



**NINESTJOHNSTREET**  
**PERSONAL INJURY**

## **Brown v Alexander**

**HHJ Wood QC, High Court,**

**18 July 2018**

### **CASE UPDATE**

**By Michael Lemmy**

**8 August 2018**

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## **Brown v Alexander [2018] High Court (Liverpool)**

### **Background**

This case marks an important decision concerning the Immediate Needs, Assessment Privilege and the Rehabilitation Code 2015.

Michael Lemmy represented the Defendant before His Honour Judge Graham Wood QC sitting as a Judge of the high Court concerning the Rehabilitation Code and the privilege that attaches to the Immediate Needs Assessment.

Paragraph 8.7 of The Rehabilitation Code 2015 provides that the Immediate Needs Assessment report will be deemed to be covered by legal professional privilege.

The Defendant argued that in the case of a catastrophically injured Claimant each subsequent assessment of her needs and recommendations for further rehabilitation should be regarded as an Immediate Needs Assessment report and subject to legal professional privilege.

### **Decision**

HHJ Wood QC rejected that argument and found that legal professional privilege only attached to the first INA and that subsequent rehabilitation and assessment reports may be used in the litigation process.

### **Comment**

There will be cases when insurers and Defendant solicitors wish to continue funding rehabilitation but may have concerns about subsequent rehabilitation and assessment reports being used in the litigation process as evidence against the Defendant.

Insurers are referred to paragraph 8.8 of the Rehabilitation Code 2015 that expressly provides that it is open to the parties to agree to extend the provisions of the Code beyond the INA to subsequent reports.

It is suggested that insurers should, in appropriate cases, obtain the Claimant's agreement to subsequent rehabilitation and assessment reports being subject to privilege in the same way as the INA in order that the insurer continues to fund any rehabilitation that is recommended.

Michael is available to discuss the impact of this decision on rehabilitation and tactics in catastrophic injury cases.

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