

Severe Head Injury, Rehabilitation, Joint Case Managers and Private Funding/ State Provision

*A look at the legal realities of funding
rehabilitation in the more challenging cases*

Paul Kirtley

Overview

- Obtaining an INA
- Applications for funding
- Use of Statutory services
- Can statutory services work alongside any INA
Recommendations / Private Support?

Obtaining an INA

- Case Manager of appropriate experience
- Engage with treating clinicians
 - Short term and long term rehabilitation
 - Is the proposed rehab plan appropriate?
- Rehab provider's duty is to the Claimant not the funding party
- Case Manager to implement an agreed rehabilitation plan

Obtaining an INA

Rehabilitation Code 2015, Part 8

- 8.1: Case Managers should carry out the assessment in an appropriate way to the circumstances of the case
- 8.2: Points to be covered in the INA, in addition to the ten markers in the glossary
- 8.3: Set out clinically justifiable recommendations
- 8.5: It is anticipated that the parties' representative will discuss recommendation and agree appropriate action to be taken

Application for Funding and Use of Statutory Services

- National Assistance Act 1948 s21
- Guidance of Buxton LJ in Islington LBC v UCL Hospital NHS Trust
- Local Authority must provide residential accommodation for a person
 - In need thereof
 - Not otherwise available to him
- In determining if a person is “in need” and deciding as to the nature of accommodation the LA may have regard to its resources

- LA providing accommodation must recover from the recipient the cost thereof (s22)
- BUT in assessing ability to pay the LA must disregard, as to capital and income, the funds of any trust which is derived from payment made in consequence of personal injury including sums administered by the Court of Protection

- NAA 1948 s29

“LA may make arrangements for promoting the welfare of persons....
Who are substantially and permanently handicapped by... injury”

- Chronically Sick and Disabled Persons Act 1970 s2

- Guidance from Supreme Court as to the staged approach.

R (on the application of KM) v Cambridgeshire County Council [2012] UKSC 23

- What are the needs
- To meet those needs is it necessary to make arrangements to provide specified services? Could these needs be met by others, or the Claimant?
- If services should be provided, the nature and extent thereof
- If the person qualifies for direct payment under the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009 then the reasonable cost of securing such services.

The Duty to Assess

- Two obligations previously
- NHS and Community Care Act 1990 s47
 - LA shall carry out an assessment
 - Having regard to the result determine in Claimant's needs call for the provision by LA of any such services.

The Duty to Assess

- Disabled Persons (Services, Consultations and Representation) Act 1986 s4
 - When requested by:
 - A disabled person
 - Authorised representative
 - Any person providing such care
 - Obligation to consider duties under s2 CSDPA 1970
- Specific Obligation to those detained under s3 Mental Health Act 1983 and are then released (s117)
 - Duty to provide after-care services

Care Act 2014

- Needs assessment, s9 (cf. s.47 NHSCCA 1990)
- Section 9(4): A needs assessment must include an assessment of:
 - The impact of the adult's needs for care and support on the matters specified in section 1(2),
 - The outcomes that the adult wishes to achieve in day-to-day life, and
 - Whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes

Care Act 2014

- Care and Support Statutory Guidance (February 2018) 6.9: The purpose of an assessment is to identify the person's needs and how these impact on their wellbeing, and the outcomes that the person wishes to achieve in their day-to-day life.
- Appropriateness and proportionality: reg 3 Care and Support (Assessment) Regulations 2014.

Application for Funding and Use of Statutory Services: Example

- 36 year old contractor injured after stepping out into road without looking
- Suffered orthopaedic injuries and TBI
- Liability agreed 70:30
- PPO
- Repercussions if public funding is reduced or withdrawn?

Can Statutory Service work alongside INA Recommendation/ Private Support?

- Defendant contends that paying a “top up” award is sufficient
- Walton v Calderdale Healthcare NHS Trust: Must be supported by cogent evidence that all/part of Claimant’s reasonable future care needs could and would be met by a local authority free of charge
- Double recovery: Reverse Indemnity
- Example: Thacker v Steeples
- Instruct care expert/ case manager to assess suitability and feasibility of additional care.

Co-operation can bring rewards
for both Claimant and
Defendant.

THANK YOU

☎ 0845 300 7747

🌐 www.exchangechambers.co.uk

EXCHANGE
CHAMBERS