

Resolving Complex and Catastrophic Injury Claims - Has There Ever Been a Better Time to Talk?

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Coronavirus or COVID-19 has already brought sweeping changes to just about every aspect of life and civil litigation has not escaped this turmoil. In the worlds of catastrophic injury and clinical negligence claims the impact on Claimants is likely to be disproportionately high if this current hiatus becomes, as we all hope it will not, a long running situation with even longer term impact.

It is therefore beholden on all dealing with such claims, whether on behalf of Claimants or Defendants, to look at what can be done and, where possible, to alleviate the problems that have already arisen and can be predicted to arise.

For some time, we have been active in encouraging the adoption and promotion of an open and collaborative approach. This includes the joint appointment of Case Managers, the provision of rehabilitation and informal timetables to work towards ultimate resolution from the outset of a claim. It is often said that necessity is the mother of invention and the need to progress matters during this difficult time may actually provide an opportunity to consider where greater co-operation could assist.

The most obvious first step is to up the level of communication between the parties to discuss matters such as:

- whether the issues can be narrowed at an early stage to reduce the matters in dispute;
- if missed/cancelled medical appointments are truly a bar to making progress; are alternatives available? For example, if all notes and records are available, can a telephone, FaceTime or skype call take place instead?
- what procedural steps can be completed without the intervention/oversight of the court;
- is there scope to narrow views on quantum;
- Could JSM's be conducted by another method than in person, by skype for example; and
- would a form of early neutral evaluation assist in resolving either specific issues or the dispute as a whole.

This is not intended to be an exhaustive list of matters that could be discussed, merely examples of where and how progress could be made even if the normal process is disrupted. It could be a long time before the litigation process returns to normal and there will inevitably be an increase in the anxiety levels of Claimants due to the delays that are likely to arise from the current conflict. It is in the interests of both parties to keep up the momentum of the claim towards resolution.

If this anxiety is to be abated and cases resolved enabling the injured to move forward with their lives then lawyers on both sides can, and should feel duty bound, to cooperate and innovate remembering always that it is a two-way street. Looking at the longer term, if better practices and a higher degree of collaboration in dispute resolution come out of these difficult times then they ought to be retained and nurtured in a post COVID-19 world for the benefit of all.

Whether for the short or the long term, there really is no better time to talk.

For more information or advice, please contact one of our experts in our complex and catastrophic injury team.

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