



PI DEFENDANT SEMINAR 2013

CARE WORKSHOP PROBLEM

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It is file review day!

You and your colleagues have taken the opportunity to get together this afternoon to discuss a number of files that are causing concerns. A particular colleague seems to have issues with three cases each involving care claims. Surprisingly your colleague has only very limited information in respect of each, but he gives you a brief synopsis of each:

Case 1

On 01/01/10 Alice was a passenger in a vehicle being driven by her boyfriend, Barry. Their vehicle was involved in a head-on collision with a vehicle driven by Clive. Your colleague acts for Clive's insurer. Alice was badly injured and has sent a letter of claim to insurers for Barry and Clive (different insurers act for each). Although liability has not been formally settled, your insurer client has agreed to deal with Alice's claim and then seek a contribution from Barry's insurer. A 50/50 split has been mooted and that seems to be the most likely outcome.

Alice was badly injured in the accident. From the letter of claim and the disclosed medical report the following can be gleaned:

Alice sustained fracture injuries to the pelvis and humerus. She underwent surgery the day following the accident to reduce the fracture to the pelvis with external fixation. Initially surgery seemed to be successful but complications arose which resulted in further surgery a week later. After 3 weeks in total as an in-patient Alice was discharged. Following discharge she was wheelchair bound for a month and after that time was only able to mobilise with the help of crutches which she used for a further 3 months.

A draft schedule has been provided. There is a claim for care as follows:

Period 1 - 01/01/10 – 22/01/10 (in hospital)

Following the accident the claimant became markedly depressed. If left alone she would ruminate about the accident and become tearful and would need to be consoled. The nursing staff were concerned that without the company of a 'friendly face' her mental state would deteriorate with her recovery hampered. Her anxiety was made worse by the fact that a week post surgery she developed a searing pain in her pelvis. The claimant felt that her complaints went unheard for several hours. When she was eventually examined she was taken for further surgery. Thereafter the claimant was keen to have people she knew around her to alert staff to any further problems she might experience.

Visits were performed exclusively by her boyfriend, Barry.

For period 1 the following is claimed:

21 days x 3 hours per day x £10 (being the aggregate rate to reflect the fact that care was provided at weekends) x 0.75 (gratuitous discount) = **£472.50**

Period 2 – 23/01/10 – 23/02/10

The claimant was living with her boyfriend during this time. She was wheelchair-bound and required assistance with all activities of daily living from using the toilet to dressing. Her boyfriend provided her with that assistance.

For period 2 the following is claimed:



31 days x say 7 hours per day x £10 (being the aggregate rate to reflect the fact that care was provided during weekends and on occasion at night) x 0.75 = **£1,672.50**

Period 3 – 24/02/10 – 24/05/10

The claimant was confined to crutches during this period. Her mobility was gradually increasing over the course of the three months. Nevertheless, the claimant continued to require assistance with mobilising to the toilet, washing, dressing, preparing meals and shopping. For the first month care was provided by her boyfriend. Sadly the claimant's relationship broke down and the claimant's boyfriend left the home they shared. He refused to provide any further assistance. The claimant's mother (Diane) therefore left her home in Scotland and came to stay with the claimant and took over full time care.

For period 3 the following is claimed:

90 days x (say) and average of 3 hours per day x £10 x 0.75 = £2,025

Diane also suffered the following losses:

Return flight from Scotland: £400

Cost of hotel accommodation in Bristol: 90 x £45 = £4,050

Rent, utility and council tax on home in Scotland: approx £2,750

Total for period 3 = **£9,225**

Case 2

Two years ago Edward, 66, was involved in a significant road traffic accident. Liability is not in issue.

As a result of the accident Edward was rendered tetraplegic.

He also sustained a significant frontal lobe injury resulting in serious intellectual and cognitive deficit. He is no longer able to work. The injury has resulted in significant personality change. Consequently he becomes violent and agitated when in strange situations or when forced to interact with people he does not know. When out of the house he needs to be accompanied since otherwise he has a tendency to make inappropriate comments to members of the public which can escalate into violent altercations.

Edward needs consistency in respect of those caring for him. Any 'new face' can cause him to become violent and uncooperative.

Edward has a sister, Felicity (70). She does not work. Although she has a home of her own, since the accident she has stayed with Edward and has acted as his sole carer buying in agency care as and when required. However, she complains that she is feeling the strain and doubts whether she could maintain this level of care for much longer.

Edward is in receipt of a number of benefits.

For the last year Edward has successfully been attending a centre run by the local authority 3 days a week. The centre runs from 10 – 4. At the centre Edward receives meals. Initially Felicity had to stay with Edward throughout his time at the centre but as time went by he was happy to be left alone.

A care report has recently been disclosed by the claimant's solicitor. The recommendations are, as you would expect, long and detailed. Your colleague gives you a summary:

- While Felicity is able to provide a large degree of assistance around the home, she is unable to take on all caring duties. Edward requires a team of full time carers to help him with cooking meals, transferring, shopping, managing household finances, and so on;
- He will need two full time carers with him during the day;
- He tends to require the toilet once in the night. He will therefore require two 'sleep in' carers to assist him in transferring;



- Given his need for consistent carers it is not appropriate to source care from agencies since those local to the claimant have a high turnover of staff and so there is a risk that he will not see the same people.

Strangely, your colleague has yet to obtain his own care report. While there are elements of the claimant's care report with which he is not happy, there are a few points in particular that cause him some issues:

The care regime involves two full time employed day carers. Figures local to the claimant have been produced. The cost of each is put at £22,000 per annum. The cost of a night time sleep in carer is put at £26,000 per annum. However the claimant's solicitors have claimed for an additional 20% in respect of each on a "broad brush" basis to cover Tax, National Insurance and pension payments.

The claimant calculates that the regime will cost approximately £120,000 p.a.. The claimant then claims:

"For an additional 27%. The annual calculated cost does not take into account the need for training days, paid holidays, handover/team meetings or sickness. The claimant claims for the enhanced percentage to take account of such contingencies. The claimant therefore claims £164,000 per annum."

Past gratuitous care has been calculated at 6 hours per day. An hourly rate of £9.24 has been used at 50 weeks per year – $7 \times 6 \times £9.24 \times 50 \times 0.75 = £14,553$ p.a.

The claimant then claims for commercial care estimated to have been provided for 2 weeks of the year at a cost of £2,000 p.a.

Case 3

Gail is 13 years of age. At age 2 she was diagnosed as being autistic. Gail requires significant care and attention from her parents considerably above and beyond that which would otherwise have been provided. Both her parents were successful professional people. Her mother gave up work to care for her. Her father continues to work as an accountant. On average around one day a week her parents would pay for outside help either to assist them directly in caring for Gail or to enable them to take a break from their duties.

Two years ago Gail was involved in a road traffic accident. As a result she sustained grossly disabling physical injuries. Her mobility is limited to 10 minutes and then she walks with a shuffling gait. She requires assistance day and night with all activities of daily living. She can no longer dress herself and needs help with eating and drinking hot liquids. She is at risk of falling. She needs help with washing and in mobilising to the toilet. Gail's condition will be permanent. Her condition is now such that her father is unlikely to continue to play a prominent role in her care.

The costs of care are not yet finalised. However, it looks as though Gail will need 24 hour care provided by commercial carers. Your colleague wonders what specific points, if any, need to be looked at in order to assess the likely cost of care.

