

**LEVEL 4 - UNIT 9 – PREPARATIONS FOR PERSONAL INJURY TRIALS
SUGGESTED ANSWERS – JANUARY 2018**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

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

SECTION A

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. The Protocol does invite parties to consider early notification of the claim. Even if they do take this step, the Protocol requires all parties to send two copies of a letter of claim to the defendant, in this case the local authority.

We should also notify the defendant of the medical expert that we wish to instruct. We should also consider rehabilitation and ADR.

- (b) If we did send a Letter of Notification of Claim, this should be acknowledged by the local authority within 14 days of receipt.

With respect to the letter of claim the local authority should send this to their insurers within a maximum of 7 days from receipt unless they were self-insured and so dealing with the matter themselves.

The local authority or their insurer then have to acknowledge receipt of the letter of claim within 21 calendar days of the posting of the letter, and confirm the identity of their insurer. If they failed to respond, we could issue proceedings without further recourse to them.

If they did reply, they would then have 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) The documents are:
- Claim Form;
 - Particulars of Claim;
 - Medical Report;
 - Schedule of Special Damages;
 - Response Pack.

Credit was given to those candidates who gave details of the contents of the response pack: i.e. Acknowledgement of Service, Defence and Counterclaim and Admission.

- (d) Our first step would be to request voluntary disclosure. If the defendant refused to give this, we would apply for specific disclosure as allowed for under r.31.12, as the letters are clearly covered by standard disclosure.

In order to apply for specific disclosure, we would have to file an application notice specifying the order we required. We would also file a witness statement in support of our application. Either the witness statement or application notice would set out the grounds on which the order was sought

- (e) The statement will have to comply with the requirements of PD32. This would mean heading the statement with the title of the proceedings. There would also be an endorsement at the top right hand corner of the statement, as set out in PD32.17.2. A mark was awarded to those candidates who detailed the information that this endorsement contains.

PD32 goes on to say that the paragraphs in the statement should be numbered and the statement should contain a statement of truth.

Outside of the requirements of PD 32, the second sentence of the last paragraph of the statement contains opinion evidence. As Mr Grimshaw is not an expert, he cannot give opinion evidence. The second sentence of the paragraph should therefore be removed.

- (f) As noted in the answer above, the statement will have to be verified by a statement of truth. We would therefore have to warn Mr Grimshaw that he should ensure that the contents of the statement are entirely accurate. In doing so, we should also inform him of the consequences of rule 32.14. This states that a witness can be prosecuted for contempt of court if they give a false statement of truth without an honest belief in its truth.
- (g) We would serve a witness summons on Mr Grimshaw using form N20. The witness summons should be issued by the court where the trial is due to take place. It should be served on Mr Grimshaw 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.

In order to allay Mr Grimshaw's fears about being out of pocket, we would inform him that he will 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. Mr Grimshaw would therefore be subject to criminal sanctions if he fails to attend the hearing.

- (h) The contents of the bundle are set out in PD39A. The key documents are:-
- the claim form and all statements of case;
 - schedule of losses and expenses;
 - a case summary and/or chronology where appropriate;
 - all witness statements to be relied on as evidence;
 - any medical reports and responses to them;
 - any experts' reports and responses to them;
 - any order giving directions as to the conduct of the trial.

Credit to a maximum of one mark was given to candidates who mentioned other documents referred to in the list in PD39A.3.2, although there is nothing to suggest that these would be relevant here.

- 2 (a) In order to be able to set judgment aside, we would have to satisfy the test in rule 13.3. We would, therefore, have to show that we had a real prospect of successfully defending the claim, or that there was some other good reason why the judgment should be set aside or the Defendant should be allowed to defend the claim.

Here we would rely on the first of these points, as we have grounds for defending the claim. We can argue that the system of work was safe given the weight the Claimant should have been lifting and that, if it was unsafe, this was due to the action of a third party.

In addition, rule 13 asks the court to take into account whether we have made the application promptly. Here, proceedings were only served a month ago and our client has contacted his insurers as soon as he picked up the court papers.

- (b) A key part of our defence will be that a third party was responsible for the accident. As a result, we would seek to bring an additional claim under part 20 against Sanderson Transit Limited for the negligent actions of their servant or agent.

We could do this without permission but it would be best to advise the court of this at the hearing to set aside judgment.

- (c) The first step would be for the court to order a time by which our client and the part 20 defendant to file and serve their defences.

The case would then be allocated to a track. Given the value and relative simplicity of the claim it would be allocated to the fast track. As a result, the court would follow the standard steps set out in PD28. These deal with:

- disclosure;
- exchange of witness statements;
- expert evidence;
- sending out and filing of pre-trial checklists;
- date for the hearing.

- (d) In order to be successful in their application for an interim payment, the Claimant would have to satisfy one of the grounds in rule 25.7.

The proceedings are being defended and so the Claimant would have to argue that if the claim went to trial, the Claimant would obtain judgment for a substantial amount of money (other than costs) against the Defendant from whom he is seeking an order for an interim payment, whether or not that Defendant is the only Defendant or one of a number of defendants to the claim.

Candidates did not have to quote the rule verbatim but needed to show a knowledge of the key elements of it.

Here, we have a potentially strong defence to the claim which therefore might not succeed, at least against us. We also have evidence that the Claimant has pre-existing back problems. As a result, even if the Claimant was successful at trial it is quite possible that they would not obtain judgment for a substantial amount of money