FORUM OF INSURANCE LAWYERS

Informing Progress - Shaping the Future

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The rehabilitation needs of the digital native

This roundtable event was held on 30th November and was hosted by the **FOIL Rehabilitation SFT**.

In introducing the session, **Chris Eccles** of the SFT explained that a digital native (DN) is someone born after 1983: the generation that has grown up living life online, using apps and the internet as a matter of course. A survey had found that in the UK, the USA and Australia, 45% of this cohort used health apps, compared to 10% in the over 55s. DNs have an expectation or understanding that digital offerings in everyday life are important.

The generation of lawyers and insurers currently dealing with high value personal injury claims are probably not DNs. There is therefore a mismatch between those making the decisions about rehabilitation and those receiving it, with some 59% of RTA victims falling into the DN cohort.

The panel comprised four speakers: '**Simon**' (not his real name for reasons of confidentiality) was a claimant in a RTA and was the recipient of rehabilitation which had been successful; **David Withers** of **Irwin Mitchell** had acted as Simon's solicitor; **Stephen Foster** of **Kennedys** represents defendants in catastrophic injury claims; and **David Fisher** of **AXA**, who was the claims handler at AXA for Simon's claim.

IN BRIEF

After an introduction by a claimant who had suffered catastrophic injury, a panel comprising this claimant's solicitor and the solicitor and insurer who had represented the defendant, discussed the place of technology in rehabilitation.

Simon

Simon had been involved in a serious RTA in a city centre. He suffered multiple orthopaedic and brain injuries. He acknowledged that he had survived only because of the expertise and care he had received from the NHS and private facilitators. Initially he was told (or heard it said about him) that the prognosis was poor. If he recovered, he would never walk again; he might not ever talk again; but five years later he is doing many of the things that it was said he would never do.

A video was then shown starting from the immediate aftermath of the accident (the police appealing for witnesses) and showing stages of Simon's rehabilitation (learning to walk; leaving hospital; ongoing physiotherapy; walking independently; speech therapy; and further work on mobility).

David Fisher

Technology should play a greater role in rehab than it currently does.

In paying tribute to Simon, David said that, as the paying party, he rarely got to meet the claimant. Where it has happened, it has often been very late in the process. Claimants' solicitors seem fearful of letting insurers meet with their clients, but it is an incredibly humbling experience and achieves more than claimants' solicitors seem to appreciate. They should allow such meetings at the earliest opportunity. Free and open access to multidisciplinary team meetings is particularly helpful but being permitted such access is very much the exception at present.

Two things particularly stand out in relation to rehabilitation: the first is the ABI IUA book The Psychology of Rehabilitation (a collaborative work) which opened the speaker's eyes on this topic. Secondly, an article by Dr Bruce Scheepers, which talks about brain injury and rehabilitation and criticises the rehab industry for wrapping people in cotton wool, which doesn't help them always lead as full a life as they possibly could do. The speaker felt that this was an area where technology could really assist.

Stephen Foster – Partner Kennedys

The speaker echoed David Fisher's comment that insurers and defendant solicitors rarely hear what a claimant has to say. Stephen's roles within his firm include scanning the market for technology and other products that may assist in improving the quality of a claimant's life, post serious injury.

Rehab in the acute phase of a CAT PI case can set the tone for how the claim progresses. Getting it right can, as evidenced by Simon, maximise the rehab gains, aid recovery and from a defendant perspective reduce the indemnity spend.

Unfortunately, technology does not play an important part in that at the moment, but hopefully that is about to change.

Simon interjected to describe what he had had. He felt that recording his progress, such as his walking and talking had been important, as had having Alexa, a laptop and a phone, so that he could see how he was doing. Without all of that he could not have seen if he was doing alright. He had had an electric speech therapy kit, which assisted in restoring feeling and movement in his face around his mouth. That helped restore his ability to speak again. Some of these devices also assisted Simon to communicate with his peers, his family and his solicitor.

Another delegate commented that many of these items are relatively low cost and part of day-to-day life for many people. There is another layer of more expensive equipment that can assist. Simon, however, said that he had waited seven months for some of this basic equipment, with experts having to justify it and it should not have been like that.

Stephen Foster

The speaker returned to his suggestion that there is now a greater awareness of the place of technology in rehab. First, there has been an increase in the number of digital options such as support systems to help people with anxiety or decision making through apps. This might be 24-hour monitoring devices; control through sensors in the home; or improved design in technology to improve mobility.

Covid has forced people to look at alternative ways of delivering rehab to claimants, at a time when resources are stretched. This has led to a public debate about the role of technology and the ability to deliver treatment and care more cost effectively and efficiently.

In the claims environment there are obstacles to the use of technology in rehab but the speaker thought that this was largely down to a lack of knowledge of what is available. This applies to judges, practitioners, case managers and experts. Education is needed but the landscape is changing in a positive way.

David Withers – Partner Irwin Mitchell (IM)

The speaker felt that IM was very enthusiastic about rehab and even a little too much so on occasions. He had seen many cases where rehab had been effective and had turned lives around. Simon's rehab journey had been particularly successful and that was down to his commitment, as well as the input of the defendant team.

It was felt that insurers are generally getting better at rehab: the major insurers have specialist teams who know what they are doing, but there are others who still have no interest in rehab.

The speaker acknowledged that in the context of the DN, there may be a tendency to be too enthusiastic and put too much in place, which the claimant could find overwhelming.

The session was opened to other delegates

One delegate felt that it was difficult to keep up with the developments in technology, with apps being launched on a daily basis. It seems, however, that few of these are clinically validated with having the research behind them. This is particularly a problem for case managers.

Another delegate commented that while an app might look superficially helpful, it might not be. It also had to be recognised that claimants who were not DN, might struggle to use technology. In terms of the Rehab Code and putting the claimant at the centre of the process, this meant looking at both their digital and non-digital needs. Simon's video had shown the amount of physical input from the physiotherapists and other therapists. Even if possible, the digitalisation of those activities is some way off.

Q&A

Are there any products that the speakers (or others) have seen that stand out?

Simon: a lot of his therapists made videos for him, which enabled him to copy and practise the exercises either on his own or with assistance from family or friends. (Simon's case settled pre-Covid, so this idea will almost certainly have been used more since the pandemic).

David Fisher: The pandemic will probably produce a paradigm shift for us all.

Brain in Hand was developed for acquired brain injury (ABI) but is rarely recommended by case managers in cases of traumatic brain injury (TBI). The default recommendation seems to be Alexa and a personal trainer may be recommended instead of something like Peloton.

Stephen Foster: agreed that *Brain in Hand* was underused in TBI cases. He had experienced one case where the claimant had TBI but did not want a support worker with him when he was going to see his friends but he embraced *Brain in Hand* and liked it.

David Fisher thought the point about 'did not want a support worker with him' was important. Most people value their privacy but the default for claimants always seems to be support workers. He felt that both case managers and claimant solicitors, acting in the best interests of their clients, should weigh-up maximising damages against maximising quality of life. There should be more debate about that issue: was it putting the claimant back in the position they were before the accident, in so far as compensation could do so?

David Withers believed that the starting point is finding common ground. If he wants to provide his client with the best possible quality of life, he needs to engage with the insurer to secure the funding for effective rehab. Maximising damages can only come towards the end when the functional deficits and reasonable needs are known. Finding that common ground at the outset should be everyone's aim. This comes down to trust, information and communication, which had been the position in Simon's case. The defendant team was offered unfettered access to multidisciplinary team meetings and ongoing disclosure. They were allowed access to the claimant's case manager. All work was towards maximising Simon's recovery and then having a settlement meeting.

Stephen Foster felt that claimant solicitors were suspicious of any technology offered by a defendant as just being to lower the value of the claim, rather than promote and improve the quality of life.

Looking to the future, the speaker felt that one of the key areas in the future may be remote monitoring, the development of which has been accelerated by Covid. Some of these monitoring products are controlled by sensors. *Tech Angels* is one to watch but there are similar products which permit remote monitoring whenever required.

The speaker had also been involved with a claimant with spinal injury who did not want the (largely psychological) stigma of a motorised wheelchair and so a product (*Triride*) was provided which served to motorise a standard wheelchair.

There are many, simple products available, such as pill reminders and dispensers (so a carer should not be required just for that purpose).

David Withers raised the common issue of what the claimant would have had in any event. The risk of this argument being pursued may put off some claimant solicitors from buying equipment which could assist the claimant. The claimant should show the defendant how the equipment will make a functional difference and thus impact on the care claim.

He felt that the spinal injury (SCI) cohort is ahead of the TBI cohort when it comes to technology. It is a natural step to consider technology in the context of SCI. There is also more to be done with amputees and stroke victims.

It is often tempting to try to make the person fit the tech, rather than the tech fit the person.

David Fisher was of the view that the knowledge of case managers was paramount, as it helps the trust issue. There is also an issue around supply and demand. Some technology is expensive to develop and its intended market needs to be considered. The speaker used the example of SCI claimants wanting home control systems, which he thought were targeted at architects with wealthy clients. There is not a similar market incentive for tech companies to develop products for TBI claimants. There were, nevertheless, cost effective solutions available in TBI cases, such as voluntarily tagging a lady with dementia, who liked to walk her dog but who had a history of getting lost. She could then be tracked remotely. He agreed, therefore, that monitoring was something that could be taken forward to maximise independence and quality of life.

This again raised the issue of awareness in case managers, who should be offering these solutions, rather than being told about them by one of the parties. There is a problem with one party refusing to agree to what is suggested and some products need further development.

David Withers commented that claimant lawyers sometimes see this issue through the eyes of the case manager, who may have a different view from the insurer about what is suitable. It must be borne in mind that the case manager must provide advice which does not expose them to a claim for negligence. Part of the case manager's risk assessment must be whether a product at a given cost will deliver what is required.

A delegate agreed that some recommendations would be more palatable if they came from an independent case manager. Case managers need to do more to horizon scan. The delegate felt that with the various therapies, it was unlikely at present that they would go entirely digital, but a blended approach was needed. Some technology is more for the defendant than the claimant, for example technology being trialled by a local authority to assist in lifting and turning patients in care homes. In a claims' context, this could lead to two carers becoming one. This is a strap-on exoskeleton device, but the target market is more the individual with a bad back. Similar innovations should be shifted and lifted into the claims' scenario, subject to being cost-effective.

David Withers commented that technology had also brought about benefits in allowing multidisciplinary meetings to be held online and also in facilitating the uploading of documents, with stakeholders having access at the same time.

He was concerned that, for example, the NHS five-year plan focuses on infrastructure with no mention of products to assist service users.

Stephen Foster added that NICE proposes that guidance should be available to patients as to what technology is available to them.

Laurence Besemer – FOIL CEO outlined the purpose of FOIL 'Fireside Chats' in which suppliers are politely interrogated about their products. That seems to be a suitable way of investigating further what is available in a claims' context.

A delegate expressed concern that there are fewer and fewer independent case managers, as firms are taken over by third parties. There are concerns about quality for the future.

Speakers' summaries

Stephen Foster: working collaboratively is key but technology undoubtedly has a part to play in the future. There should be a willingness to give products a go, rather than simply rejecting them.

David Withers: a key point for defendants to take away is that if they are asking a claimant to accept a product, they need to do the legwork associated with it, to show that it achieves what is suggested.

David Fisher: it is not necessarily about doing something because it is cheaper. It is about what is going to help to maximise that particular claimant's independence, self-determination and quality of life. It is to be hoped that in the future, technology will take a bigger role in this than is currently the case. Case managers should be asked: 'What technology does this person need to help them in their recovery and their independence and quality of life?'

Simon: remember it is me, the claimant at the end of it. If the claimant says s/he wants something; the insurer asks why? and the claimant explains why: just give them it.