

Practice Principles

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Practice principles for occupational therapists/case managers working with Independence Works Ltd

The occupational therapist network members who work within this scheme are all fully qualified independent occupational therapists registered with the Health and Care Professions Council. Their registration can be checked on the HCPC website at www.hcpc-uk.org. Network members have committed themselves to observe the following principles in all work carried out within the scheme.

Professional decision-making and the duty of care:

- Occupational therapists on the network are all working independently and are expected to have the professional training and experience to do so. They should also have the business skills to carry out their role as specialist provider of services.
- Network members undertake to ensure that they maintain their professional development and training as required for professional registration, and to carry out their clinical responsibilities.
- Network members will carry out a holistic assessment, and design a rehabilitation plan to meet the client's needs. They will implement this to the best of their ability.
- Network members place great importance on individual professional accountability and continuity of professional care: they will maintain overall responsibility for the rehabilitation of each client on their case load and will not normally delegate or transfer this responsibility to others.
- Where it is impossible to implement a rehabilitation plan, network members will ensure that the reasons for this are made clear and that the consequences of any such failure are also made clear to both parties.
- As occupational therapists, network members will be clear and objective in carrying out their assessments, and understand clearly that their duty of care is towards the individual client. Their assessment and recommendations should not be coloured in any way by their beliefs or expectations about what either party to any litigation may want or expect.
- If (as is often the case), the way forward is unclear and a degree of exploration / investigation / trial and error is necessary, then the OT will make this clear within the report, but will always make a "balance of judgement" decision on how to proceed. This decision making process will be clearly mapped out in the report.
- Network members will keep both parties fully informed about relevant aspects of the client's progress through rehabilitation, while respecting the client's right to privacy in matters unrelated to the injury and litigation. In this respect they undertake to act within the spirit of the 2015 Rehabilitation Code.
- Networks members will implement rehabilitation plans with minor resource implications as promptly as possible. Major recommendations with significant resource implications will frequently require discussion between the OT and both parties: such discussions may be pursued in a formal or informal manner through letters, telephone contacts and emails, with the prime objective being to ensure that the client's needs are met and rehabilitation is progressed.
- If the OT is not happy with the action (or lack of it) that is agreed by either or both parties this will be made clear in writing to both sides with clarification of any adverse outcomes or increased risk: the occupational therapist cannot insist that a particular provision is made, but should keep pointing out the difficulties and risks that may arise from inaction or inappropriate action. Network members will follow their own judgement and take responsibility for their own decisions. In complex cases they may consult with colleagues.

- In the case of any complaint about a network member, the network member will themselves undertake to consider the complaint carefully and to make a full oral or written response as appropriate. All network members commit themselves to a formal complaints procedure which the complainant can follow if the complaint cannot be amicably resolved.
- Network members are aware that their role as “clinical case manager” within the litigation setting was clarified by the judgement of Wright v Sullivan, at the Court of Appeal on 27 May 2005. Essentially this judgement confirms the specific duty of care to the client / patient, while emphasising that good practice in litigation should be to encourage as much openness as possible.
- The Wright v Sullivan judgement confirms that clinical case managers should not be “beholden to two masters”. The panel members take the view that they are “beholden” to only one master - their clients - through their duty of care.
- Network members share the view that communication is essential, and are agreed that professional jargon can be a barrier to good communication. Network members are committed to endeavouring to make their reports as accessible as possible for all readers, including their clients and all other readers who may not be familiar with medical terminology or the wider context of health and social care and support.
- Network members are aware that recent court judgements have confirmed that courts expect that in all cases the potential availability of state provision should be considered so that the court can make informed judgements as to whether and to what degree this should be taken into account in the settlement.

The following extracts and comments are relevant:

- “The clinical case manager should owe her duties to her patient alone. She must win the patient’s trust and if possible her co-operation in what is being proposed, and while it will be in her patient’s interests that she should receive a flow of suggestions from any other experts who have been instructed in the case, she must ultimately make decisions in the best interests of the patient and not be beholden to two different masters.”
- The judgement also makes it clear at paragraph 27 that the case manager should be free to attend whatever meetings she considers are appropriate in the interests of her client / patient.
- Paragraphs 28 and 29 deal with the issue of openness. The judge regarded it as “desirable to encourage as much openness in the exchange of information and views as possible”. He commented at paragraph 31 “Failures in communication often create as much havoc in the field of litigation as they do in other walks of life. The claimant’s advisers did their client no favours by first saying that they “vehemently objected” to the defendant’s insurers’ quest for a greater degree of openness and then permitting suspicions to fester because they were not open about their dealings (or non-dealings).”
- The judges in Crofton v NHSLA 2007 said: “We would accept that there may be cases where the possibility of a claimant receiving direct payments is so uncertain that they should be disregarded altogether in the assessment of damages. It will depend on the facts of the particular case. But if the court finds that a claimant will receive direct payments for at least a certain period of time and possibly for much longer, it seems to us that this finding must be taken into account in the assessment.”
- Network members will, as part of their intervention, routinely investigate and clarify the statutory assistance that is available to the client.
- Network members will be proactive in deciding when rehabilitation is complete or when their involvement is no longer required or appropriate. If a case should be settled prior to the completion of rehabilitation or the provision of necessary ongoing assistance, the network member will make this clear to all parties.