



Acting as an expert witness

Guidance for occupational therapists
Second Edition

Royal College of Occupational Therapists

Royal College of
Occupational
Therapists



Specialist Section
Independent
Practice

About the publisher

The Royal College of Occupational Therapists is a wholly owned subsidiary of the British Association of Occupational Therapists (BAOT) and operates as a registered charity. It represents the profession nationally and internationally, and contributes widely to policy consultations throughout the UK. RCOT sets the professional and educational standards for occupational therapy, providing leadership, guidance and information relating to research and development, education, practice and lifelong learning. In addition, 10 accredited specialist sections support expert clinical practice.

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Introduction and context

This guidance has been produced for occupational therapists working as expert witnesses and for occupational therapists who are considering undertaking this work.

For the former group it will provide a guide against which they can measure their existing practice; for the latter group it will provide sufficient information to assist in making decisions to undertake this work.

To note, throughout this guide the term *occupational therapy expert witness* refers to someone who:

- has trained and is registered with the Health and Care Professions Council (HCPC) as an occupational therapist within the United Kingdom (UK); and
- has been instructed to act as an expert witness.

Civil Law is constantly being updated and differs across England and Wales, Scotland and Northern Ireland. Readers are advised to refer to the relevant websites to keep abreast of such changes:

<https://www.justice.gov.uk/courts/procedure-rules/civil>

<http://www.gov.scot/Topics/Justice>

<https://www.justice-ni.gov.uk/>

1 The role of an expert witness

The Civil Procedure Rules 35.2 (i) defines an expert as

'...a person who has been instructed to give or prepare expert evidence for the purposes of proceedings'.

(Ministry of Justice 2017a)

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35#IDAOKICC>

In the context of litigation in the UK, an 'expert' is somebody who has appropriate qualifications, knowledge and experience to assist the process of litigation.

The evidence of an expert must always be:

- impartial;
- objective;
- unbiased; and
- independent.

In England and Wales,¹ evidence may be given by way of providing a formal report and giving oral evidence in Court for the purposes of assisting the Court to reach a decision. It is important to understand that it is the duty of any expert witness to remain entirely objective and to provide evidence for the benefit of the Court, and not to act as advocate for either party.

Expert witnesses have a recognised professional qualification and significant practice experience. Over the last 20 years or so, in addition to medical expert opinion, progressively more expert opinions have been sought from other health professionals. This has seen an increasing role for occupational therapy expert witnesses, who are well placed to determine the functional impact of an accident or injury and able to advise about the value of loss incurred.

To note, it is important to understand that expert witnesses are very different from ordinary witnesses. Witnesses of fact or material witnesses are called 'witnesses' specifically because they have had involvement in the situation that has given rise to litigation. Witnesses of fact can be treating clinicians, family members, friends, bystanders, etc.

1.1 Criminal vs civil law experts

Expert witnesses are required in every area of legal proceedings and the type of expert witness required is dependent upon the nature of the case. To illustrate:

¹ For Scotland and Northern Ireland, please refer to the instructing solicitor.

- Where it is suspected that a crime has been committed, this case will be heard in a **criminal Court** and an expert witness in advanced driving might be instructed to analyse skid marks and determine the speed of vehicles involved.
- When a person is injured through no fault of their own, due to an accident or medical procedure that has gone wrong, this matter will be dealt with in a **civil Court**. In the case of an accident, e.g. a road traffic accident, there may also be a criminal case dealing with the accident and a civil case dealing with liability and damages.
- If an individual is injured as a result of alleged negligence on the part of another person (the legal terminology is a third party), then they may have a right of action against them for damages (compensation) if they can prove this negligence.

Civil cases involve the injured person bringing the claim against the person or organisation that caused the injury. In the context of personal injury cases, this is likely to arise in collisions on the road, or as a result of an accident at work. A claim could also result from medical negligence, for example injury during birth or surgery.

In respect of a civil case, there will be a determination of whether or not the third party is at fault and then an assessment of the amount of damages.

There are major differences between criminal law and civil law in the UK.

	Criminal law	Civil law
Legal action taken between	The case is between the State vs another party, such as a person or other legal entity, e.g. a company.	The case is between the Claimant, who is the injured party who has brought the action, vs the Defendant, whom the Claimant is holding liable for the harm caused and against whom the action is brought.
Burden of proof	'Beyond reasonable doubt' has to be shown for a successful prosecution. This means that a conviction cannot be obtained unless there is almost complete certainty about the verdict.	'The balance of probability' is used, i.e. more likely than not. The Court determines which option is considered most likely to have happened or will occur.

Within a civil Court system the Judge is required to make a decision regarding three points of process:

- **Liability** – A Court will have to determine whether or not the person or organisation blamed by the Claimant is actually at fault for the injuries and losses that have occurred as a result of the incident in question.

- **Causation** – This is whether the action in question directly caused the loss claimed for, e.g. whether a particular action or circumstance led to a particular loss or disability. It has to be established that the injuries and any losses sustained were actually caused by the negligent act in question. Consideration may also need to be given to whether the person had a pre-existing condition which may have impacted on them in any event.
- **Damages** – The injured person is entitled to recover an amount for pain and suffering and loss of amenity that they have endured in consequence of the negligent incident. They can also recover past expenses, future losses and expenses that will be required, provided of course that these are supported by the evidence. It is in this context that the evidence of occupational therapists is often crucial. Please note that damages are often called quantum and both represent the compensation that an injured person will recover.

In virtually all serious personal injury cases, however the injuries are caused, the Court will require expert evidence in relation to the assessment of damages. It will be in this context that the occupational therapist will be required.

2 The role and function of an occupational therapy expert witness

Occupational therapists are now regularly instructed as expert witnesses in personal injury and clinical negligence cases across the UK. Despite their small numbers as a profession, the role of occupational therapists is substantial.

2.1 How an occupational therapy expert witness is instructed

An occupational therapy expert witness may act on behalf of:

- The injured party, who is referred to as **'the Claimant'** (or **'the Pursuer'** in Scotland).
- **The Defence** against whom the litigation is taken, e.g. a healthcare trust or motor insurance company.
- Both parties as a **single joint expert witness**.

An occupational therapy expert witness is instructed, usually by a solicitor, with a formal written **letter of instruction** (see Appendix 1). This letter will include details of the Claimant's circumstances, with instructions being specific to each claimant's case.

Usually a solicitor will instruct an occupational therapy expert witness to provide a report to assist the Court by:

- Detailing a comprehensive assessment of the Claimant's functional status; and
- Quantifying the needs arising from any temporary or permanent impairment of function and consequent loss of independence.

The loss incurred is then given a monetary value or 'quantum' to reflect the costs of rehabilitation, care, equipment and services required by the Claimant to mitigate their losses.

Occupational therapy expert witnesses have various areas of expertise, including:

- Care: mainly commenting on past and future care costs.
- Equipment: commenting on equipment and adaptation needs.
- Rehabilitation: commenting on past and future therapy needs.
- Vocational/functional capacity: commenting on work-related skills and abilities.
- Loss of service: commenting on ability/support requirements in order for the claimant to resume roles and responsibilities.

or any combination of the above.

2.2 Upon formal instruction

On acceptance of formal instruction, an occupational therapy expert witness is required to give an estimate of their costs for the duration of the case via a **cost budget** (see Appendix 2). Solicitors representing the parties have to put forward a budget which is an estimate of the costs that will be incurred. This will include the costs of all experts, including the occupational therapist.

An expert witness must be prepared to meet deadlines imposed by the Court throughout the lifetime of each case in which they are instructed. In some cases this time commitment may span over many years and the expert needs to be prepared to commit to the longevity of the case. Once costs have been submitted and accepted by the instructing solicitor and the instruction is agreed, the named occupational therapist will be treated as an expert witness and will be subject to the obligations set out in the *Civil Procedure Rules (CPR)*, as explained in this document.

An occupational therapy expert witness will then be sent related and relevant documentation to read, usually referred to as a '**bundle**'. The bundle may include medical notes and reports from other experts, and statements from witnesses of fact and other professionals involved in the care of the Claimant.

It is most common for expert witnesses to be asked to:

- Read the bundle and make note of salient issues.
- Visit the Claimant to undertake a comprehensive assessment of occupational performance.
- Provide a full and detailed report on the lifelong needs arising from the Claimant's injuries, cross-referencing other information provided in the bundle as required (see Appendix 3).

Following submission of this report, the expert witness may be asked to carry out further work, including:

- Revisiting the Claimant and providing an update report.
- Attending case conferences with the instructing party, either in person or by telephone. The conference may also include Counsel, other medical experts and the client.
- Taking part in a meeting between Claimant-instructed and Defendant-instructed care experts, usually by telephone. The aim is to provide a joint statement highlighting areas of agreement and disagreement between the care experts.
- Responding formally to questions from either party concerning their report.
- Attending Court and giving oral evidence.

2.3 Giving evidence in Court

Giving oral evidence in Court can be stressful and demanding. It requires substantial preparation and specific training (which is detailed in section 3). Expert witnesses will be subjected to cross-examination, which seeks to challenge the expert's credibility and the reasoning that underlies their assessment and recommendations.

In 2013, a further procedure was introduced whereby the experts for both the Claimant and the Defendant could be required to give evidence at the same time. They would be called to the witness box together and the Judge would then ask them questions. By this time their reports would have been disclosed and a joint report prepared. Once the Judge had finished asking questions, the Claimant's and the Defendant's legal representatives would then be able to ask any follow-up questions. This is a procedure known as 'hot-tubbing' but so far it has been rarely used.

3 Being and staying competent

Occupational therapists acting as expert witnesses are required to observe prevailing professional standards as set out by the Royal College of Occupational Therapists (RCOT) and the HCPC, including:

- *Code of ethics and professional conduct* (COT 2015)
- *Professional standards for occupational therapy practice* (COT 2017)
- *Standards of conduct, performance and ethics* (HCPC 2016)
- *Standards of proficiency: occupational therapists* (HCPC 2013).

The single exception to this rule is that client confidentiality takes second place to the expert witness's overriding duty to provide client-related information to the Court, as detailed in the *Civil Procedure Rules* Part 35 (see section 4 for more details).

3.1 Credibility as an occupational therapy expert witness

When considering acting as an expert witness, it is fundamental that the occupational therapist understands that they will need to be seen as a highly experienced, credible expert who can demonstrate contemporary, evidence-based knowledge in their specific area.

Most occupational therapy expert witnesses will have at least eight years of experience in their specialist area. However, it must be emphasised that most occupational therapists who take on expert witness work have significantly more experience than this. For instance, an occupational therapist being asked to advise on a spinal cord injury should have experience of working on such cases. They should have knowledge regarding equipment relating to such individuals, for example up-to-date information on the type of wheelchair to use and the type of vehicles that are available. They should also be in a position to assess the level of support that such individuals need and to be able to base their opinion on a significant amount of experience.

Experts will be instructed separately by the Claimant and the Defendant or a single expert may be jointly instructed by both parties. During the Court hearing the experts will be challenged by the Claimant- and Defendant-instructed barristers.

In addition to significant specialist knowledge and contemporary experience in their specialist area, an occupational therapist working as an expert witness needs to be able to:

- Express themselves effectively both in written material and orally.
- Demonstrate a logical progression from assessment through needs identification to final recommendations.
- Robustly demonstrate and defend the reasoning behind their recommendations.
- Remain calm and clear in complex meetings and under cross-examination by any party.

It is essential that the occupational therapist understands the professional obligations entailed in taking on the expert witness role. To present oneself as an expert witness, without either sufficient specialist expertise or experience in occupational therapy issues or in the requirements of the litigation process, may jeopardise a case and result in financial penalties and loss of reputation for the occupational therapist.

3.2 Training to be an expert witness

While an occupational therapist with the appropriate level of skills and experience may be an 'expert' in his or her field, they will require significant extra training prior to working as an expert witness.

It is strongly recommended that all occupational therapists undergo specific training and seek out appropriate professional support and advice before undertaking any work as an expert witness. The RCOT Specialist Section Independent Practice (RCOTSS – Independent Practice) has many members who are experienced in this area of work, and membership of the Specialist Section is encouraged.

In addition, the RCOTSS – Independent Practice holds an annual study day aimed at supporting occupational therapists considering becoming or already working as expert witnesses (<https://www.rcot.co.uk/about-us/specialist-sections/independent-practice-rcot-ss>).

Training courses are available in all aspects of the medico-legal process and an occupational therapist considering working as an expert witness should undertake introductory training to familiarise themselves with the following:

- The CPR Part 35 and practice directions; who and what is involved in civil litigation.
- The expert witness's obligations and potential liabilities under CPR.
- The difference between liability, causation and damages and the potential roles of the occupational therapy expert witness in each.
- The concept of the 'burden of proof' and how this affects expert witness work.
- The role of the expert witness as opposed to that of a 'witness of fact'.
- How an expert witness is instructed by the Claimant, Defendant, or as a joint expert.
- How the terms 'care expert', 'rehabilitation expert', 'occupational therapy expert' and 'vocational rehabilitation expert' are used in litigation.
- The concept of 'duty of care' as it applies to clinicians, experts and advisers.
- The ongoing role of the expert witness following preparation of the initial report, including further assessments, comments, written questions, meetings of experts, case conferences, attendance at Court and giving oral evidence.

Further training can be undertaken regarding standards of written communication, including:

- What is expected within the types of expert report requested and the use of appropriate wording.
- The presentation of costs required when providing quantum reports.
- Current and relevant case law regarding rates set for care, etc.

Occupational therapists working in the field are advised to consider undertaking other specific training such as:

- advanced report-writing skills;
- courtroom skills;
- experts meetings;
- case law updates; and
- basic law for expert witnesses.

The above list is not exhaustive but is intended to illustrate the breadth of additional knowledge that is required.

3.3 Avoidance of conflict of interest

As an expert witness, the occupational therapist's role is to provide impartial, professional advice, clarification, opinion and information to assist the Court to reach a fair and reasonable conclusion.

To avoid potential or actual conflict, the expert witness should not have had any previous clinical or other contact with the Claimant, or act as the Claimant's treating professional or clinical case manager during the litigation. If they do, it is likely that their evidence will not be accepted as they will not be considered an independent (and impartial) expert.

Very occasionally an occupational therapist working clinically with a Claimant may also become the expert witness, where it is agreed that the practitioner is the only individual who could usefully fulfil both roles. However, this situation would be very unusual. There may be exceptional circumstances where this is unavoidable, in which case the Court, through the instructing solicitor, must be notified of a potential conflict and clear guidance must be sought.

An occupational therapist who has undertaken an expert role is free to take on any clinical or case management role once this litigation has been settled.

4 Legal frameworks: rules and protocols

Rules and documentation undergo regular revision and updating. It is essential that those undertaking expert work ensure that they are familiar with the most recent version of each document, and that they keep themselves up to date with all relevant changes to rules, regulations and procedures.

The *Civil Procedure Rules 1998* encourage parties to consider litigation as a last resort and to try to settle disputes quickly, minimising costs. Some of the authority to manage cases has been moved effectively from lawyers to Court, including the guidance around the appointment of experts and the use of evidence. In England and Wales, the more recent Jackson Reforms (Sime and French 2013) have further consolidated the need to adhere to strict timescales and proportionality of costs.

4.1 *Civil Procedure Rules: Part 35 and Practice Direction*

In relation to Court proceedings, the *Civil Procedure Rules* (CPR) are the overarching rules that determine procedures in all civil cases in England and Wales. Many principles, however, apply to all legal jurisdictions. The CPR start with a statement of their overriding 'objective', to ensure access to fair justice.

The CPR is a vast document, with Section 35 and associated Practice Directions being the salient parts of the document for an occupational therapist considering expert witness work. It is therefore essential that they make themselves familiar with the rules and Practice Directions as they closely define many aspects of the expert witness role, and as such are routinely referred to in instructions from solicitors and throughout Court proceedings (<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35>).

For further guidance regarding practice directions for Scotland and Northern Ireland, see the links below:

Scotland: http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/Guidance%20booklet%20for%20expert%20witnesses.PDF

Northern Ireland: <https://www.judiciary-ni.gov.uk/judicial-decisions/practice-direction-12015>

4.2 *Guidance for the instruction of experts in civil claims*

This guidance by the Civil Justice Council came into effect on 1 December 2014, and replaced the former *Protocol for the instruction of experts to give evidence in civil claims*, which was removed from Practice Direction 35 of the *Civil Procedure Rules* with effect from that date. Occupational therapists must refer to this guidance in order to ensure they work within the legislative framework.

The purpose of this guidance is to assist litigants, those instructing experts and experts to understand best practice in complying with Part 35 of the Civil Procedure Rules (CPR) and Court orders. Experts and those who instruct them should ensure they are familiar with CPR 35 and the Practice Direction (PD35).

(Civil Justice Council 2014, p1)

<https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/cjc-publications/guidance-for-the-instruction-of-experts-in-civil-claims/>

4.3 Pre-action protocol for personal injury claims

One of the most important changes brought about by the *Civil Procedure Rules 1998* was the requirement for parties to exchange information about the dispute before issuing Court proceedings. Standards were introduced which a prospective party to a personal injury claim is expected to observe, and these are detailed in the *Pre-action protocol for personal injury claims* (Ministry of Justice 2017b).

The Protocol applies to all claims which include a claim for personal injury apart from medical negligence claims, disease or illness claims and low-value personal injury claims arising out of road traffic accidents. The Protocol encourages the parties to exchange information at an early stage and to consider using a form of alternative dispute resolution. The parties are expected to consider as early as possible whether the Claimant has reasonable needs that could be met by rehabilitation treatment or other measures. The parties are encouraged to follow the Rehabilitation Code, which is annexed to the Protocol.

The Protocol encourages joint selection of, and access to, quantum experts and, on occasion, liability experts. The expert report produced is not a joint report for the purposes of CPR Part 35. The Protocol promotes the practice of the Claimant obtaining a medical report, disclosing it to the defendant, who then asks questions and/or agrees it and does not obtain their own report. The Protocol provides for nomination of the expert by the claimant in personal injury claims, and details the precise process to be followed for the instruction of expert witnesses.

https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_pic

4.4 A guide to the conduct of cases involving serious injury

<http://www.seriousinjuryguide.co.uk/>

This best practice guide is designed to assist with the conduct of personal injury cases involving complex injuries, specifically cases with a potential value on a full liability basis of £250,000 and above, and that are likely to involve a claim for an element of future continuing loss.

The guide is intended to help parties involved in these claims to resolve any/all issues whilst putting the Claimant at the centre of the process. It puts in place a system that meets the reasonable needs of the injured Claimant whilst ensuring the parties work together towards resolving the case by co-operating in narrowing the issues.

This guide does not apply to medical negligence cases, only to accident cases. The guide is voluntary. Accordingly, it is necessary for the firm of solicitors representing the injured person to have signed up to this guide and the insurance company representing the Defendant also has to be a signatory. So far, 65 firms of solicitors, including all the specialist firms, have signed up to the guide; 85 per cent of members of the insurance industry are also signatories.

5 Prevailing principles

The *Civil Procedure Rules* have the overriding objective of enabling the Court to deal with cases justly and at proportionate cost. There are several overarching principles that need to be appreciated by experts in the course of their duties.

5.1 Restitution

The principles that govern the assessment of damages are well established. The purpose of an award of damages in personal injury claims is, so far as is possible, to put the Claimant in the position they would have been in had they not been injured.

This is summarised in *Heil v Rankin et al* [2001] 2 QB 272. Lord Woolf MR, giving the judgment of the Court of Appeal, said as follows at paragraphs 22, 23 and 27:

... the aim of an award of damages for personal injuries is to provide compensation. The principle is that 'full compensation' should be provided... the compensation must remain fair, reasonable and just. Fair compensation for the injured person. The level must also not result in injustice to the Defendant, and it must not be out of accord with what society as a whole would perceive as being reasonable.

5.2 Reasonableness

Although the issue of 'reasonableness' in determining quantum is ultimately a matter for the presiding Judge, an expert should understand and appreciate this basic principle of damages when making recommendations to meet needs and calculating corresponding costs. If the expert makes recommendations that are unreasonably extravagant, or indeed parsimonious, their credibility, objectivity and impartiality could be questioned by the Judge.

5.3 Proportionality

The issue of proportionality is relevant to all experts in practice as they need to be aware of the relationship between the cost of producing their evidence and the cost of the case. If a Court considers that the overall cost involved in establishing or defending the case is disproportionate to the amount involved, the costs will be cut regardless of whether it was reasonable to incur such fees.

Appendix 1: Business considerations for independent expert witnesses

The main considerations when setting up in business and working independently are captured in the Royal College of Occupational Therapists' Specialist Section – Independent Practice *Code of business practice* (2018).

The following, however, should be remembered when undertaking expert witness work:

- Consult a solicitor in the development of your terms and conditions.
- Be sure you know exactly who is responsible for paying you, particularly if there is a joint instruction.
- Keep yourself up to date concerning how different types of cases are funded.
- Ensure the instructing solicitor is aware of your terms and conditions, and has signed them, and that you are aware of the timescale for payment for your services.
- Ensure your instructing solicitor is fully aware of your fees and provide an estimate for the job. Be aware that experts are now required to provide a cost budget to their instructing solicitor.
- Do not undertake any work unless fully instructed in writing.
- Agree any changes to your terms in writing.
- If a solicitor does not pay, even after several communications, do not be afraid of threatening Court action.
- As it stands, medico-legal work is not VAT exempt.
- Make sure you have fully met your part of the agreement with the solicitor.
- Make sure your professional indemnity covers medico-legal work, as some policies do not.
- Keep clear records of work carried out (what, where, when, who) – this is sometimes required by the Court and for scrutiny, possibly years later. Date and log all communications and interactions with all parties involved. Occupational therapists are also required to work according to HCPC standards and legal requirements of record keeping.
- Data security is crucial in this work. All practitioners should be registered with the Information Commissioner and must ensure that they comply with the General Data Protection Regulations (GDPR).
- There is no specific requirement for keeping your legal reports. The solicitors will keep records of the other legal documents in the case. The Royal College of Occupational Therapists' Specialist Section – Independent Practice Medico-legal Forum committee recommends that records are kept for seven years following settlement of the case, or seven years from age 18 for children. Further general guidance on record retention is available in the Royal College of Occupational Therapists' guidance on *Keeping records* (2018). <https://www.rcot.co.uk/practice-resources/rcot-publications/downloads/keeping-records>
- Any case documentation, both electronic and paper copies, which is no longer required should be destroyed as confidential waste.

Appendix 2: Preparing your cost budget

The Courts are required to undertake costs management in addition to the pre-existing case management.

In summary, costs management is achieved through costs budgeting and costs management orders, which essentially seek to ensure proactive and proportionate costs management. As part of this process, Courts have the power to limit costs.

As an expert witness you should be asked by your instructing party to provide projected costs for your input, prior to or very early on in your involvement.

This should include costs for:

- Reading evidence
- Assessment and report
- Answering questions on your report
- Considering opposing experts' reports
- Meetings with Counsel
- Joint expert meetings and statements
- Trial preparation and attendance.

As an expert you should:

1. Monitor your costs as against the budget.
2. Seek agreement or approval of additional costs before they are incurred.
3. Remember that a revised budget is likely to be agreed or approved only if there have been 'significant developments'.

If in doubt, refer to your instructing party.

Appendix 3: Preparing your expert report

The following is basic guidance only and training in writing an expert witness report is highly recommended. Further advice can be found in various publications, including *Writing medico-legal reports in civil claims: an essential guide* (Eyre and Alexander 2015).

It is fundamental that the reader, ultimately a Judge, understands your report and follows the rationale. Therefore the report needs a clear structure, with a logical explanation of how each of your recommendations relates to your assessment of need.

Key content and structure

- State the title and purpose of the report, ensuring the status is clear, e.g. 'first updated report', 'supplementary report', etc.
- Include a contents page.
- Include a summary of your opinion and recommendations:
 - Ensure any specific questions set by your instructing solicitors are answered; do not stray outside your remit or field of expertise.
 - Address the report to the Court and not to the party from whom you have received instructions.
 - State the details of your instructions (written or oral).
 - Give names of instructing solicitors.
 - Include general information, such as the Claimant's name, address, date of birth, date of injury, date and location of your interview with the Claimant.
 - Detail key dates/timeline of circumstances since the index incident.
 - List all documents you have relied on in preparing the report and reference them if quoted.
 - Where there is a range of opinions, summarise the range and give reasons for your own opinion.
 - Recommendations must be accompanied by corresponding costs, as well as relevant evidence/rationale for costs and cost source contacts.
 - Costs for recommended equipment should detail the capital cost and the annualised costs based on the service costs and replacement period of each item of equipment.
- Provide a summary of costs.
- Add a glossary of terms if necessary.
- Sign and date the report.
- Include all relevant declarations and statements in accordance with current CPR requirements and practice directions.
- Include a CV stating your qualifications and career history, particularly detailing experience relevant to the case in question.

Essential considerations for the body of the report

Use your assessment and information gleaned from other evidence to present a comprehensive picture of your client, including educational/social/employment/medical history to help contextualise your recommendations.

- Avoid repeating chunks of other reports, but do cite and refer to other reports.
- Determine current medical circumstances as detailed by other medical experts and the client's own report, including pre-existing conditions, residual disabilities and prognosis, as compared with pre-material incident level.
- Detail present functional level and functional potential with regard to activities of daily living as compared with previous level.
- For quantum reports, identify client care/support, therapy and equipment needs as well as the means, model and cost of service provision to meet those needs.
- In making recommendations, consider what input is required to put the Claimant into the position they would have been in but for the incident, based on Claimant's reasonable needs, expressed preferences and pre-incident roles, responsibilities and reasonable expectations.
- Consideration should also be given to future possible life changes, including relationships, children and the later stages of life, and the additional needs that may arise from these. It may be helpful to consider separate distinct scenarios or periods of life and associated costs.

Glossary

NOTE: Terms in the glossary are based on *Civil Procedure Rules – glossary* (Ministry of Justice 2017c).

Case

Action, suit or claim in a Court of law. It can also mean the arguments put forward by parties in a Court of law.

Case management (legal)

Used in the legal profession to refer to the management of a legal case, such as a compensation claim for personal injury. The *Civil Procedure Rules* (see below) provide for the Judge in the case to act as case manager and to determine case management tracks (see below), what types of expert evidence will be allowed, and timescales for the progression of the case. (This should not be confused with the term as applied to clinical case management.)

Case manager

Therapist or care professional who assesses needs and co-ordinates services, rehabilitation, care and support for clients who may have complex needs. In the litigation process they may provide factual evidence to the Court.

Causation

The extent to which it can be proven on the balance of probabilities that the injuries and losses have been caused by the negligence of the third party.

Extent to which, in legal terms, losses such as loss of physical function or loss of income are considered to be directly or indirectly caused by the event (for example, an accident or medical incident) that has triggered a case under civil law by one person against another.

Civil justice or civil law

Branch of the law that applies to the rights and dealings of private citizens, including, for example, a claim by one person (or organisation) against another for personal injury or clinical negligence. It does not include criminal, immigration, employment or family matters, although a civil claim may often extend to such matters as the loss of employment and the failure of relationships.

Civil Procedure Rules (CPR)

Rules and procedures for civil proceedings in Courts in England and Wales.

There are separate rules and procedures for Scotland and Northern Ireland and experts should refer to the Scottish Courts and Tribunals Service or the Northern Ireland Courts and Tribunals Service.

Claim

Proceedings issued in the County or High Court.

Claimant

Person issuing the claim (England).

Damages (quantum)

The amount of compensation that the injured person will receive.

Expert witness

Person instructed to give independent evidence and opinion on a subject in which they are qualified or have expertise.

Family Procedure Rules

Rules and procedures for family proceedings in Courts in England and Wales.

There are separate rules and procedures for Scotland and Northern Ireland and experts should refer to the Scottish Courts and Tribunals Service or the Northern Ireland Courts and Tribunals Service.

Liability

Extent to which one person or organisation is deemed, in legal terms, to be responsible for an event causing a loss (for example of physical function, employment or assets) suffered by another person or organisation.

Litigation

Legal proceedings or Court action. Litigation can be civil, criminal or any other legal proceedings.

Pursuer

Person issuing the claim (Scotland).

Treating clinician/practitioner

Therapist who provides therapeutic intervention for the client. In the litigation process they may provide factual evidence to the Court as a witness of fact/material witness.

Witness/witness of fact/material witness

Person who gives factual and objective evidence in Court, called because they witnessed or are involved in an event or case. Please note that this is different from an 'expert witness', as described above.

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