

**LEVEL 4 - UNIT 9 – PREPARATIONS FOR PERSONAL INJURY TRIALS
SUGGESTED ANSWERS - JANUARY 2017**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

Question 1

- (a) As the claim is worth more than £25,000 it will be dealt with under the Pre Action Protocol for Personal Injury Claims. This sets out various matters that the claimant has to deal with.

The protocol does require the claimant to consider early notification of the claim. However, in this case, the key step is to send two copies of a letter of claim to Chris Mc Innes / the campsite.

We should also notify the defendant of the medical expert that we wish to instruct. This could be done in the Letter of Claim or later. With respect to the claimant's medical condition we should also consider rehabilitation.

More generally, we should keep in mind the possibility of ADR.

- (b) If a Letter of Notification of Claim has been sent, this should be acknowledged within 14 days of receipt. Chris McInnes should send the letter of claim to his insurers within a maximum of 7 days from receipt.

Chris McInnes or his insurer must then acknowledge receipt within 21 calendar days of the posting of the letter and confirm the identity of the insurer.

If Chris McInnes fails to respond, we can issue proceedings without further recourse to him.

If he does reply, the defendant then has three months from the date of acknowledgement of the claim to provide a substantive response to the claim.

The defendant also has 14 days in which to respond to the nomination of the medical expert.

- (c) Guidance on the contents of the medical report is set out in the standard letter of instruction in Annex D to the Pre Action Protocol for Personal Injury Claims.

This asks the doctor to provide details of the relevant pre-accident medical history, the injuries sustained, the treatment received and the present condition particularly the capacity for work.

The doctor should also give a prognosis. This should identify areas of continuing complaint or disability, when these continuing symptoms are likely to resolve, their impact on daily living and the cost of any further treatment.

(Credit was given for those candidates who mentioned the statement referred to in the letter of instruction or the statement of truth. Equally, candidates who referred to the requirements of part 35 were given some credit for this).

- (d) The necessary requirements are set out in Practice Direction 16.4.1. This states that the Particulars of Claim must contain the claimant's date of birth and brief details of the claimant's injuries.

A copy of the schedule of special damages should be attached as should a copy of any medical evidence upon which the claimant is seeking to rely.

Question 2

- (a) The first step here would simply be to ask the defendant to let us have a copy of the quote on the basis that it falls within the requirements for standard disclosure. If they refused, we should then make an application for specific disclosure under CPR 31.12.

We would therefore have to prepare an application notice specifying that the defendant should disclose a copy of the quote. The application would have to be supported by evidence in the form of a witness statement and we would also have to set out the grounds for the application.

In this case, we would rely on the information we have been given by Bill Cotton to show that the defendant had received the quote and it supported our case.

Credit was also given to candidates who indicated that we would have to make an application in this case as Mr Cotton had not retained a copy of the quote.

- (b) Here, we would have to satisfy the requirements of PD25B.2.1, which gives details of the evidence we would need to present. In order to do this, we would have to prepare a witness statement, which included details of the sum of money sought, the matters for which this is sought and the sum of money for which final judgment is likely to be given.

We would also have to give details of the special damages and future loss and the reasons for believing that the conditions in rule 25.7 are made out.

Here, we would argue that we are likely to be successful in this claim given that the Defendant knows of the defect. We will also recover a substantial sum given the loss of earnings to date which amount to approximately £12,000.

There will also now be a continuing loss as our client is going to be medically retired. Miss Eden has ongoing medical issues and is waiting for an operation on her ankle. As a result, she will not be able to work or will have difficulty in finding alternative employment. This will cause her to experience financial difficulties.

Further medical evidence is required. This is going to delay the trial in this matter. This means that if Miss Eden is successful, damages will not be paid out for some time. This will cause her further financial hardship.

With respect to the interim payment we would ask for at least £1,500 to cover the outstanding debt on our client's utility bills although more likely we would request an additional amount to cover our client's bills for the future.

- (c) In order to ensure that Mr Cotton attended the trial, we should serve a witness summons on him using form N20. The witness summons should be issued by the court where the trial is due to take place.

The witness summons should be served on Mr Cotton at least 7 days before the date when he is due to give evidence unless the courts give permission for the summons to be served within the 7 days.

When the summons is served on Mr Cotton, he should be offered or paid a sum to cover his travelling expenses and a sum for his loss of earnings.

If we comply with the above requirements, the summons will be binding. As a result, Mr Cotton will be subject to criminal sanctions if he fails to attend the hearing.

- (d) As the claimant, it would be our responsibility to prepare the trial bundle. We would have to agree the contents with the defendant. Once we had done so we would lodge the bundle with the court, including copies for the Judge and witness box, not more than 7 nor less than 3 days before the trial. We would also book and brief an advocate to conduct the hearing. We should also book the expert if he was giving evidence.

Credit was given to candidates who mentioned other potential steps that could be taken including preparation of skeleton arguments or case summaries.

Question 3

- (a) As the claimant has entered judgment against our client, he would have to apply to have this set aside under CPR 13. He would have to make the application promptly. He would also have to show that he had a real prospect of successfully defending the claim or that there was some other good reason why the judgment should be set aside.

- (b) It appears that we would satisfy the test given Mrs Hothi's evidence. We would therefore provide details of her to help show that our client has real prospects of successfully defending the case.

We should also show that our client has been out of the country to support our argument under the 'other good reason' limb of the test in CPR 13.

- (c) As we are alleging the other party was to blame for the accident we should make a counterclaim under CPR 20. This could be dealt at the same hearing as the application to set aside judgment.
- (d) There are a number of matters that the court would consider. These include proportionality, speed, cost effectiveness, the value and complexity of the claim / counterclaim and whether questions put to the expert would be effective and deal with all the issues.

Credit was given to candidates who referred to the overriding objective and the factors mentioned there.

- (e) The difficulty we have here is that the witness statement will not be served on time. This would mean that we would not be able to rely on our key witness unless we obtained the court's permission to do so - see CPR 32.10.

We could contact the defendant to agree an extension of time of up to 28 days as allowed for in CPR 3.8.

If the defendant refused to agree to such an extension we would apply to the court to grant such an extension under CPR 3.1(2)(a).