

The personal injury protocol

Introduction

As your case is a Personal Injury case, it will be conducted in accordance with the Personal Injury Protocol which sets out a number of steps each of the parties to the claim must take before they consider starting Court proceedings.

The aim of the Personal Injury Protocol is to encourage settlement of claims without the need to commence proceedings in Court.

Settlement is encouraged by promoting openness between the parties and co-operation in the process of obtaining the evidence necessary to value the claim.

The Overriding Objective

It is important to stress at this stage that in all Civil Litigation, including Personal Injury Litigation, the Court and the parties must always seek to give effect to the Overriding Objective, which is to enable the Court to deal with cases justly. The Court Rules confirm that dealing with a case justly would include, so far as is practicable:-

- 1 ensuring that the parties are on an equal footing;
- 2 saving expense;
- 3 dealing with the case in ways which are proportionate -
 - b to the amount of money involved;
 - c to the importance of the case;
 - d to the complexities of the issues and
 - e to the financial position of each party;
- 4 ensuring that it is dealt with expeditiously and fairly;

- 5 allotting to it an appropriate share of the Court's resources, whilst taking into account the need to allot resources to other cases.

It is impossible to advise in this Fact Sheet all the various implications that the Overriding Objective may have in your case but, for example, it may mean that the Court will prevent the parties from obtaining evidence to prove an expense or loss if it considers the cost of obtaining that evidence will exceed the total value of the loss or expense.

You will be advised throughout the course of your case when the Overriding Objective is likely to have an impact upon how your case is conducted and how your claim is formulated.

The Protocol

The steps we will follow in initiating and pursuing your claim are as follows :-

- 1 Your claim will be initiated by a Letter of Claim which will be sent by us to the Defendant and to his/her insurance company. That letter will include sufficient information to enable the Defendant and his/her insurance company to appreciate when, where and how your accident occurred, together with a summary of the injuries you have suffered.

In order to successfully claim compensation on your behalf it is necessary for us to prove that your accident and injuries were caused by the negligence and/or breach of statutory duty of the Defendant. Or, in other words, we have to show that someone was legally at fault.

Head Office

3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 549884

Thames Gateway

The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

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It may be the case that the Defendant is "at fault" in one or more ways and our Letter of Claim must set out in as much detail as possible the reasons why we feel the Defendant is at fault. These reasons are known as "allegations of negligence and/or breach of statutory duty".

The Letter of Claim must also give an indication of any financial loss or expense incurred and continuing as a result of the accident. If you have been able to provide us with full details of your loss and expense at your initial interview then a list of your losses and expenses (known as a "Schedule of Special Damage") will be sent to the Defendant with the Letter of Claim.

If we are acting for you under a Conditional Fee Agreement backed by an "After the Event" insurance policy, we have to give notice to the Defendants that it is our intention to recover the success fee and the insurance premium from them in the Letter of Claim.

The Letter of Claim is obviously a very crucial document and it is important that the information in it is as accurate as possible. For this reason, a draft Letter of Claim will be sent to you for your approval before it is sent to the Defendant. Upon receipt of the draft Letter of Claim you should consider it as quickly as possible and if there is anything in the Letter of Claim which is inaccurate in any way you should let us know.

- 2 Once the Letter of Claim has been sent to the Defendant he, or his Insurers, should acknowledge receipt within 21 days. If they do not do so then we would

be entitled to commence Court proceedings on your behalf, although we are more likely to enquire as to the reason for the delay before taking that step.

- 3 Once the Defendant has acknowledged our Letter of Claim he has a maximum of 3 months to investigate the claim and to respond to us. In the response the Defendant should say whether or not he accepts that he was at fault (known as "accepting liability"). If he does not accept that he was at fault he has to provide us with a detailed explanation for his denial. In addition, if he denies that he was at fault then he must enclose with the letter of reply any documents that are relevant to the issues in dispute and which may help or hinder his case.

It may be the case that the Defendant accepts some blame but he also feels that you are partly to blame for the accident and the injuries suffered. In those circumstances the Defendant will have to give a full explanation as to why he considers you partly to blame and, again, if there are any documents relevant to that he must provide these.

- 4 The procedure following the Defendant's reply will depend upon whether the Defendant accepts or denies liability.

If the Defendant accepts liability

Where the Defendant accepts liability the parties can turn their attention to obtaining evidence necessary to value, or quantify, your claim. To quantify your claim two types of evidence will be necessary. Firstly, evidence to prove any loss or expense which has been incurred as a result of the accident and,

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secondly, medical evidence to explain exactly what injuries you have suffered, the treatment you have received and the extent to which you will, or will not, make a full recovery.

You will have been asked to collect documentation to prove your losses and expenses from the outset and at this stage hopefully we will have been able to prepare a Schedule of Special Damage on your behalf. That Schedule, together with the documentation in support, will be served upon the Defendant's Insurers as soon as it is complete.

Before we instruct any medical expert we have to provide the Defendant's Insurers with a list of suitable experts and they then have 14 days within which they can object to one or more of the experts on our list. (In practice, we will include our list in our initial letter of claim wherever possible.) We must then instruct an expert who is acceptable to the Defendant. If the Defendant's Insurers object to all the experts on our list then we are able to instruct an expert of our own choice and in that case it may be necessary for the Court at a later stage to decide whether either party has acted unreasonably in the process of obtaining medical evidence. If the Court did decide that we had acted unreasonably then we may not be able to recover the cost of instructing that expert but if we do feel that there is a risk that the Court will take that view we will of course advise you and discuss this with you before proceeding.

If we go ahead and instruct an expert who is acceptable to both parties, once

we have received the expert's report we must serve it on the Defendant if it is our intention to rely upon the report as evidence in support of your claim. Each party is then allowed to ask the expert questions to clarify the contents of the report.

The Protocol provides that the Claimant, i.e. you, pays for the medical report itself and the additional cost of the expert replying to questions is to be borne by whichever party asks the questions.

Once medical evidence has been obtained, if the medical expert does feel that your injuries have stabilised and he can advise confidently upon how the injuries will affect you in the future, the parties can then proceed to discuss settlement of your case. Clearly the hope is that a satisfactory settlement can be achieved but if this is not possible then we will advise you as to whether or not you should commence Court proceedings against your opponent.

If the medical expert cannot advise with any certainty how your injuries will affect you in the future then it may be necessary for us to defer settling your claim for a time and to instruct the expert to prepare a further report after a certain period, i.e. six months or twelve months. If that happens we may, however, be able to negotiate an interim payment from the Defendant's Insurers to reimburse you for your loss and expense to date. It may also be the case that the medical expert recommends further medical investigations or treatment and in those circumstances we may be able to ask the Defendant's Insurers to pay for those investigations or treatment.

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If the Defendant denies liability

Where the Defendant refuses to accept that he is at fault then we will need to consider carefully the reasons he has given and any documentation served in support of his case. If, after considering the Defendant's response and documentation, we do not think that your case will succeed you will be advised accordingly and your case will most probably be brought to an end. If, on the other hand, following review of the reply we do still consider that your case will be successful, we will probably advise you to commence Court proceedings. Before we take that step it may be necessary for us to obtain more evidence in support of your claim, for example additional witness statements or additional documentation and it may be necessary for us to obtain an opinion on the merit of the claim from a barrister.

If we do advise you to issue proceedings then you will be provided with further information explaining what will happen next and the implications of commencing Court proceedings.

Why Follow The Protocol?

It is intended that the steps set out above become the normal and reasonable approach to Personal Injury claims. If we

do not follow the Protocol, if Court proceedings are subsequently commenced on your behalf the Court can take into account that the Protocol has not been followed and that could have adverse consequences. The Court will not be concerned with minor variances from the Protocol, i.e. if time limits are extended for short periods for good reasons, but may, for example, decide that Court proceedings have been commenced when they should not have been and even in circumstances where you win the case the Court may not allow recovery of certain costs.

This information sheet has been prepared to highlight some key issues relating to the Personal Injury Protocol. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at May 2009 and may be affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Jonathan Clement by email at jonathan.clement@ts-p.co.uk or call on 01892 510000.