

CARE WORKING GROUP

DRAFT/LETTER OF INSTRUCTION TO CARE EXPERTS

1. **Introduction**

In these proceedings you are instructed on behalf of [*the party*] by [*the instructing solicitor*] to provide an analysis of the claimant's [*past and*] future care needs together with appropriate costings. The Court has directed that your report should be exchanged/served by [*date*]; accordingly we would be grateful to receive your report by [*date*].

[*The other party*] is represented by [*other party's solicitor*]. We understand that [*the other party*] has instructed [*identify expert*] to report on the claimant's care needs.

2. **Care: Best Practice Guidance**

The parties have agreed to follow the *Care: Best Practice Guidance*. We therefore enclose the following documents:

Enclosures

- 2.1 [*Including: letters of claim and response, statement of case, chronology, relevant court orders, witness statements (specify if disclosed), expert reports (specify if disclosed), other relevant documents*];
- 2.2 A template for a care report which, so far as possible, you are requested to follow. Please feel free to include any additional information or advice that you consider may help the parties or the court; and
- 2.3 A Care Information Schedule that has been completed by the Claimant's family dated [*insert date*].

3. **Summary of Claim**

This claim arises from [*brief outline of claim, e.g. circumstances surrounding the birth of the claimant, delay in diagnosis of meningitis*]. The summary should identify the date of the alleged accident/breach of duty. Please confirm if the claimant suffered from a pre-existing condition or a disability before the alleged accident/breach. Please confirm the claimant's family details and circumstances.

In preparing your report you should be aware that negligence or breach of duty and/or causation is [*admitted/not admitted*]. The claim therefore proceeds on the issues of liability and quantum/quantum only. (Please specify)

4. **Basis upon which claim for care is formulated**

For the purpose of your report you should assume that the defendant is liable for the present condition and prognosis of the claimant. Accordingly, in approaching the valuation of [*past care and*] the future care regime, you should assess the level of care over and above that which would have been required in any event (i.e. assuming that the claimant had not suffered from the injury which is alleged to have been caused by the defendant's negligence).

It is important to bear in mind that in a case in which the claimant was suffering from a pre-existing condition or disability (as here) prior to the injury which forms the subject of these proceedings the disability that needs to be assessed is the disability attributable solely to the alleged/admitted (delete as appropriate) negligence and not the totality of the claimant's disability.

The purpose of the payment of damages is to put the claimant as nearly as possible in the position they would have been in had they not been injured. The basis of the assessment of future care is that which is required to meet the individual claimant's reasonable requirements.

In accordance with the *Care: Best Practice Guidance*, it is anticipated that you will use the basic NJC Spinal Point 8 rates for the calculation of gratuitous care. If you rely upon an alternative rate or an aggregated or enhanced NJC rate, you are asked to specify the rate and explain why it is relied upon.

When calculating care costs, it is recommended that rate changes are calculated by reference to the dates of changes used by the NJC for ease of comparison between experts e.g. from 1 April to 31 March.

5. Summary of Medical Evidence

We have enclosed copies of the relevant medical evidence concerning the claimant's condition and prognosis [*identify documents by reference to author, date of report and party on behalf of whom the report has been obtained; provide a brief summary to describe the history of the claimant's condition, his/her current condition and prognosis; and identify any significant differences in opinion between the medical experts if it is likely that this may impact on your assessment of the claimant's care requirements*]. If you consider further medical evidence or clarification is required please let us know as soon as possible.

(If appropriate) You should be aware that we are awaiting further medical evidence from [*identify further medical report which is pending*]. We anticipate that this material [*will/will not*] be available in time for you to include its assessment in your final report. It is likely that this further information [*will/will not*] affect your proposals for future care. (Set out details of likely impact of further medical evidence on care requirements, if appropriate).

6. Care Information Schedule

To assist you in the preparation of your report we are enclosing a *Care Information Schedule* which has been completed by the claimant's advisers (enclosure 2.5). The purpose of the Schedule is to provide you with information including details of the care and assistance which the claimant has been receiving. Please refer to the information contained in the Schedule when preparing your report. If you think that the information contained in the Schedule may not be complete or accurate please specify. If there is any further information that you require which is not contained in the Schedule please let us know *before* visiting the claimant so that we can obtain it for you.

7. Notes for Guidance

We set out below some notes by way of guidance as to the essential matters which we would ask you to include within the narrative of each section of your report. It would be of assistance to us if you could set out the relevant information in separate labelled paragraphs for ease of reference for the Court in due course.

8. **Your Report**

Please comment on the following matters that are relevant to this case and their impact on the care of the claimant

- i) Medical and Therapy Support (*Care Information Schedule*, Section 2);
- ii) Social Care and Voluntary Sector Support (*Care Information Schedule*, Section 3);
- iii) Welfare Benefits (*Care Information Schedule*, Section 4);
- iv) Housing (*Care Information Schedule*, Section 5);
- v) Education/Training (*Care Information Schedule*, Section 6);
- vi) Past & Current Care Provision (*Care information Schedule*, Sections 7 and 8); and
- vii) Future Care (*Care information Schedule*, Section 9)

(a) *Care*

Please insert the information provided by the claimant/claimant's family into your report and comment as appropriate.

Please provide your assessment of the claimant's future care and aids & equipment needs with reference to the following age bands: 0-5, 6-11, 12 -16, 16 -19 & 20 and above.

Please identify whether the future care you have valued is to be provided by a trained nurse, care assistant, or family member or other.

If the care is to be provided in whole, or part, by purchased care please state whether such care should be provided by a privately employed carer or via agency provision giving your reasons.

If no care is to be provided gratuitously through family provision, please set out the reason for this, stating whether it is due to ill health of the principal carer, family wishes etc.

Please provide a schedule of the rates (including the sources for these rates) that you are relying upon to cost the care that you consider necessary. Please also identify any additional costs that will be incurred e.g. National Insurance, insurance premiums, training etc.

(b) *Education*

If future schooling provision is at present not confirmed, please set out alternative care packages for the level of care and valuation of care according to the different proposals for meeting the claimant's future educational needs.

(c) *Local Authority/PCT/Voluntary Sector/Direct Payments*

Please comment so far as possible on the current provision of local authority/PCT/voluntary sector/direct payments or assistance to age 19 and beyond age 19. The case manager, if appointed, should be able to assist.

(d) *Provision of State Benefits*

So far as possible, please identify state benefits which the claimant and the claimant's family may be eligible for in the future. Again, the case manager if appointed should be able to assist.

9. Civil Procedure Rules

Set out below are the specific requirements of the Civil Procedure Rules which apply to all experts' reports and with which your report *must* comply. You may also find helpful the Part 35 Practice Direction and Protocol for Expert Evidence which can be found on the Ministry of Justice Website at:

http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm#part31.

- (1) Your report should be addressed to the Court and not to the solicitors from whom you have received your instructions;
- (2) Your report must include:
 - a. Details of your academic and professional qualifications;
 - b. Details of any literature or other material which you have relied on in making the report;
 - c. A statement setting out the substance of all facts and instructions (whether oral or written). The statement should summarise the facts and instructions given to you which are material to the opinions expressed in the report. Any facts which are within your own knowledge should also be made clear;
 - d. Details of the documents or any other evidence upon which any aspects of the advice or report is based;
 - e. An expanded chronology of the relevant events;
 - f. Any risk assessments that have been carried out;
 - g. Where an examination, measurement, test or experiment is used for the report, you must state who carried it out, their qualifications and whether or not it was carried out under your supervision;
 - h. Where there is a range of opinion on the matters dealt with in the report please give:-
 - a summary of the range of opinion; and
 - the reason for your own opinion.
 - i. A summary of conclusions reached at the end of the report;

- j. If you are not able to give your opinion without qualification, you must state the qualification;
- k. A statement that you understand your duty to the court, have complied with and will continue to comply with that duty;
- l. A declaration that you are aware of the requirements of Part 35 and practice direction 35, the Civil Justice Council's Protocol for the Instruction of Experts (see above) and the practice direction on pre-action conduct;
- m. A statement of truth i.e. *I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.*"

This wording is mandatory and must not be modified.

Please do not hesitate to contact us if there is any point in these instructions or your role and duties to the court as an expert in this case that you wish to clarify.