

QBE European Operations

# Technical claims brief

**Monthly update** | October 2015



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## Contents

QBE successful in private prosecution for attempted £300k fraud	1
Guide to the Conduct of Cases Involving Serious Injury	2
The 2015 Rehabilitation Code - making a real difference to injured people	3
Judicial College Guidelines (JCG, 13th edition) for the assessment of general damages	4
Private Members' Bill, The Negligence and Damages Bill	5
<b>Disclaimer</b>	<b>6</b>





## Fraud

### QBE successful in private prosecution for attempted £300k fraud

On 2 October, QBE achieved further success in its fight against Casualty fraud when a private prosecution, under the Fraud Act 2006, resulted in a 12 month custodial sentence.

An Employers' Liability claim (November 2008) seemed to be a straightforward leg fracture, so when the claimant alleged significant incapacity and claimed £300,000, the decision was taken to investigate further. Investigations to validate the claim were clearly justified when surveillance evidence showed the claimant was grossly exaggerating his level of reported injury and incapacity.

The original claim looked to be heading for trial, but was struck-out due to a procedural default on the part of the claimant. Upon full consideration of the evidence, QBE took the decision to take the matter further and proceed with a private prosecution.

QBE issued the private prosecution for attempted fraud under the Fraud Act 2006. The relevant section of the Act defines the crime:

#### 2 Fraud by false representation

1. A person is in breach of this section if he—

(a) dishonestly makes a false representation, and

(b) intends, by making the representation—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

2. A representation is false if—

(a) it is untrue or misleading, and

(b) the person making it knows that it is, or might be, untrue or misleading.

The case was heard on 2 October 2015, at Guildford Crown Court, when the claimant pleaded guilty to attempting to defraud. The court heard that whilst the claimant suffered an injury at work, he got greedy and grossly inflated his claim by alleging that he couldn't work - in stark contrast to the surveillance evidence. He admitted making a number of statements

which he knew were untrue. The judge spoke about the need for litigation to be open, transparent and honest, or the whole system would be undermined. The claimant was sentenced to 12 months in Her Majesty's custody.



Insurance fraud, once the exclusive domain of personal motor, is now on the increase in Employers' Liability. This latest case comes on the back of other well-publicised attempts to defraud our clients and QBE of substantial amounts of money. The continued success of our Special Investigations Unit underlines their experience to identify attempts to defraud and a dedication over the long term to collate all available evidence and bring the perpetrators to justice.

**Matt Lacy**  
Director of Casualty at QBE.

## New

### Guide to the Conduct of Cases Involving Serious Injury

The Guide was launched on 12 October, after attracting the support of 12 major insurers (including QBE) and 40 claimant law firms (including Irwin Mitchell, Stewarts, Slater Gordon). Its aim is to improve the handling of catastrophic injury claims valued at more than £250,000. Signatories have committed to a series of objectives, including speedy resolution of liability, early access to rehabilitation, resolution in a cost appropriate and proportionate manner, within an agreed timeframe.

The key sections are:

1. Early notification
2. Case planning (agreed action plan)
3. Liability (including early interim payment for disbursements and base costs)
4. Rehabilitation
5. Interim damages

6. Part 36/Calderbank offers (the parties should use dialogue in the first instance)

7. Documents (prompt disclosure of all relevant documents)

Parties are encouraged to put aside any previous differences and work in an environment of mutual trust, transparency and collaboration. The underlying principle is to put the claimant at the forefront of the claim and to progress matters in a less adversarial manner, thereby achieving an efficient, reasonable and fair settlement.

The success of the Guide will be based on all signatories embracing it, adhering to it and thereafter receiving some tangible benefit. The Guide is supported by the ABI, Association of Personal Injury Lawyers (APIL) and Forum of Insurance Lawyers (FOIL). The (failed) previous Multi Track Code had similar goals, but lacked clear benefit for those involved, which the new Guide has sought to address. Only time will tell whether the Guide succeeds, but it appears to stand a fighting chance!



A significant benefit for insurers will be early access to key medical information, which will allow early and more accurate claim analysis and reserving. The focus on rehabilitation and early (and ongoing) interim payments, will promote maximum functional recovery and motivated outcomes. The Guide is welcomed by QBE and reflects our strong commitment to positive claims resolution, rehabilitation and fair compensation for injured claimants.



# new

## The 2015 Rehabilitation Code – making a real difference to injured people

The new Rehabilitation Code provides an approved framework for injury claims within which claimant representatives and compensators can work together. Whilst the Code is voluntary, the Personal Injury Pre-action Protocol provides that its use should be considered for all types of personal injury claims. The objective is to ensure that injured people receive the rehabilitation they need to restore quality of life and earning capacity, as soon as possible, and as much as possible. Although the principles are the same throughout, the Code recognises significant differences between the handling of lower value injuries (<£25k) and medium or catastrophic injuries.

The key features of the Code are:

1. The claimant is put at the centre of the process.
2. The claimant's lawyer and the compensator work on a collaborative basis to address the claimant's needs, from first early notification of the claim and through early exchange of information.
3. Rehabilitation needs are assessed by independent professionals with appropriate qualifications, skills and experience.
4. The claimant has the ultimate say in choice of case manager, and is not obliged to undergo treatment or intervention that is considered unreasonable.
5. The case manager should seek proactively to co-operate with treating NHS clinicians.
6. The compensator will pay for any agreed assessment of rehabilitation needs, and must justify a refusal to follow any of the rehabilitation recommendations.
7. Initial assessment (including the Triage Report for lower value injuries) is outside the litigation process.
8. Where rehabilitation has been provided under the Code, the compensator will not seek to recoup its cost if the claim later fails unless fraud or fundamental dishonesty can be proven.
9. In the interests of streamlining the process, most lower value claims will require a Triage Report only.
10. It is the intention that the parties adopt the principles of the Code beyond the Immediate Needs Assessment and throughout the rehabilitation process.

The working parties that drew up the 2015 Rehabilitation Code included representatives from across the industry. Publication follows extensive consultation lasting a year, during which time the working parties received more than 40 submissions and held a market briefing in May. Although it is for the parties involved in personal injury claims to decide when and how to use the Code, it is envisaged that it should become operational from 1 December 2015.



QBE Rehabilitation endorses this revised Code, in particular the focus on collaboration and communication with the insurer and the solicitor, and putting the claimant at the heart of the process. The new Low Value injury section is a positive in that it gives guidance on the compensator not having to fund inappropriate or excessive treatment prior to the insurer being notified. The code also gives guidance around invoicing and report content which is a progressive step forward to ensure claims handlers have the evidence that treatment has actually taken place. At the higher end, the consideration of NHS care and clinical pathways has been made more prevalent in this Code to ensure case managers factor this into their reports and not opt for private, insurer funded rehabilitation as the first option.

**Rosie Hewitt**  
Rehabilitation Manager at QBE.

## Judicial College Guidelines (JCG, 13th edition) for the assessment of general damages

September saw the release of the 13th edition of the JCG, which is commonly used by claims handlers and judges, to assess an award for general damages. When drafting the new edition of the JCG, the authors consider recent court awards, as well as the Retail Price Index (RPI), which has increased by 3.4% between April 2013 – 2015.

Awards in the 13th edition have increased by at least 3.4%, although there are a number of exceptions where damages have been increased by significantly more than that:

- Awards for minor injuries lasting up to 7 days, up to 28 days and up to three months are mainly **increased by 5%**, with the top end of the highest bracket increased by 3.3% to £1,860.
- To bring similar injuries into line, the top of the bracket for neck and back injuries lasting up to the three months is also increased to £1,860 – **an increase in this case of 20%**.
- The bracket for neck and back injuries lasting three months to a year now starts at £1,860 – **an increase of 20%**.
- The top of the bracket for provisional awards for moderate lung disease is increased from £7,800 to £13,750 – **an increase of 75%**.
- The top of the bracket for simple fractures and soft tissue injuries to the leg is now £9,000 – **an increase of 34%**.

A number of new categories of injury are also included:

- Injuries leading to double incontinence – up to £140,000.
- Mental anguish due to impending death - £3,550.
- Short term paraplegia for a short period before death from unrelated causes - £37,500.
- Failure to diagnose an ectopic pregnancy - £25,000 - £75,000.

As always, the authors make the point that the figures quoted are merely 'guidelines not tramlines' and should be used alongside other quantum resources. The 13th edition comes into force with immediate effect and has potential application to all personal injury claims, irrespective of the date of accident/injury.

Prior to release of the 14th edition (in two years time), it is suggested that there will be a full review to determine the appropriate inflation index used to increase the awards – the Government increasingly uses the Consumer Price Index (CPI), for example in increasing public sector pensions in line with inflation, in place of the Retail Price Index (RPI) which includes housing costs. Over recent years the CPI has been running at a significantly lower rate than RPI, raising the possibility that future increases in damages may be lower than in the past.



Assuming the JCG are embraced by the courts, and claimant solicitors, the most obvious impact of the 13th edition will be to contribute further to annual claims inflation. The 5%+ increases on common low-value injuries will go some way to counter any savings achieved via Portal and fixed cost reductions. In the short-term, the increases could also lead to more Portal claims proceeding to Stage 3 and non-Portal claims to assessment by the courts.



### Private Members' Bill, The Negligence and Damages Bill

A new Private Members' Bill has been published, which calls for 'greater fairness' for bereaved people and victims of psychiatric harm. The Negligence and Damages Bill has been introduced by Middlesbrough MP Andy McDonald and is supported by the Association of Personal Injury Lawyers (APIL). The Bill received its 1st reading on 13 October.

APIL cite the level of statutory bereavement damages in England & Wales (currently £12,980) and draw comparisons to the very different system in Scotland (Loss of Society awards). In that jurisdiction, damages are assessed by the court, they tend to be greater than £12,980 and can be claimed for most familial relationships.

The Bill also seeks to weaken the test for secondary victim claims, who suffer psychiatric injury following a primary victim's accident/injury. The result would be to remove some of the longstanding tests established following the Hillsborough tragedy. The public policy tests were put in place by the House of Lords to control the scope and number of secondary victims, so as to prevent an opening of the 'floodgates'. Views will obviously differ and there have been a number of cases that have unsuccessfully tried to achieve this Bill's aim via the courts.



It remains to be seen whether it receives enough parliamentary support to progress. It would represent a significant piece of legislation for the insurance industry. Current trends tell us that the current government may oppose the Bill, but the disparity with bereavement awards in Scotland looks set to remain on the agenda. This is not the only difference between the UK legal jurisdictions and current trends suggest that will continue, rather than a concerted effort to bring them into line.



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