary notes and records to meet their clinical and regulatory obligations.

### Stage 4

The invoice to be sent to the compensator by the claimant, the claimant representative or the treatment provider.

Invoices to be submitted only after treatment has been provided – no pro-forma invoicing to be permitted.

All invoices for rehabilitation treatment to contain or be accompanied by a document giving the following information:

- The HCPC number of the individual(s) who provided the treatment.
- The type of treatment provided: self-help signposting; self-help with clinical support; remote clinical treatment; or face to face clinical treatment.
- If the treatment was face to face, the location at which the treatment was provided
- If self-help signposting, the method of delivery (printed materials, website guidance, video, etc)
- If self-help support, details of the support provided including details of any follow-up.
- For clinical treatment, the number of sessions divided into remote and face to face.
- Details of the length of each clinical treatment session
- A breakdown of the cost of the treatment including, if more than one type of treatment has been provided, the cost of each type and the cost of each session.
- Confirmation that the treatment has been provided as outlined in the invoice.

It being agreed that timely adherence to the provisions of this process is in the interest of all parties including the injured claimant, it is agreed that the steps required to progress a claim through the process will be given prompt attention.

## **Claims on which liability is not admitted**

For the avoidance of doubt the agreed process will only apply where an admission of 100% liability has been made by the compensator, or where liability is deemed admitted under the OIC process.

In cases where there is a partial admission, the claimant could obtain their own rehabilitation treatment if they wished and could claim the agreed proportion in line with the liability split from the compensator at the end of the case or by way of interim payment.

Where there is no agreement on liability, or where rehabilitation has started before an admission of liability is received, the parties may still agree to follow the process. Compensators should consider from the outset whether there is a possibility or likelihood of at least a partial admission later in the process so as not to compromise the prospects for rehabilitation.

## **Rehabilitation Standards**

Rehabilitation Standards, covering clinical governance, business probity, conduct and ethics have been published alongside this agreed process, to assist parties who may wish to incorporate such standards into bi-lateral agreements.

## **Rehabilitation for psychological injury**

It is recognised that claims will arise under the statutory whiplash regime which will include minor psychological injury which requires rehabilitation. The view of the working groups is that in due course the electronic portal should include a process to deliver appropriate psychological treatment where required, with any need to be identified in the first instance in the medico-legal report. Rehabilitation for minor psychological injury will not be handled through the process set out in this document.

# Rehabilitation Standards

These Rehabilitation Standards are published alongside the agreed 'Rehabilitation in Soft Tissue Injury Claims – Joint Proposals from the Rehabilitation cross-industry working group and ACSO', to assist parties who may wish to incorporate such standards into bi-lateral agreements.

Achieving optimal rehabilitation outcomes for the injured Service-User is the principal outcome of the rehabilitation within the personal injury claims process requiring all Stakeholders to work in ways to promote positive rehabilitation outcomes. This includes promoting early assessment and provision of medical and rehabilitative interventions to achieve optimal recovery outcomes.

These standards underpin the Rehabilitation of Soft Tissue Injury Claims process. The standards should be interpreted with objectivity, and flexibility is allowed in the methods used to achieve compliance with these standards. All Stakeholders are autonomous and accountable professionals and will need to make reasonable decisions about their practice and how best to meet the standards. All parties should always conduct themselves in accordance with their own professional regulator's standards. This policy is intended to complement those professional standards. If in the unlikely event there is any conflict between the provisions of this policy and a regulator's professional standards, then those standards should prevail.

For the purposes of this policy, a Rehabilitation Provider is defined as:

*"An organisation whose principal function is to provide rehabilitation services, and which is: i) independent; ii) properly staffed and resourced; and iii) directly and solely responsible for all work associated with receiving instructions, coordinating, or directly providing, rehabilitation services."*

## 1. Standards for Business Probity

### 1.1 Rehabilitation Provider Personnel

Each Rehabilitation Provider must:

1.1.1 Ensure the employment and appointment of fit and proper persons, meaning the employment of persons that:

- are of good character,
- are appropriately qualified,
- are competent and have the necessary skills for their position, and
- are able by reason of health (after reasonable adjustments) to perform their role.

In addition, for senior personnel including Senior Managers, Directors, Board Members and Shareholders, they must **not**:

- have been responsible for, privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) including, but not limited to, fraud,
- be an undischarged bankrupt or subject of a bankruptcy restrictions order,
- be prohibited from holding the relevant office or position,
- have been erased, removed, or struck off a register of professionals maintained by a regulator of healthcare or social work,
- be included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland, or
- be an individual listed on the MH Treasury and OFAC sanctions list.

1.1.2 Employ staff in-house with responsibility for managing instructions received, for arranging and coordinating treatment, and for directly undertaking administrative work associated with the provision of rehabilitation services, including management of a panel or employed network, managing invoicing, payment and debt collection processes.

1.1.3 Appoint a registered Healthcare Professional (GMC, NMC or HCPC) - with the qualifications, experience, and expertise relevant to the rehabilitation services being delivered - as a responsible person for ensuring clinical governance and quality assurance.

1.1.4 Employ staff to oversee and quality assure clinical and non-clinical processes and work.

1.1.5 Appoint a nominated Caldicott Guardian, responsible for compliant management of records and overseeing and ensuring organisational compliance with the 8 Caldicott Principles.

## **1.2 Service Provision**

Each Rehabilitation Provider must:

1.2.1 Establish and maintain the direct management and control of a sub-contracted panel or employed network of registered Healthcare Professionals.

1.2.2 Deliver rehabilitation in accordance with good industry, evidence-based practise, and with assurance systems in place.

1.2.3 Carry a minimum professional indemnity insurance of £1M and minimum public liability insurance of £3M.

1.2.4 Have processes in place to recognise excellence, address underperformance, and resolve disputes quickly and effectively.

- 1.2.5 Operate ethical supply-chain practises and prioritise systems of procurement for sub-contractors based on suitability and quality, and not solely on financial considerations. In addition, ensuring supplier funding arrangements are fair, proportionate, and do not cause undue financial risk for the supply chain or impair the ability to provide safe, effective, quality and ethical care to an injured person.
- 1.2.6 Demonstrate understanding of their performance to monitor, manage and comply with these standards and Rehabilitation Protocols.
- 1.2.7 Have the operational capacity to demonstrably delivery against referral volumes submitted to the Rehabilitation Provider or can suitably demonstrate appropriate business strategy to meet that capacity.
- 1.2.8 Only accept referrals for geographical locations for which the Rehabilitation Provider has coverage and capacity to deliver.
- 1.2.9 Demonstrates a robust end-to-end claimant customer service capability in terms of rehabilitation services offered, resources (people, processes and technology) deployed and the quality of outputs.

## **2. Standards for Clinical Governance**

Each Rehabilitation Provider must:

- 2.1 Have governance system in place to ensure the following overarching principles are upheld:
  - Safe Care – the Service-Users safety comes first
  - Timely Care – Service-User care will be delivered in the timeliest way and not delayed
  - Effective – Service-User care will be based upon the best available evidence
  - Efficient - Provision of care will avoid inefficiencies (e.g. time, money, resources)
  - Equitable - Access to care will be provided to all in an equitable manner
  - Patient Centred – Service-Users will participate fully in decisions about their care
- 2.2 Ensure suppliers / healthcare professionals operate only within their scope of practise and expertise.
- 2.3 Ensure that all suppliers / healthcare professionals have the appropriate level of qualification and accreditation and have systems in place to ensure that Healthcare Professionals' knowledge remains current, and they are regularly partaking in professional development.
- 2.4 Ensure the suitability of premises, protecting rights, privacy, and dignity of service users, and ensure premises are suitable, suitably maintained, and operate systems of infection prevention control and controls for safe maintenance.

- 2.5 Use recognised outcome measures or psychometrics to evidence the effectiveness of services being delivered and must be open to publishing the results and performance for the benefit of other Stakeholders and promoting confidence and integrity in the Rehabilitation processes.
- 2.6 Have sufficient processes to monitor and evidence the effectiveness of the treatments they are procuring / delivering.
- 2.7 Have systems in place to ensure Service-User safety and that assess and manage risk.
- 2.8 Have appropriate mechanisms in place to capture Service-User feedback on their experience, with an action log for any changes made resulting from customer feedback.
- 2.9 Have sufficient systems of audit in place, together with a record with evidence of resulting actions.
- 2.10 Have industry standard safeguarding systems for adults and children, including robust identification processes and safeguarding for vulnerable people, including systems for multi-agency working.
- 2.11 Have in place documented systems for accepting, recording, and effectively and quickly managing any complaints, any incidents, risks, or safety incidents.
- 2.12 Have systems and processes in place for the identification of unacceptable practise, issues of conduct, and poor clinical performance and non-compliance with legal / regulatory frameworks.
- 2.13 Have the appropriate policies, procedures and guidelines to underpin their compliance with this Governance Framework.
- 2.14 Have robust systems for onward referral, and for ensuring continuity of care in so doing – all Stakeholders must do their utmost to ensure continuity once treatment has commenced or onward referral is required, irrespective of the status of the claim.

### **3. Compliance**

Each Rehabilitation Provider must:

- 3.1 Comply with all relevant regulatory requirements in relation to information security, including all duties imposed under relevant the Data Protection legislation.
- 3.2 Demonstrate commitment to, and compliance with, corporate compliance requirements including, but not limited to, anti-bribery legislation, whistleblowing, modern slavery, corporate criminal offences, money laundering, anti-fraud and anti-trust practices.
- 3.3 Be committed to, and be compliant with, a business ethics policy by the Rehabilitation Provider and all individuals controlling it. This includes a demonstrable understanding of the impact that controlling individuals'\* behaviour may have on

maintaining, monitoring, and enforcing the ethics policy (\*shareholders (including beneficial owners), directors (including shadow directors) and day-to-day operational management).

- 3.4 Have systems, policies and procedures in place for managing conflicts of interest. This includes where a related party is involved or where the treating healthcare professional has a relationship in a medico-legal capacity.
- 3.5 Have systems in place for accessing medical records, and must be clearly prescribed, provided in an accessible manner, to the Service-User, in an efficient and data secure way.
- 3.6 Have a documented and tested Business Continuity Plan, including testing schedule which demonstrate operational restoration.

#### **4. Standards for conduct and ethics**

##### **4.1 Act in the best interest of the Service User**

- 4.1.1 The Service-User must be kept at the centre of all decisions made. Each Stakeholder involved in the process is responsible for promoting the Service User's best interests in all dealings with the Service-User. You must respect that those interests will vary when providing a service as a Defendant, Claimant, or Rehabilitation Provider.
- 4.1.2 **Equity, Diversity and Inclusion:** You must promote equity, diversity and inclusion in all practices, taking into consideration neurodiversity, personal vulnerability and susceptibility to discrimination. This will include complying with and positively surpassing the requirements of the Equality Act 2010 and any successor legislation. You must therefore not allow your views about a Service-User's sex, age, colour, race, disability, sexual orientation, marital status, pregnancy and maternity, social or economic status, lifestyle, culture, religion or beliefs, or other protected characteristics to impact on the way that you deal with each individual Service-User. You must ensure that the specific needs of neurodiverse, individuals with greater needs, and vulnerable Service Users are met and should strive to improve outcomes for such Service-Users.
- 4.1.3 **Safety:** You must ensure that the Service-User's safety comes first and is prioritised over any procedure, or other matter, and act in ways that prioritise health outcomes.
- 4.1.4 **Evidence Informed Care:** You must ensure care and treatment provided to the Service-User is based upon / informed by the best available evidence and deliver rehabilitation in accordance with good industry practise.
- 4.1.5 **Involvement:** You will ensure that Service-Users will be informed and participate fully in decision about their care.
- 4.1.6 **Collaboration:** You will work collaboratively with others to overcome barriers to achieving positive health outcomes for the Service-User.

4.1.7 **Maintaining Competence:** You must always maintain and uphold your professional standards when dealing with the Service-User.

## 4.2 Respect confidentiality

4.2.1 **Service-User Confidentiality:** You must treat information about the Service-User as confidential and use it only for the purposes for which they have provided it. You must not knowingly release any personal data or confidential information to anyone who is not entitled to it, and you should check that people who ask for the information are entitled to it.

Rehabilitation Providers are bound by a common law duty of confidence to protect personal information. The duty of confidence is conferred by common law, statute, and policies linked to professional registration. Service-Users expect that information given by them to their healthcare professionals is treated in confidence and not passed to others without their permission, unless extenuating circumstances exist in which confidentiality can be breached. Rehabilitation Providers must adhere to rules for sharing confidential information and equally not sharing information, with consent, without consent or where the individual has explicitly refused.

You must keep to the conditions of the Data Protection Legislation and always follow and keep up to date with best practice for handling confidential information.

4.2.2 **Stakeholder Confidentiality:** You must Safeguard all confidential, commercially sensitive, and personal data acquired through businesses relationship and not use them for personal advantage or to the benefit or detriment of third parties.

## 4.3 Keep high standards of personal and professional conduct

4.3.1 You must maintain high standards of both personal and professional conduct so as to ensure that the general public and all other Stakeholders will have confidence in you as Defendant, Claimant or Rehabilitation organisation and your actions should not undermine confidence in the services.

You must show skill, care and diligence when conducting your business and providing services to Service-Users at all times, taking into consideration the interests of the Service-User, other Stakeholders, Rehabilitation Providers, regulators, and industry bodies.

All Stakeholders are expected to engage and co-operate in a professional manner.

## 4.4 Reporting issues of conduct and competence

4.4.1 Stakeholders must be alert to important matters concerning their conduct or competence, or about the conduct and competence of any other Stakeholder. Examples of important matters include:

- Conviction of a criminal offence, receiving a conditional discharge for an offence or accept a police caution;
- Disciplined by a professional regulator;

- Referred on any conduct issue to a Regulatory Body;
- Any allegation of serious misconduct or criminal offences;
- Suspension or being placed under a practice restriction because of concerns about conduct or competence;
- Being declared bankrupt, entering into any individual voluntary arrangements or had a County Court judgment issued.

Stakeholder should be transparent about such matters and reporting you to a Regulatory Body as appropriate.

#### **4.5 Keep your professional skills and knowledge up to date**

4.5.1 You must make sure that your professional skills, knowledge and performance are of good quality, up to date, and relevant to your scope of practice. Rehabilitation Provider's will need to ensure appropriate levels of procedural training for Rehabilitation within the Civil Liability Act Regime is provided to relevant persons in their organisation. All Stakeholders and Rehabilitation Providers will be required to ensure that they maintain up to date knowledge on relevant Healthcare legislation, Data Protection Legislation and all other relevant Applicable Law

#### **4.6 Keep accurate records**

4.6.1 Accurate records should be maintained of all engagement with the Service-User, on all aspects relating to respective professional codes and standards, and provision of rehabilitation services.

#### **4.7 Behave with integrity**

4.7.1 All Stakeholders will be expected to behave with integrity at all times. This covers their dealings with Service Users, and Stakeholders. This will include (but is not limited to):

- Managing and handling any conflicts of interest in a timely and professional manner, through the relevant regulatory processes
- Ensuring that referral fees are not requested, paid or received in breach of the Legal Aid Sentencing and Provision of Offenders Act 2012;
- Not providing any misleading information in their dealings;
- Not engaging in any other practice that would undermine the public confidence;
- Admitting to any mistakes made and attempt to rectify any adverse consequences in a timely manner; and
- Honouring commitments to Service-Users, in a manner that is appropriate, timely and consistent.

## **4.8 Acting with the scope of your role**

4.8.1 All Stakeholders must strictly operate within the boundaries of their professional role, operating within the training, responsibility, decision-making capacity, and capacity linked to the profession they have been educated, are competent, are authorised to perform, and where appropriate are regulated. Stakeholders must refrain from undertaking actions, making decisions, or providing opinions that are outside of their scope, and must refer to the respective competent professional.

## **4.9 Ensure probity in organisational practices**

4.9.1 Probity means acting with integrity, fairness, and honesty. All Stakeholders will be expected to ensure probity in their organisational practices, including (for example) business behaviours, policies, procedures, and procurement practices, are fair and honest. This will include (but is not limited to):

- Not acting to delay or act in ways that are detrimental to achieving positive rehabilitation outcomes or delaying overall care provision.
- Putting Service-User interests, honesty and integrity above the desire for personal reward, increased growth and profitability;
- Refraining from unpopular and unethical marketing practices, such as unsolicited consumer contact;
- Not unnecessarily withholding payment;
- Not acting in a way that will prevent a Rehabilitation Provider from ensuring the safe, ethical and continuous care of a Service-User;
- Prioritising systems of procurement for rehabilitation services based on suitability, governance, quality, and safety, and not solely on financial considerations;
- Pursuing positive and collaborative relationships in pursuit of a more cohesive and friction-less service delivery - supply chains should be innovative, flexible and creative in order to ultimately benefit the service user;
- Ensuring all parties work collaboratively and individually to prevent fraud;
- Ensuring funding arrangements are fair, proportionate, and do not cause undue financial risk for supply chain partners or impair the ability to provide safe, effective, quality and ethical care to an injured person.

## **4.10 Comply with the relevant Civil Procedure Rules, Practice Directions and Protocols**

4.10.1 You should ensure that you are up to date with all relevant provisions and that the provisions are adhered to. This should include making the relevant fraud checks required by the RTA protocol.

4.10.2 All stakeholders must make sure they are familiar with the standards and keep to them. The standards are written in broad terms and designed to apply to all Stakeholders as far as possible.