

The Solicitors were referred to Lord Denning's words in *Kelly v. London Transport Executive* (1982) –

“These then are the duties of Solicitors who act for legally-aided clients. They must enquire carefully into the claim made by their own legally-aided client so as to see that it is well-founded and justified, so much so that they would have advised him to bring it on his own if he had enough means to do so, with all the risks that failure would entail.”

List of Cases:-

*Esther Alcock and Others v. Liverpool City Council and Another* 1988 (Unreported)

*Simaan General Contracting Co. v. Pilkington Glass (No 2)* (1988) 1 All ER 791 CA

*Greater Nottingham Co-operative Society v. Cementation Piling and Foundations Ltd.* Times 28.3.1988.

*I.B.A. v. E.M.I. and B.I.C.C.* (1980) 14 B L R 1

*Dutton v. Bognor Regis U.D.C.* (1972) IQB 373

*Anns v. London Borough of Merton* (1978) A.C. 728

*Hedley Byrne & Co. v. Heller and Partners Ltd.* (1963) 2 All ER 575

*Junior Books Ltd. v. Veitchi Co. Ltd.* (1982) 3 WLR 477

*D & F Estates Ltd. v. Church Commissioners for England and Wales* (1987) 36 BLR 72

*Greater London Council v. Cleveland Bridge and Engineering Co. Ltd.* (1986) 8 Const. LR 30

*Kelly v. London Transport Executive* (1982) 2 All ER 842

## **ACCESS TO MEDICAL REPORTS ACT 1988** **By Mark L Dawbarn, Solicitor, Cannon Lincoln Group**

This Act comes into force on 1st January 1989 and will add yet further to the burden of legislation with which the financial services industry is having to comply. There has always been a measure, not of conflict, but perhaps of tension, between the Life insurance offices and the medical profession, arising out of the differing need of insurers for medical information. Certainly the Act will make it much more difficult for them to obtain reports and may cause medical practitioners to be unforthcoming when the information is provided.

The Act applies to reports given by registered medical practitioners relating to the physical or mental health of patients under their care. Patients have rights of access to such reports if they are required for the purpose either of an insurer who is considering entering into or has previously entered into a contract of insurance with the patient, or by an employer, prospective, present or past. (Employment seems to have a wide meaning).

The Consent of the patient is required before the insurer may apply for the report. This of course has always been standard practice as no medical practitioner would supply information without consent. There are however additional requirements on the insurer who has to follow certain requirements laid down in the Act.

1. On deciding that a report will be sought the insurer must notify the proposer of that fact and of the proposer's right to withhold consent. He must also notify the proposer of his rights of access to the report, of certain limitations on those rights and of his right to prevent submission of or append comments to a report with which he disagrees.
2. Having given the notification above, the insurer may now obtain the consent of the proposer to seek the report.
3. Armed with the proposer's consent the insurer may apply to the medical practitioner for the report. The practitioner must be informed, if such be the case, that his patient has requested access and be warned not to supply the report unless he has given his patient access to it or 21 days have elapsed. (This potential delay to the issue of business is not likely to be received with open arms by intermediaries or insurers).
4. If access has not been requested by the proposer at the stage where the medical report is sought (at 3 above) the proposer still has the right (of which he will have been informed under 1 above) at any time before the report is supplied to notify the practitioner that he requires access, and he can exercise that right at any time within 21 days of his notification.
5. The medical practitioner must retain copies of reports for at least 6 months and patients have rights of access during that time.

Insurers will still be able to obtain independent reports without following these procedures and may find it convenient to do so in increasing numbers of cases.

Claims as well as initial reports are covered by the Act, although it cannot have any relevance on the case of a claim on the death. The provision will apply in the case of claims under sickness and accident policies. The insurer will in those cases have to rely on the insured's obligation to provide evidence of his disability, to ensure that he received adequate information.