

## Disability analysis in clinical negligence

### Should 'condition and prognosis' be renamed 'disability and prognosis' report, asks Doctor Mark Burgin



As a doctor I am aware of the subtle long-term consequences of medical negligence. A delay in diagnosis can lead to a poorer outcome in what the claimant can do. The claimant's specialist states that "full recovery" has occurred but the patient disagrees. The claimant complains of minor continuing symptoms, discomfort on examination. Medically the condition has been cured and there is no evidence of disease found on scans.

However the claimant states their life has changed with restrictions to their function in many areas. The medical model does not give the full picture of the losses that are suffered by victims of medical negligence. Disability analysis uses the social model (how the claimant's life is affected) rather than the medical model (how a disease affects the claimant's body). Impairment is a part of the body not working as it should. Restriction is an inability to perform an activity when compared with a 'normal' person. Linking the two broadens the range of information available, and for this reason disability analysis is as effective for assessing the mildest as the most severe impairments.

### Millions of disability analysis examinations

The Department of Work and Pensions DWP has been using disability analysis to control access to social security benefit of hundreds of billions of pounds for many decades. Disability activist groups support and work with the DWP to improve the Disability Analysis test. ATOS has the contract to supply disability assessment to the DWP and has a continuing professional development scheme for Approved Disability Analysts. This organisation has a £100m annual budget to perform a million threshold based examinations a year for disability benefits. Doctor Scot Darling, medical director of Premex, who has qualified as an Approved Disability Analyst says it is *"a specialised course that has to be undertaken to show suitable competency involving 4 stages of training. This includes e-learning, classroom work, role play, formal written examinations & supervised assessments followed by stringent audit of report quality. Premex has trained Disability Analysts in Personal Independence Payment PIP as a supply chain partner to Atos in this state benefit and can provide doctors at competitive cost."*

### Advantages for a clinical negligence lawyer

Clinical negligence needs an alternative to the present 'condition and prognosis report'. The personal injury report model of high quality/rapid turnaround has been copied for Liability and Causation reports in screening reports. Many solicitors now use Screening Reports at an early stage to improve efficiency. Condition and prognosis however continues to use multiple overlapping reports to try to cover all aspects of a claimant's condition. The lack of sufficient numbers of specialists capable of producing these complex bespoke reports to the highest standard restricts lawyer's choice. There is a risk that unexpected persisting low level impairments and associated functional restrictions can fall outside the remit for the commissioned experts. A Disability and Prognosis Report could provide lawyers with a powerful new tool to control costs and push up standards in clinical negligence reporting.

### Four areas of information combined

Disability analysis considers the impairments by combining information from four separate areas: Medical; Typical Day; Examination Findings; Variability.

- Medical information from diagnoses, investigations, treatment and follow up arrangements by specialists indicates the severity of the condition.
- Typical day is a detailed description of the problems faced in areas of life such as the activities of daily living ADL, self care, mobility etc and how carers, aids and adaptations help.
- Examination and non standard examination (observations) look at the claimant as a whole assessing the severity of impairments for each area.
- Variability considers if the claimant's condition has severe or frequent changes which restricts doing tasks safely, repeatedly, to an acceptable standard and in a reasonable timescale.

## Functional restrictions answer the claimant's and lawyer's questions

These four raw materials of the disability analysis are then linked together to form functional restrictions. These functional restrictions are simple to understand and discuss for lawyers and claimants. The disability analyst can determine which condition is likely to be causing which impairment (or whether combinations of conditions are interacting). The lawyer can link conditions caused by the injury with restrictions and therefore with the losses suffered. Functional restrictions are flexible enough to cover any aspect of a person's life work, home and future care. The reports are robust and explicitly discuss areas that appear to contradict (inconsistencies).

## A better service for the clinical negligence claimant

The disability assessment takes about 30 minutes for questions and 10 minutes for the examination. The examination is of the impaired areas but does not involve significant undressing or discomfort. The claimant can be seen at the clinic or on a home visit; home visits can actually make the assessment more reliable. A questionnaire with the questions written may be sent prior to the examination so that the claimant can prepare. The report itself takes the expert about 2 hours in total to prepare and a turnaround of 2 to 4 weeks. Cost of report in the low hundreds is achievable for small value claims thus opening access to compensation. The used is straight forward language and avoiding technical jargon.

## Medicine's best kept secret?

Disability reports describe the claimant's condition (disability) with a greater level of detail than other techniques. Even where there has been an apparent full recovery many claimants continue to have unexpected persisting low level or intermittent impairments. Disability analysis considers every aspect of a claimant's condition so that it is unlikely that minor symptoms are missed. Over the last 20 years Personal injury PI reporting has been revolutionised with consistent quality reports and fast turnaround time. There is a great potential for Disability and Prognosis Reports to be standardised leading to similar changes in clinical negligence .

### Functional restrictions

- Carry / stack
- support / steady
- mobility
- bending
- exercise tolerance
- manual dexterity
- continence
- upright posture
- personal relationships
- emotional control
- social skills
- change tolerance
- motivation
- learning
- vision
- hearing
- balance / falls
- consciousness
- life expectancy