

<b>Title</b>	<b>Preparations for Personal Injury Trials</b>	
<b>Level</b>	4	
<b>Credit value</b>	10	
<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will:</b>	<b>The learner can:</b>	
<b>1 Understand the procedures which a litigant should follow before court proceedings are issued</b>	1.1 Explain the general obligations of a claimant and defendant under the Practice Direction on Pre-Action Conduct ("PD-PAC")	1.1 As set out in PD-PAC paras 1-17 e.g. ethos of early exchange of information and documents, promoting settlement without litigation; must follow PAPs or comply with objectives and steps set out in PD-PAC if no specific protocol, compliance where limitation is approaching
	1.2 Identify the Pre-Action Protocols (PAP) relevant to Personal Injury (PI) claims	1.2 PAP for Personal Injury claims – applies to PI claims not covered by other specific protocols  PAP for Disease and Illness claims – applies to claims where claimant has suffered disease or illness as opposed to injury  PAP for the Resolution of Clinical Disputes – applies to claims against medical professionals for negligent medical treatment  PAP for Low Value PI Claims in RTA – applies to RTA claims where total damages are less than £25,000  PAP for Low Value Employer's Liability and Public Liability Claims – applies where total damages are less than £25,000
	1.3 Explain the obligations of a claimant under the Pre-Action Protocol for Personal Injury claims	1.3 Sections 1 - 5, 7-11; application to claimant's circumstances and objectives; Annex B1: contents of letter of claim, list of proposed

		experts
	1.4 Evaluate, in a given situation, the information required to prepare a letter before claim	1.4 Assess, in a scenario, which information is relevant and which further information is required to be collated in order to fulfil PD-PAC/PAP obligations
	1.5 Explain the obligations of a defendant under the Pre-Action Protocol for Personal Injury claims	1.5 Sections 1 - 4 and 6-11; application to defendant's case and objectives; Annex B2: defendant to acknowledge letter of claim within 21 days; defendant has 3 months to investigate and respond in full; should enclose documents in accordance with Annex B; must indicate whether he/she objects to suggested experts
	1.6 Explain the steps which a claimant may take to obtain documents if the defendant fails to comply with their pre-action disclosure obligations	1.6 Application for pre-action disclosure under CPR 31.16; Section 33 Senior Courts Act 1981/Section 52 County Courts Act 1984; what is desirable, e.g., <i>Black v Sumitomo Corp (2001)</i>
	1.7 Identify the sanctions which the court may impose if the parties fail to comply with their pre-action obligations	1.7 Stay of proceedings/costs/interest sanctions: Para 15 and 16 PD-PAC; also affects costs - CPR 44.11
	1.8 Apply knowledge of the procedures a litigant should follow to a given situation	1.8 Application to a complex scenario
<b>2 Understand the use of witnesses in PI cases</b>	2.1 Evaluate the difference between a witness of fact and an expert witness	2.1 A witness of fact is someone with first-hand knowledge of facts, which may be at issue in the dispute  An expert witness is a witness who will provide an opinion in a field of expertise where the court requires assistance; every PI case requires medical evidence to assist the court on the cause, nature and extent of the injuries suffered, i.e., diagnosis, prognosis and causation medically and in law

		Only experts are permitted to give opinion evidence
	2.2 Explain the requirements for statements of witnesses of fact	2.2 CPR 32 requirements; usually at outset of case, lawyer takes initial proof of evidence; if proceedings issued, in due course, a formal witness statement must be prepared ; mandatory service of witness statements in accordance with court directions; relevance of CPR 32.2 and 32.4  Formalities under PD32: statement of truth and consequences of verifying false statement - CPR 32.14; no opinion evidence
	2.3 Explain who may be an expert	2.3 Import of CPR 35.3(1) and Civil Evidence Act 1972 s3. Person with formal qualifications or accumulation of experience; ideal defendant expert has a combination of both; note the need for expert to display independence and impartiality; danger that may arise where expert is well known for appearing for one side or the other
	2.4 Describe what control the court exerts over experts	2.4 CPR 35: no expert evidence permitted without the court's permission; obtained at Case Management Conference (CMC) or by means of directions questionnaire; court will permit expert evidence where needed to resolve issues in case; tight control over number and type of experts
	2.5 Explain the expert's duties to the court	2.5 CPR 35: expert's duty is to the court, not the party instructing him; PD35 sets out duties in detail

	<p>2.6 Compare the roles of a single expert, a joint expert and separate experts</p>	<p>2.6 Court may permit:</p> <ul style="list-style-type: none"> <li>- a single expert selected by both but instructed by one party – very common in lower value PI cases – the other party may ask questions</li> <li>- a joint expert jointly selected and instructed by both parties - both parties may ask questions; differences between single and joint experts;</li> <li>- separate experts – each party may instruct their own expert</li> <li>- NB power to restrict expert evidence to single joint expert in soft tissue injury claim (CPR 35.4(3B)); impact of PD-PAC and relevant protocols</li> </ul>
	<p>2.7 Explain how a lawyer could locate an expert witness</p>	<p>2.7 Where case involves expert issues, need to obtain preliminary view at outset; identification of experts e.g., directories, firm approved list, recommendation; obtain CVs, details of experience, availability</p>
	<p>2.8 Analyse the steps taken to prepare expert evidence where the expert is not a joint expert</p>	<p>2.8 Preparation of letter of instruction; Guidance for the instruction of experts in civil claims and Annex D to PAP for Personal Injury claims report must comply with formalities under PD35; production by expert of draft report – draft is privileged until disclosed to opponent; changing the draft; scope for changing the draft is very limited – expert must give summary of instructions in the report, including instructions received orally; if report is unfavourable, may consider not disclosing it and obtaining another report from a different expert <i>Ricky Edwards-Tubb v. JD Wetherspoon PLC</i> [2011]; ; once the report is disclosed, opponent may ask questions of the expert: CPR 35.6 and CPR 35 PD 6.1; nature and scope of questions to expert e.g. proportionate and to seek clarification; if both sides have been given permission, court usually makes provision for meeting of experts and production of joint report CPR 35.12</p>

	2.9 Analyse the steps taken to prepare expert evidence where the expert is a joint expert	2.9 Parties must agree identity of expert; preparation of joint letter of instructions; if parties cannot agree the identity or remit of the instructions, must revert to the court for assistance; report must comply with formalities under PD35; no privilege or scope for changing the draft; both parties may ask questions under CPR 35.6
	2.10 Analyse the ways that an opponent can attack an expert's evidence	2.10 Opponent could question credibility on basis of: <ul style="list-style-type: none"> <li>- Lack of qualifications/experience</li> <li>- Any direct or indirect links with the claimant/allegations of bias</li> <li>- Errors or inconsistencies within the report or between the report and other evidence (e.g., claimant's own witness statement and medical records)</li> <li>- Failure to consider alternative possibilities – expert taking too narrow a view</li> <li>- Failure to focus on detail – expert taking too wide a view</li> <li>- Report which does not accord with published technical literature on the topic</li> </ul>
	2.11 Apply knowledge of the use of witnesses to a given situation	2.11 Application to a complex scenario
<b>3 Understand how to commence and serve civil proceedings</b>	3.1 Explain the procedure for issuing and serving a claim other than a claim which is low value	3.1 CPR 7 and PD 7A; e.g. procedure for claims which do not fall within the protocol(s) for low value claims; documents and fee required to issue claim; service by court or by claimant (need for certificate of service); 4 month validity period of claim form

		<p>Documents required to be served upon defendant; Particulars of Claim can be with claim form or served within 14 days afterwards CPR 7.4</p> <p>Methods of service under CPR 7.5; calculation of deemed date of service of claim form or other documents</p>
	3.2 Draft a claim form for a given dispute	3.2 Completion of N1 claim form in relation to scenario
	3.3 Analyse the content and structure of Particulars of Claim for a given dispute	<p>3.3 Rules on contents of Particulars of Claim focussing on personal injury claims as set out in CPR 16.4 and PD16; requirement to attach medical report and schedule of special damages; meaning of statement of truth and who should sign</p> <p>Defective drafts; identification of what is wrong; making corrections – mistakes could include failing to set out court heading correctly, failing to provide all information stipulated in CPR/PD 16, failing to give correct information at the end of the document</p>
<b>4 Understand how the defendant can respond to proceedings</b>	4.1 Explain the options available to the defendant upon receipt of a claim form	4.1 CPR 9 Admissions, serving defence or acknowledging service; requesting extension of time for service of defence CPR 15.4; Part 18 requests if clarification required of Particulars of Claim
	4.2 Analyse the dates by which the defendant must acknowledge service and/or serve a defence	4.2 Knowledge of deemed date of service (as above); CPR 10.3 & 15.4; calculating actual dates based on scenario

	4.3 Analyse the range of responses that can be made to a claim	4.3 CPR 16.5 & PD16; knowledge of range of responses defendant can make to claim – admit/deny/neither admit nor deny; and implications of those responses e.g. consideration of Part 36 offer; sufficient knowledge to critically review/take instructions upon document
	4.4 Explain what a counterclaim is	4.4 Part 20; what constitutes a counterclaim; distinction between making allegations of claimant's blameworthiness in relation to the cause of action e.g., contributory negligence and making a separate claim against claimant arising from a different cause of action
	4.5 Explain what an additional claim is	4.5 Part 20; claims by defendant against co-defendants; claims by defendant against persons not currently party to the proceedings; usually claims for contributions/indemnities
	4.6 Explain the procedures for bringing a counterclaim and for bringing additional claims	4.6 CPR 20.4; CPR 20.6 – contribution notice; CPR 20.7 - Part 20 claim form and particulars of Part 20 claim  CPR 20.3 – which CPR provisions apply to Part 20 claims
	4.7 Explain the options available to a claimant in receipt of a defence and/or counterclaim	4.7 Default judgment provisions apply; must serve defence to counterclaim; optional reply; time-limits for service of defence to counterclaim and reply: CPR 15.4 & 15.8; Part 18 request if clarification required
	4.8 Apply knowledge of how the defendant can respond to a given situation	4.8 Application to a complex scenario
<b>5 Understand the procedure where a defendant admits liability or fails to respond to proceedings</b>	5.1 Explain what happens if a defendant fails to acknowledge service or to serve a defence on time	5.1 CPR 12 (12.1 - 12.6) claimant can request default judgment.; judgment will be for damages to be assessed by the court
	5.2 Explain the purpose of a disposal hearing	5.2 A disposal hearing is a short hearing of no more than 30 minutes during which the judge

		<p>will decide how much the defendant should pay by way of damages; used for straightforward cases where either the defendant has admitted liability or judgment has been entered for damages to be assessed; PD 26 paragraph 12.4 and CPR 32.6; evidence is limited – no oral evidence – witness statement only plus evidence attached to the claim, i.e., expert report; procedure designed to “dispose” of the case quickly</p>
	5.3 Explain the purpose of a trial on quantum	<p>5.3 A trial on quantum is a longer hearing at which the court assesses the damages payable by the defendant; used where either the defendant has admitted liability or judgment has been entered for damages to be assessed; if the issues in the case are complex, the evidence voluminous, or the claimant is required to attend for cross-examination, the case cannot be resolved by way of a disposal hearing and the court will instead list a trial on quantum; the court is likely to case manage a trial on quantum in a similar way to other trials</p>
	5.4 Evaluate the circumstances in which the court might set aside a judgment	<p>5.4 CPR 13 (CPR13.1-13.3) e.g. where irregular judgment has been entered; court must set it aside; regular judgment - defendant must show they have a real prospect of successfully defending the claim or there is some other good reason why the judgment should be set aside; court will consider whether application made promptly</p> <p>Where the damages have already been assessed at a disposal hearing: CPR 39.3(3); Defendant must show acted promptly, had a good reason for not attending hearing and has a reasonable prospect of success</p>
	5.5 Apply knowledge of where a defendant admits liability or fails to respond to proceedings to a given situation	5.5 Application to a complex scenario

<b>6 Understand the procedure relating to interim payments</b>	6.1 Evaluate the grounds on which an order for interim payment may be made	6.1 CPR 25.7 conditions to be satisfied : Admission, obtained judgment; "Would obtain...substantial sum"
	6.2 Describe the limitations on the scope of the interim payment procedure	6.2 Reasonable proportion of damages (CPR 25.7(4); Contributory negligence and set-off (CPR 25.7(5))
	6.3 Describe the timetable prescribed under the interim payment procedure and what evidence is required	6.3 Request to be made direct to defendant; notice of hearing and evidence in support 14 days in advance: CPR 25.6; Defendant's evidence in response: 7 days in advance; Claimant's counter-evidence: 3 days in advance; evidence outlined in CPR PD 25B para 2.1 setting out what is sought and why and how the CPR 25.7 conditions are satisfied ; claimant does not have to show need, e.g., <i>Stringman v McArdle (1994)</i> but failure to do so may give rise to an argument that the money will be wasted
	6.4 Evaluate how a defendant who has made an interim payment will not be prejudiced at the trial	6.4 Court not told about the existence of an interim payment – CPR 25.9; Court can adjust the payment; adjustment between claimant and defendant; repayment, variation or discharge: CPR 25.8; adjustments between co-defendants: CPR 25.8
	6.5 Apply knowledge of the procedure on interim payments to a given situation	6.5 Application to a complex scenario
<b>7 Understand how the court manages cases</b>	7.1 Describe the overriding objective	7.1 Overriding objective (CPR 1); courts to manage cases justly, dealing with cases proportionately, saving time and costs; encouragement to settle/use ADR alongside litigation process, enforcement of compliance with rules, practice directions and orders
	7.2 Evaluate the court's case management powers	7.2 Extensive powers of case management in CPR 3: General powers – CPR 3.1 Making orders of own initiative – CPR 3.3

		Sanctions – CPR 3.7, 3.8 and 3.9 Power to rectify matters – CPR 3.10 Cost Management Order CPR 3.12-18
	7.3 Analyse the criteria used by the court to decide an appropriate track for an action	7.3 CPR 26.6-26.8; values/features of small claims track case, fast track case, and multi-track; directions questionnaire to be completed for all multi-track cases (but optional for fast track); parties can agree or court can impose small claims track in cases higher than small claims limit (£10,000)
	7.4 Complete a directions questionnaire in relation to a given situation	7.4 Completion of directions questionnaire including information in relation to witnesses, experts, trial length, possible interim applications, costs
	7.5 Explain the directions which a court commonly gives in a fast track PI case.	7.5 CPR 28.3 and PD 28 section 3
	7.6 Explain what may happen if a party is unable to comply with the court's directions	7.6 Parties can agree extensions of time, but there are restrictions CPR 28.4 and PD28 sections 4 and 5; if agreement cannot be reached, party can apply to the court for an extension of time; timing of application to prevent sanction e.g. exchange of witness statements see CPR 32.10; court may impose sanctions for failure to comply e.g., unless orders, costs orders; range of sanctions described under CPR 3; relief from sanctions
	7.7 Apply knowledge of how the court manages cases to a given situation	7.7 Application to a complex scenario
<b>8 Understand the rules relating to disclosure and inspection of documents</b>	8.1 Analyse the criteria for standard disclosure	8.1 Meaning of disclosure; standard disclosure obligations in CPR 31.6; parties' duty to search for documents falling within standard disclosure: CPR 31.7; meaning of control: CPR 31.8; completion of lists: CPR 31.10; continuing duty of disclosure: CPR 31.11; PD31A regarding extent of search
	8.2 Explain what inspection is	8.2 CPR 31.3 - right to inspection of disclosed documents; opponent obtains/reads other

		party's documents; various methods, e.g., requesting copies, attending inspection appointment
	8.3 Explain the basis upon which a party may claim a right to withhold documents from inspection	8.3 CPR 31.1 - legal professional privilege; grounds for withholding inspection based on legal advice and litigation privilege
	8.4 Analyse the options available to a party where the disclosure process does not produce the documents required or expected	8.4 Specific disclosure in CPR 31.12 where the opponent has failed to comply with disclosure obligations
	8.5 Apply knowledge of the process of disclosure of documents to a given situation	8.5 Application to a complex scenario
<b>9 Understand what is required to prepare for and attend the trial</b>	9.1 Analyse pre-trial preparation requirements	9.1 Preparing trial bundles; booking and briefing Counsel; holding pre-trial conference with Counsel; ensuring all witnesses will be present – issuing witness summonses if necessary; keeping all persons involved fully informed as to arrangements for trial and maintaining list of contact details; lodging trial bundles at court for judge and witness box; ensuring relevant IT is available; knowing where relevant services might be obtained; completion of pre-trial checklist (CPRs 28.5 and PD 28 and 29.6 and PD 29)_
	9.2 Complete a pre-trial checklist in a given situation	9.2 CPR 28.5 and 29.6 - requirements for completion of pre-trial checklist PDs 28 para 6 and PD29 para 8; details of any special arrangements necessary e.g., IT, video
	9.3 Explain how a lawyer can compel a witness to attend trial	9.3 CPR 34; service of witness summons N20 and conduct money; consequences of failing to comply; obligations continue until released by the court
	9.4 Analyse the requirements for trial bundles	9.4 Claimant's responsibility; format under CPR 39.5 and PD39A; agree index with opponent; chronological order; pagination; number of

		copies (1 for each party plus 1 for each advocate, 1 for judge, 1 for witness box); time for lodging
	9.5 Explain which other documents may be required by the court in advance of the trial	9.5 Purpose of skeleton arguments, case summaries, lists of issues
	9.6 Analyse what happens in court on the day of the trial	9.6 Overview of trial procedure – opening speeches, oaths/affirmations; status of witness statements; examination in chief, cross-examination, re-examination, closing speeches, costs arguments; judgment; role of lawyers at trial

<b>Additional information about the unit</b>	
Unit aim(s)	The learner will understand what is required to prepare for and attend trial including the use of witnesses in Personal Injury Cases, how to commence and serve civil proceedings and how the defendant can respond to proceedings. They will also have a broad understanding of how the Court manages Personal Injury Cases.
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically SFJ1B14: Personal Injury Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	Chartered Institute of Legal Executives (CILEx)
Availability for delivery	1 <sup>st</sup> April 2013