

ATE INSURANCE FOR CLINICAL NEGLIGENCE

Have you got your risk assessment right?



By Paul Bonner, Senior Underwriter

As ATE insurance underwriters we see the good, the bad and the ugly, so see us as adding value to your risk assessment process. Here at Temple, we share a combined 100 years' experience of underwriting clinical negligence cases and wanted to share some of that in order to you help maximise your fee-earning.

We're here to help, not to second-guess you. You may well be equally experienced, but below is a view from the receiving end of your cases that could save you a great deal of time and costs.

This guide shares our experience of why -

- **Many cases are discontinued far too late** - this causes a higher claims exposure, benefiting nobody.
- **We see many more cases stalling** due to inadequate case timetable management. Too much time is spent identifying appropriate experts, followed by long delays in obtaining the experts reports - without ever having a 'Plan B' in place.
- **Too much time and money is also spent** trying to turn an unsupportive expert around. If the answer is not 'yes', then the case is probably a 'no go'.

The client isn't always right

The rise in clinical negligence ATE insurance claims has often been due to accepting subjective evidence from the client alone. This is not a good risk assessment. We require a law firm to obtain all relevant medical notes and records and review them. This is one of our Eligibility Criteria before a case can be insured under delegated authority.

If this was a school exam, 'show your workings' would still gain you some marks even if the final answer was incorrect. Here the stakes are somewhat higher, but the principle still stands - reviewing your rationale can give insights you, your client and your ATE insurer could all benefit from.

This guide is by no means a comprehensive list but adherence to it will, we suggest, lead to less time being written off and reduce claims, including the amount of the monetary claims.

In summary - aim to develop a detailed risk assessment process backed by objective evidence and, ideally, a separate case plan setting out defined goals with a strict timetable.

If you can confidently say that all the risk assessment best practice from this guide is happening, you should be seeing healthy wins statistics and few claims. If not, please call 01483 577877 or email Matthew.Best@temple-legal.co.uk. We are only too happy to work with you to create a more robust process.

On page 2 is an overview of the key principles for effective risk assessment for clinical negligence cases.

Quick guide for clinical negligence cases

1. Review your current risk assessment procedures - measure their robustness against case success/loss data.
2. Implement constructive changes - if you spot a weakness in those procedures.
3. It's good to share - include your ATE provider in those reviews to develop a dialogue.
4. Record your risk assessments - properly, and follow up on the actions identified.
5. When a claim has to be submitted to your ATE insurer - do explain the reasons why prospects have reduced.
6. Do go back! Revisit your assessments and close cases down as early as possible if prospects fall.
7. Do not rely on Counsel alone - it's your case, not theirs.
8. Create a work ethic - one that encourages review and reappraisal of prospects of success amongst your fee earners. Record your findings.
9. Budgets - do you calculate your disbursement spend and work in progress (WIP)? If appropriate, set WIP limits on different types of cases.
10. Checks and balances - have these in place until you are confident all the relevant facts and evidence are available to confirm the merits of a case.
11. Keep records of successes and failures - and liaise with your ATE provider, who should give you data to show whether you are 'the right side of the line'.
12. Fundamental dishonesty - warn your clients, especially the self-employed, of the risk of allegations of fundamental dishonesty being made against them - for example if their dealings with HMRC or DWP are not 100% honest.
13. What goes online may stay online - also warn your clients of the risks of their social media posts being examined by the defendant to seek evidence of dishonesty.

Contacts:

Matthew Best - Senior Underwriting Manager

Matt's day-to-day role involves managing a large number of ATE insurance schemes for law firm's clinical negligence and personal injury claims. In addition he uses his experience to ensure that their Temple disbursement funding facilities are set up and run smoothly. He is often seen at APIL, AvMA and SCIL conferences sharing his expertise.



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Lisa Fricker - Solicitor Services Manager

Lisa has over 15 years' experience in the legal insurance industry, and is used to working closely with solicitors to develop and maintain good working relationships. In her role Lisa manages our internal and external review process and is focused on ensuring that the quality of service provided by Temple remains at the highest standard.



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David Stoker - Senior Underwriter

David's experience allows him to undertake a key role within Temple's ATE insurance personal injury and clinical negligence teams. He also participates in the assessments of delegated schemes that Temple provide to help our customers make the most of the products and services we offer.



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Alex Stracey - Senior Underwriter

Alex has over 14 years experience within the LEI market, both ATE and BTE. She is used to working closely with solicitors to ensure the best outcomes for their clients. Her experience allows her to match customer requirements with Temple's products and services. Alex is happy to assist with any queries that arise on a day to day basis.



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Peter Morgan - Senior Underwriter

Peter has valuable previous experience in both Claimant and Defendant work and is responsible for assessing risks along with the day-to-day management of delegated authority schemes. His in-depth underwriting knowledge and expertise helps ensure partner law firms are getting the best from their litigation insurance and funding products.



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