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King's Bench Walk

Good Outcomes for Upper Limb Amputees

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Key Basic Essentials

- Establish his goals, emphasis is on "his".
- Could be for example return to work, or to reasonable prosthetic use, or to improving relationship issues within the family, or it may be easing money worries. Return to work is often prominent but caution needs to be taken in describing the present limits of what prosthetics can provide. Best done by clinicians but supported by lawyers.
- From the outset manage his expectations of the legal case. Give him your best estimate of length of time to settlement.
- Appoint a proactive case manager, go to a case manager who is an amputee specialist.
- Is pain, anxiety or depression prominent in his life, if so, it has to be addressed first.

There are no quick fixes

- Getting to an "optimal" prosthetic outcome takes time – could be 2 years from the amputation.
- Depression – pain relief – medication? Better fitting prosthetics?
- Giving the client a reason to feel better about themselves is important, confidence building is the key.
- I had a client for whom the answer was playing sport – improved his confidence , he became more positive, he engaged with his rehab.

Consensual Litigation

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- Ask yourself "Is it likely to work in this case?".
- A meeting with the opposition will quickly identify if it is possible.
- If it works , its great, speeds up a good outcome. It assists the client, yourself and the insurer. See if you can agree a case plan, fix on a sensible overall figure for interims (which can always be reviewed), agree stage payments and regular meetings plus rolling disclosure.
- If the insurer wants to control the case by drip feeding modest interim payments – then it will not work.

continued re consensual litigation

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- The insurer facilitates the rehabilitation , he does not control it.
- The insurer by regular meetings becomes better informed about the Claimant and his rehab.
- The insurer gets to ask questions of the Claimant's team, perhaps to prompt lines of enquiry that might have been missed, but he does not make the rehab decisions, save if the consensual route is not working.
- The Claimant gets to ask questions of the insurer eg delay in making payments or re breakdown in communications.

Types of prosthetics. Fingers/Thumbs/Partial Hands

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- Fingers and thumbs – "low but high" tech, seemingly simple, passive prosthetics, but highly engineered solutions available, see Naked Prosthetics, an American company, npdevices.com and what they offer. Part of their online marketing states "the average American makes 7,200 hand grasps a day". We take for granted the constant use of our hands and their digits.
- They offer solutions to clients who have often in the past been forgotten – who make do and mend perhaps with a cosmetic prosthesis, whereas with these prosthetics, if found suitable, they can get back real function.
- The cost of the prosthetics is not cheap but the solutions provided are quick to learn and easy to use, and change for the better the lives of our clients.

Osseo – Integration

- If there are real issues over insecurity of conventional socket fit, then the above is an option, but only after taking expert advice from rehab consultants, upper limb surgeon, psychologist and prosthetist. There are pluses and minuses. Pluses include, better loading of weight through the prosthesis, possible reduction in nerve pain, gaining a degree of proprioception. Minuses are infection, fractures, and uncertainties around how long before revision is required.

OI Continued

- Time from start of surgery to up and full use of the prosthetic depends on individual outcomes, sometimes it is not the OI components themselves but the myoelectrics that may cause problems eg the security of the contact.

- Cost around £30.000, is an indicator of estimated cost.

- Surgery is available at the Royal Free, London, Mr Norbert Kang has been prominent of late in this area, and also Dr Krkovic's unit in Cambridge also providing the service. The surgery is available also in the United States, Germany, the Netherlands and Australia.

Neuromotus

- This is a new treatment for phantom limb pain – uses the muscle actions within the residual limb to influence computer generated images of the missing limb.

Double-ups

- Justified re upper limbs re the likelihood of repair needs and delay in return of repaired parts. Prosthetic fingers especially prone to breakdown.
- Your prosthetic expert will usually give you a good steer in the case of a particular prosthetic part as to whether double ups are needed.
- Check with him re manufacturers' warranties and availability of loan units.

Sports and Hobbies

- This function is vital to well-being, and must be included in the prescription.
- Specialist prosthetics for specific activities e.g., quick release holds for handlebars, gym equipment, golf, shooting, swimming etc.
- A great range of activity can be catered for by the prosthetist.
- Consider to what age the prosthetic can be claimed to – Some could be for life.

Upper limb – examples of expenses specific to the injury

- Body image is important. Cosmesis is important. Everyone has their own take on the issue. Some clients like to have a very visible prosthetic, others don't.
- Extra cost of purchasing a new range of clothes- eg in some cases sleeveless clothes not suitable anymore.
- Transport– Lodgesons steering ball operating all indicators, brakes.
- An automatic gearbox, a hoist in the boot to lift bulky, heavy items.
- Large amount of boot space required in car – new car required? But the lawyer always needs to consider the "but for" considerations eg larger car would have been needed anyway, would a roof rack solve the issue.
- Wear and tear on the uninjured limbs – scans/surgery costs? Needs medical expert support, may justify care provision in later life.

Importance of trialling potential choices

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- If the client trials a prosthetic device and likes it you want to be in funds to enable its purchase – you have to have the money in place. The trial may be free of charge but the client wont be happy if he cant proceed because the funds are not available to make the purchase.
- On the choice to be made, the choice only has to be reasonable, that the defendants suggest some other device is not to the point, unless it provides a similar function at a lower cost. Even then patient choice is a powerful factor.
- In the Carpenter case (lower limb) the Claimant did not trial the Defence proposed prosthetic – relying on the advice of her treating prosthetist as to what was the best choice – held to be reasonable decision.

The importance of being in sufficient funds

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- The manufacturers will be willing to lend trial units for the client to try out.
- Once the client has made his decision, which may take a few weeks, he will want to purchase the particular prosthetic then and not wait for settlement which may be some time off.
- As the solicitor you have to have the funds available, so make the interim payment application early. In consensual litigation this will have been agreed and not present a problem.
- Do not rely on the goodwill of the insurer – if he lets you down, you then have delay in getting funds. Puts back the rehab, loses the confidence of the client.

The principles behind the assessment

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- Warby J in A v University Hospital of Morecambe 2015 EWHC 366.

" In determining whether a claimant's reasonable needs require a given expenditure, the court must consider whether the same or substantially similar results could be achieved by other less expensive means."

At para14/15 he rejected a costs/benefits analysis as at odds with the basic principles of the law of tort to put the claimant back as far as money could to his pre-accident condition.

See Carpenter v Swift at first instance paras 29 -36 good example.

Continued

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What is reasonable

- See HHJ Curran QC sitting as DHCJ in Miller V Imperial College 2014 EWHC 3772 (QB), a lower limb case, CI to be returned to her pre accident position needed a prosthesis which had key qualities -
- 1.which gave her the most natural and comfortable means of walking
- 2.was the least tiring
- 3.safest in preventing falls
- 4.gives confidence in standing and walking.
- Similar principles must cross apply for upper limb cases. In practice the qualities are subjective to the Claimant, what he finds most useful is likely to be what the court will agree to.

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Cost? Is it relevant

- Para 94 in Miller "… in the assessment of damages, proportionality has a very small part to play (see Rialis). It is correct that if no measureable and significant gain could be shown to accrue from the use of a particular prosthesis, it might well not be reasonable for it to be chosen."
- In preferring the Claimant's case for a Genium knee as oppose to an Orion knee as argued for by the Defence the judge found at para 101 that - **the ability to step backwards when answering the door, as provided by the Genium was neither marginal nor subjective but was a matter of "real validity".**

The client's preference

- Small details of preference matter and may decide whether the Claimant's choice will win the day.
- See the Miller v Imperial College case previously mentioned.
- See Swift v Carpenter Lambert J - the ability of the preferred prosthetic to have an adjustable heel height.
- With myoelectric hands clients may find using one prosthetic easier than another – one may have 20 functions another may have only 4 or 5 but the client feels it is easier for him to use, it's a matter of patient choice, each has to be tried to make an informed choice. Michaelanglo, Be Bionic, I-limb, and now the Taska hand.

the rotator wrist

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- Each hand is used with a rotator wrist. There are now lightweight wrists available.

- For example, the BeBionic hand comes with the matching Bebionic wrist.
- The Taska hand can be matched with the Otto Bock lightweight wrist.

- The weight of the overall package is an issue but does not normally present a problem.

Provisional damages

- If the client has not yet come to amputation, and you are uncertain when the elective amputation will occur, say it may be in 10 years time , claim provisional damages.
- There are cases reported where provisional damages have been awarded re amputation eg **Butler v MOJ 2015 EWHC 3384**.
- I have encountered a counter schedule aserting that an elective amputation is not a "serious deterioration" but an improvement in condition.
- Erroneous, think what is to incurred - phantom limb pain, neuropathic pain, general fatigue, wear and tear on contra lateral limb, psychological problems.

Elective amputation

- The key message is that the client has to come to his own decision – he must take his time and be ready for the operation.
- It usually will be led by treating clinicians having tried other means of saving the limb, concluding that for the patient's quality of life he should have an amputation.
- If any doubt, seek a second opinion from an independent expert.
- Get client to visit a rehab consultant, clinical psychologist and a private prosthetist, the latter may be able to introduce an appropriate amputee to the client beforehand to talk through the amputee experience.

Continuation

- If the client is still not ready for amputation, but the advice is he will have to come to it, present the schedule of loss on the basis that on the balance of probabilities the client will have the amputation within whatever is the appropriate timescale – 1,2 or 3 years hence.
- There have been successful claims for professional negligence against solicitors for proceeding too quickly and without taking sufficient safeguarding steps to elective amputation.

Case management

- Case management in amputee cases is usually for a short number of years – not for life. This need is in the acute and rehab phase, and can be towards end of life, but this is usually lower limb cases, when care needs may be high.

- Useful to have a proactive case manager during the rehab stage where a client's high levels of anxiety may lead to avoidant behaviour, such that on his own nothing would get done.

Use a Rehab Consultant

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- It is my view that this expert is the lead expert in an amputee case. He will advise on all aspects of the case – the level of care required, employment potential, the need for accommodation to be suitable for the client's needs, managing fatigue and the energy levels, degeneration towards the end of life. If appropriate he will support the prosthetist's prescription.

- The rehab consultant will also advise on - wear and tear on the contra lateral limb – research suggests it is probable – it will impact on the care claim.

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- The expert will advise on life expectancy, not usually affected in a non disease amputation from a PI cause.

Covering the cost of future scientific advances

- To make the claim would require historical analysis of year by year costs increasing not reducing – best would be manufacturers evidence, but expert in prosthetics can do it if the data has been collected over time.
- Ideally you need manufacturer's support – but not seen a case where such has been available.
- The argument against is that in the future the costs may come down not up. It has not been seen over the thirty years I have been working in this field that that has happened.

Periodical Payments

- Not appropriate for the cost of prosthetics.
- You cant index the cost of the prosthetic to any known form of indexation, the costs can rise exponentially and are unpredictable.
- You cant fix the payment to a named brand – the law doesn't allow it nor would you want to tie the Claimant to one provider.

Accommodation

- This is a complex issue in an upper limb case. It may or may not be justifiable. It will depend upon whether the rehab consultant supports the need. In a risk of falling on stairs scenario, whether ascending or descending – could one reasonably expect the client to be able to operate the hand in time.

- Generally, resolving the accommodation issue enables the client's mood to lift and his engagement increases.

- Sometimes adaptions and extensions are all that is necessary.

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- Swift v Carpenter. No appeal.

Pain management/Phantom Pain/ CRPS/Osteomyelitis

- There will usually be a pain clinic linked to most NHS limb fitting centres and most treating rehab consultants will refer.
- Phantom limb pain as a generalisation usually reduces over time. TMR is effective re phantom pain, Neuromotus a new treatment.
- Medication - Gabapentin, Pregabalin, hypnosis, mirror therapy, CBT may all help, but in some cases the pain is intractable.
- CRPS cases and amputation are complex, and great caution needs to be exercised in going for the latter, given CRPS can recur post amputation. Seek expert independent advice.

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