

# COMMISSION GUIDELINE 5

(amended June 2002)

## DIRECT CONTACT WITH CLAIMANTS WHO ARE LEGALLY REPRESENTED

The Commission acknowledges that many claimants engage a solicitor to act on their behalf and this relationship is to be respected by all parties. All communication should be directed to the claimant's legal representative and not directly to the claimant. The Commission expects that all written and verbal communication will be conducted in a professional manner that demonstrates respect for all parties, in particular the claimant.

However, the insurer may wish to contact legally represented claimants in certain circumstances. In doing so, the insurer should adopt the following procedures.

### **1. In relation to rehabilitation matters:**

The insurer may make direct contact with a legally represented claimant to investigate the need to provide rehabilitation and the establishment of rehabilitation treatment.

This contact is supported by the Commission provided that:-

- i. the insurer has first given notice to the claimant's solicitor by letter, phone, fax or e-mail; and
- ii. the insurer provides the claimant's solicitor with a copy of any correspondence or record of oral communication conducted under an authority to obtain information and any reply received.

**2. In relation to matters other than rehabilitation:**

- (A) The insurer may make written direct contact with a legally represented claimant on initial receipt of the completed Section 37 notice for the purpose of seeking the claimant's written consent to be copied in on correspondence that is being sent to the claimant's solicitor.

This contact is supported by the Commission provided that:-

- i. the contact must be in writing;
- ii. the insurer seeks written consent from the claimant to provide the claimant with a copy of correspondence to the claimant's solicitor;
- iii. a copy of this initial correspondence and all other correspondence is forwarded to the claimant's solicitor at the same time the correspondence is forwarded to the claimant;
- iv. the insurer makes no further contact with the claimant unless the claimant has signed, and returned to the insurer, consent for the insurer to contact the claimant again or the conduct of the claim by the claimant's solicitor results in the need for part 2(B) of this guideline to be followed; and
- v. should the claimant accept the insurer's proposal, only a copy of correspondence without enclosures, be forwarded.

**And/Or**

- (B) Send the claimant a copy of correspondence sent to the claimant's solicitor when:

- a) a meaningful response from the claimant's solicitor has not been provided; and
- b) a reminder letter has been sent to the claimant's solicitor; and
- c) 14 days has passed from sending the follow-up reminder letter.

This contact is supported by the Commission provided that:

- i. At the same time that a copy of correspondence is forwarded directly to the claimant, the insurer is to advise the claimant's solicitor in writing that this action has been taken; and
- ii. The insurer should revert to sending all correspondence to the claimant's solicitor once a meaningful response has been received. However, Item 2(B) remains an ongoing option available to the insurer if the above circumstances re-occur.

This Guideline does not presume to over-ride any legislative timeframes. Where there is a legislative time period within which a response can or is to be made, that time period must be respected.

Lesley Anderson  
Insurance Commissioner  
Date: 27 June 2002

First Issued: 18 October 2001