

APPENDIX

Supervisor to indicate here how often this file is to be reviewed.

CASE PLAN

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|--|--|--|--|
| <i>Name of client:</i> | | <i>Fee Earner:</i> | |
| <i>Adult or Minor:</i> | | <i>Previous fee earners if any, in order:</i> | |
| <i>Ledger No:</i> | | <i>LIMITATION DATE:</i> | |
| <i>Accident Date:</i> | | <i>Is Primary Liability OPENLY Admitted? (ie NOT merely without prejudice)</i> | |
| <i>Date client instructed us:</i> | | <i>Are they arguing Contributory Negligence:</i> | |
| <i>Town/Location of Accident:</i> | | <i>Are they arguing re Causation:</i> | |
| <i>Have you checked on Google earth street view?</i> | | | |

(TO BE USED AND RE-USED THROUGHOUT THE CASE AND TO ACCOMPANY ANY RECOMMENDATION TO ISSUE OR CLOSE)

Has the client ever complained in any way?

1. **BRIEF CIRCUMSTANCES/PARTIES**

- a) **Type of Accident?:** RTA, Slip & trip, Work, Holiday, Animal, Other (please state)
- b) **Facts/circumstances**
- c) **Name of Main Defendant** (give full name and status) =
- d) **Other possible alternative/concurrent defendants?** (give name, role and brief reason to blame them).
- e) **Have they indicated any defence or expected defence? If so, what? Does it seem valid / true / realistic?**

PROVING OUR OWN CASE

2. **DUTY**

- a) **Define the duty or duties** – firstly where it comes from and then what it is, (eg general duty under Occupiers Liability Act, and specifically to install and maintain a door closer to prevent the door slamming NB Don't discuss breach)
- b) **Who** owes the duty(ies) (are you sure it is the Defendant or could it be someone else?)
- c) **To whom** is the duty owed? (is our client definitely in this group or category?)
- d) **In infant** cases, have you considered whether the parent(s) themselves could be to blame?

3. BREACH

- a) Specify what the Defendant did that he shouldn't or didn't do that he should have. NB No fancy words or section numbers – just set it out in simple basic words eg:
- a) The Defendant's employee spilled some vegetable oil on the floor.
 - b) Employee didn't clean it up and
 - c) Didn't put up warning sign and
 - d) Didn't alert our client
 - e) Defendant had a system which made it likely that oil would be spilled
- b) Evidence of there being a breach
- c) Are you sure that it was done / not done by the defendant(s) you are pursuing (rather than by somebody else)
- d) Do we need any non-medical expert evidence? Who from?
- e) If so, to prove what?

4. CAUSATION

- a) How/why do you say that the breach(es) you're alleging caused the client's accident.

NB Many of you misunderstand this section. It's not about proving there's a breach or about whether he's really injured. It is asking whether the client would still have been injured, i.e. would not have avoided injury, even if the Defendant had not done the wrong thing you are complaining of or had provided the thing or the training etc that you say was missing. For example if we alleged that there was insufficient training but it is shown that even if he'd had reasonable training this would still have occurred. In other words, it may be that there are breaches, but they didn't cause the accident/incident. Another example – in an RTA the Defendant's car may have had bald tyres. There's a clear duty to have adequate tread and it's a breach (and a crime) not to. But, if the RTA was on a dry day then bald tyres are an advantage. They give more grip, not less. So bald tyres can't have caused the RTA. They would only do that on a wet day. Please apply this same logic to consider causation in your case.

- b) Also, did the accident cause the symptoms? i.e. would he have had some/all of the same condition / symptoms anyway?

I.e. are there pre-existing illnesses, degenerative conditions, etc or previous accidents or other circumstances that could equally / better explain the injury / symptoms? (OR some of them) Example – A man has got a bad back but his Dad had a bad back and he himself has a history of back pain. Things like that should alert you to check out whether the current symptoms come from a pre-existing condition/propensity and therefore would have occurred anyway even without the accident. Be alert to this possibility and ask the expert to comment on it.

5. LOSS

- a) Do the generals exceed £1,000? What are they realistically? (ie assuming 100% liability). (Don't just say "fast track" – give a rough estimate based on current knowledge of symptoms to help us gauge how weighty the quantum is).
- b) OR is it a child/mental patient? NB (even infants' generals now need to go over £1,000)
- c) What are the special damages? Is the schedule complete? Yes/No

Loss of Earnings (consider whether these are reasonable/unavoidable) NB Do you think it's possible that the client has remained out of work longer than his injuries justify? Is he now failing to mitigate his loss by getting a new job and/or returning to his own job and/or lighter duties?

NB - Does the client's employer require sick pay to be repaid? (i.e. if they aren't the Defendant).

Handicap on the labour market?

Travel?

Care and assistance claim?

Medical expenses?

Other?

- d) *How real / realistic are each of these?*
- e) *Are any of the losses unlawful in any way? (e.g. working without paying tax, immoral earnings, etc?)*
- f) *What / where is your evidence for the losses?*
- g) *For the losses generally has the client properly mitigated his losses?*
- h) *Is any additional medical expert from any other discipline needed? If so, why?*
- i) *What efforts have been made to settle?
(Have you tried the settlement team?) Yes/No
(If so, what happened?):*

6. EVIDENCE

What have you got so far?

- a) *Photographs – of what?*

Who took them?

When were they taken?

Quality / relevance? (i.e. are they good enough to prove breach?)

Do we need more/replacements?

- b) *Witnesses*

| <i>me(s)</i> | <i>What key ingredients they can show/prove for you</i> | <i>Statements</i> | <i>Obtained?</i> |
|--------------|---|-------------------|------------------|
| | <i>NB Set these out in bullet form beside each name</i> | | |
| 1. | | | <i>Yes/No</i> |
| 2. | | | <i>Yes/No</i> |
| 3. | | | <i>Yes/No</i> |
| 4. | | | <i>Yes/No</i> |

NB Remember you will need to serve witness summonses.

- c) *Have you obtained voluntary disclosure of all relevant documents from the Defendant in accordance with the pre action protocol?*
- d) *What do the documents show/suggest/prove? (set out key facts/points)*
- e) *Have you checked and understood the documents and considered whether any are missing? If so, what is missing?*
- f) *Do any questions or lines of enquiry emerge? (Set them out)*

- g) Do other documents now seem to exist and to be relevant as a result of what you've seen on disclosure? Have you sought to get these?
- h) What are they – i.e. what are you requesting? (List them).
- i) Is an Application for Pre Action Disclosure of Documents appropriate here?
- j) Are there any OPEN admissions? If so, of what and from whom? Are they capable of being retracted? i.e. is this multi track?
(NB If admissions have been made without prejudice then say so here – because that alters how we treat them, because they can be retracted even in a fast track case. If so, your position could be harmed if you've relied on a WP 'admission' and failed to gather evidence).
- k) Have you done a Notice to Admit Facts?
- l) Have you served/should you serve requests for further information? If so, what? - set out the requests in brief.
- m) How strong/credible/consistent is your overall evidence?
- n) Do you believe the client and why/why not?
- o) Have we instructed a doctor? (if so when and what type of expert?)
- p) If you've not instructed a doctor yet, set out why not
- q) Does the medical evidence support the client's injuries?
i) in terms of being real/genuine?
ii) in terms of causation?
- r) Do you feel you need any other medical evidence/report and if so why? E.g. MRI, x ray, updates, questions to expert, etc?

7. CONTRIBUTORY NEGLIGENCE

- a) Is contributory negligence alleged/likely to be alleged?
- b) If so, why? What do they say our client did that was wrong/negligent /foolish?
- c) Even if contributory negligence is not yet alleged, analyse the question of whether there is contributory negligence as if you were being asked to produce an imaginary letter of claim against our own client. (Think in exactly the same way as if he was a defendant and identify the duty, the breach and whether there's causation, i.e. did his own error/foolishness actually cause the accident. Remember, they need to show he did something wrong himself and that it caused or helped cause his own accident? If you can't show this, they probably can't.)
- d) Having done the above exercise, does the alleged or potential contributory negligence seem real/valid?
- e) How significant was it? What percentage would the quantum be reduced by and why?

8. OPPONENT / FUNDING / LIMITATION

- a) Is the Defendant insured? (If not can he pay personally?)
- b) If the Defendant is a business, is it solvent? Will it be able to pay the excess on its insurance? Do you know whether there is an excess and, if so, how much?

- c) *Is the Defendant an insolvent company which has now been removed from the Roll at Companies House? If so, you'll need to get it restored to the Roll before you issue proceedings*
- d) *Is it an MIB case? (IF SO, NOTE STRICT NOTICE REQUIREMENTS – SEE SUPERVISOR) NB Note also 9 month limitation period in MIB cases.*
- e) *Do you have the Defendant's correct and full name and category?
(eg individual, sole trader, partnership (ie a firm) limited company, charity, Local Authority, Chief Constable, County Council, Secretary of State, etc)*
- f) *What is the attitude/nature/character of the Defendant/TPI? How determined are they?*
- g) *If the Defendant is a limited company, is it part of a group of companies – if so are you sure you are suing the right one?
(Consider suing more than one, or even all, if in any doubt)*
- h) *Have you done a Company search?*
- i) *What Part 36 Offers are there and when?
Ours = £
Theirs = £*
- j) *Does the difference justify issuing proceedings?*
- k) *Are you giving any / sufficient discount ie for contributory negligence and/or losing outright ie for “litigation risk”? (ie on top of, and separate from, the risk of getting quantum wrong).*
- l) *What is your realistic valuation of quantum (assuming 100% liability).*
- m) *What has the client authorised as a minimum?*
- n) *What are the other side alleging / saying about quantum / mitigation of loss / medical causation?)*
- o) *Do you have answers to what they allege? If so, what?*
- p) *What do you need to be able to answer / rebut – ie what would you need to prove / disprove and how? i.e. what other evidence could you possibly get / use?*
- q) *Have you given Julie a copy of the limitation date notice (CDN 1) for this case? Yes / No*
- r) *Have you notified her in writing of any notices of changes to the limitation date (CDN 4)? Yes / No*
- s) *Please state the date when the limitation date notice was last checked / reconsidered (i.e. in case things have changed since it was first completed. This should be checked regularly throughout the case especially if the injuries were caused by a process rather than an event – in such cases be cautious and calculate from the earliest possible date i.e. from when that process began, not when it ended):*
- t) *NB Have you checked that the entries in the client's medical records tally with when he says the accident was? If it differs, see supervisor re changing the limitation date on the computer.*

9. CLIENT CARE

- a) *Has the client ever complained or grumbled in any way? (even informally)*
- b) *If so, what about? And when?*
- c) *Have you had contact with the client by letter or phone at least every 4 weeks throughout the case without exception? If not, set out the dates of each contact with to the client*
- d) *What fee earners have had conduct of this file – (set out initials and approximate periods of ‘ownership’ if more than one fee earner).*
- e) *Have you filled in a blue form for change of fee earner? Yes / No*
Has this been given to Carrie? Yes / No

10. YOUR HANDLING OF THE FILE/YOUR CONCERNS

- a) *Is the file a ‘bogey’ file in any way? (please say so openly and early on*
- b) *Do you feel you understand what to do? i.e. are you comfortably within your depth? Yes / No*
- c) *Is there anything you don’t understand or are worried about? If so, what?*
- d) *How is your relationship with the client?*
- e) *Has the file been neglected/drifted at any point – if so when / for how long / why?*
- f) *Would you like us to transfer the file to a colleague? Yes / No*