

STEWARTS

# How OTs can present information to lawyers

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## What is the claim for

- > Negligence
- > Breach, causation, damage
- > Burden – falls on the claimant
- > Standard – balance of probabilities
- > Need for insurance
- > Key role of experts



## The lawyer's role – managing relationships

- > Client
- > Litigation Friend
- > Family
- > Defendants
- > Experts
- > Case Manager
- > Rehabilitation team
- > Counsel



## Experts

- › Liability and quantum
- › Often reflect many of the MDT members
- › Hired guns for both sides?
- › Reporting to the court
- › Overrides duty to the instructing party
- › Time to report
- › Availability for conferences
- › Performance in court



## Rehabilitation

- > Fundamental to the role of the solicitor
- > Case manager – may be an OT
- > Multi-disciplinary team
- > OT in the MDT
- > 3 (or 4!) OT views in the case?



## OT experts

- › First duty to the court
- › Different slant of OTs on each side
- › Second duty to client
- › May only see client once or twice, relatively briefly
- › Has the benefit of wide range of written material
- › May have been in conference with counsel and other experts on their side
- › Needs to produce one or two long comprehensive reports
- › Prior to trial will discuss recommendations with other side's OT



## OT experts

- > Credibility is everything
- > Make use of all material
- > Explain rationale for every recommendation
- > Cross reference to medical evidence/witness statements/other evidence
- > Acknowledge when there is a range of opinion
- > Make recommendations within your field of expertise
- > Use medical evidence as basis for discussing future needs as client's condition deteriorates with age



## OT experts

- > What equipment is needed
- > Why
- > How often does it need to be replaced?
- > How much does it cost to be replaced?
- > Not an annual figure
- > Holidays, therapy etc
- > Defer to other experts where necessary – transport, technology
- > Recommendations may be fed through to MDT



## Treating OT

- > Duty to the client
- > Benefit of regular contact with client
- > Probably seeing much less written material
- > Equipment recommendations will probably be made
- > Money will be required
- > A specific request may be required to fund more expensive items



## Justifying recommendations

- > Work justifying the recommendation needs to be proportionate
- > Consider need for an email/full report
- > Consider asking case manager/solicitor/deputy what is required
- > Timescale
- > Potential audience – barrister/judge/solicitors/medical experts



## Report for recommendation

- > Summary/conclusion
- > Alternatives to using equipment
- > Consider downsides
- > Consider alternative suppliers
- > Consider variations in product between suppliers



## Report for recommendation

- > Client is not obliged to select cheapest alternative
- > Justify why the cheapest product is not appropriate
- > Value of trialling
- > Supply from statutory services



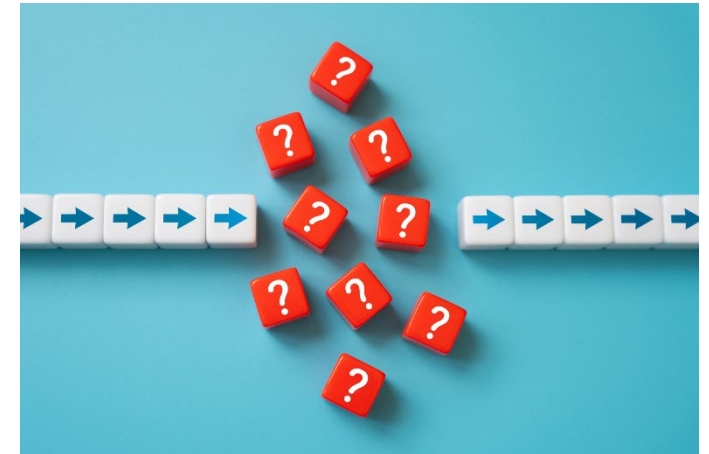
## Solicitors tasks

- > Check client agrees with recommendation
- > Check rest of MDT agrees with recommendation
- > Send it to OT expert
- > Send it to the other side, asking for money
- > Defendant may fund it directly or offer general interim payment
- > Apply to court for funding
- > May need to commence proceedings



## Conclusions

- › May be a number of OTs involved in a case
- › Each has different drivers
- › OTs in rehab team need to plan ahead with equipment needs
- › Consider the basis on which recommendations are made
- › Consider the audience for such reports
- › Spend time proportionate to the item in question setting out the recommendation
- › Communication is key



# Questions

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