

## ATE INSURANCE FOR CLINICAL NEGLIGENCE IN NORTHERN IRELAND

### Have you got your risk assessment right?



*With ATE insurance becoming more prominent in Northern Ireland, now is a good time to protect yourselves and your clients from the risks of litigations. Our underwriters have a wealth of experience from both an insurance and legal background which has allowed us to see the very best and worst from the risk assessment process.*

As you are the experienced lawyers, our role is to help, not to second-guess you. You will be the ones who have the day-to-day conduct of the case; however, our experience has allowed us to recognise trends across the industry as a whole. Below is a view from the receiving end of your cases that could save you a great deal of time and costs.

#### It 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'.
- Picking the wrong expert, those without sufficient experience or have retired from practice altogether. You may find that they are unable to support the case to trial.

See below/page 2 for an overview of the key principles to risk assessment for clinical negligence cases.

#### 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 good risk assessment practice and could lead to an expensive mistake further down the line. We require a law firm to obtain all relevant medical notes and records and review them demonstrating that you understand the full allegations of negligence.

It is important to be able to show your thought process, not only for good case management but also reviewing your rationale can give insights you, your client and your ATE insurer could all benefit from.

We're here to help and share our experience. This article 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.

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 that is not the case, then please call 01483 577877. We are only too happy to work with you to create a more robust process.

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.

## 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

#### Head of Personal Injury & Clinical Negligence

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

#### Head of Solicitor Services & Quality Assurance

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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