

{INCLUDETEXT "C:\\Users\\NeilB\\OneDrive - PRACCTICE LTD\\Documents\\OspreyOfficeGateway\\header.doc"}

Our Ref:        { MERGEFIELD MATTER\_FEE\_EARNER\_ID }/{ MERGEFIELD client\_no }/{ MERGEFIELD matter\_no }

Your Ref:

{ SET LETTER{ DATE \@ "d MMMM yyyy" } }{ref LETTER \@ "d MMMM yyyy" \ \\* MERGEFORMAT }

{ IF { MERGEFIELD TK\_PICLIENINFO\_tkCLIENTMINOR } = "Yes" "{ MERGEFIELD TK\_PICLIENINFO\_TK\_LITFRNDTITLE } { MERGEFIELD TK\_PICLIENINFO\_TK\_LITFRNDFORE } { MERGEFIELD TK\_PICLIENINFO\_TK\_LITFRNDSURN } { MERGEFIELD TK\_PICLIENINFO\_TK\_LITFRNDADDR }" "{ MERGEFIELD LINKNAME\_TITLE\_1 } { MERGEFIELD LINKNAME\_INITIALS\_1 } { MERGEFIELD LINKNAME\_SURNAME\_1 } { MERGEFIELD CALCULATION\_ADDRESS }" }

Dear { IF { MERGEFIELD TK\_PICLIENINFO\_tkCLIENTMINOR } = "Yes" "{ MERGEFIELD TK\_PICLIENINFO\_TK\_LITFRNDTITLE } { MERGEFIELD TK\_PICLIENINFO\_TK\_LITFRNDSURN }" "{ IF { MERGEFIELD TK\_PICLIENINFO\_tk\_SALUTATION } = "" "{ MERGEFIELD LINKNAME\_TITLE\_1 } { MERGEFIELD LINKNAME\_SURNAME\_1 }" "{ MERGEFIELD TK\_PICLIENINFO\_tk\_SALUTATION }" }" }

**Re: { MERGEFIELD MATTER\_MATTER\_DESCRIPTION }**

**RE: Your Claim**

I write to confirm that court proceedings have now been issued on your behalf and, in the near future, copies of the formal court documents detailing your claim will be received by the Defendant.

I think this is a convenient point to outline the way in which the court case will proceed and to remind you of the costs implications of court action.

I hope this will give you a clear picture of the action I will be taking on your behalf and usefully confirm some aspects of earlier advice.

**1. Stages of the court process**

The steps in the court process can be summarised as follows:

- (1)     *Details of the case*

{INCLUDETEXT "C:\\Users\\NeilB\\OneDrive - PRACCTICE LTD\\Documents\\OspreyOfficeGateway\\footer.doc"}

The court papers sent to the Defendant include the Particulars of Claim which set out what has happened, the effect of what has happened, and why the Defendant is blamed.

The Defendant has 14 days, from receiving the court papers, to indicate whether the claim is to be defended.

(2) *The Defence*

The Defendant must respond to the Particulars of Claim by a Defence. Assuming the Defendant first indicates the claim will be defended, the Defendant will have 28 days from receipt of the court papers to send out the Defence.

The Defence must confirm which parts of your claim are admitted, which parts are not admitted but not denied, and which parts are denied. The Defendant must give reasons for the matters that are denied. In this way, the Defence will define which aspects of the case have to be proved at a later stage and should help to narrow, to some extent, those issues.

If the Defendant fails to indicate within 14 days whether the claim is to be defended, or fails to send out a Defence within 28 days, I can ask the court to enter judgment in your favour. Any such judgment would finalise the question of liability in your favour, leaving only the amount of compensation to be decided by the court. This would be fixed at a hearing if terms could not be agreed in the meantime.

It is quite likely however that the Defendant, or solicitors instructed to act, will ask for further time over and above 28 days, to prepare the Defence. The Defendant should not generally have more than 42 days from receipt of the court papers to send out a Defence, although in appropriate circumstances the court may allow longer. I will let you know if this timescale is extended.

(3) *Exchange of further detail on the case*

Once I have the Defence I will:

- (i) write to outline the issues that have emerged;
- (ii) consider whether I need to reply to the Defence on your behalf. A reply is not normally required but sometimes fresh points can be raised in the Defence which do require comment;
- (iii) consider whether any questions need to be put to the Defendant to obtain further information on matters arising out of the Defence.

The Defendant may well send with the Defence a request for some further information on your case, and I will let you know if I need further instructions from you to deal with any such request.

(4) *Allocation and case management directions*

When statements of case have been exchanged, the court will ask the solicitors acting for each party to file a report. That report will detail the background to the proceedings, the issues that have arisen, the evidence that will be necessary to deal with those issues and any other matters that the court might need to make a ruling on. The purpose of this

is to ensure that the issues which remain in dispute at that stage can be resolved as justly as possible. For these purposes, the court is particularly concerned to ensure that the matter is dealt with expeditiously, economically and proportionately.

The court may at that stage direct any specific issue to be determined ahead of other issues as this sometimes helps in resolving the whole case.

When the court has considered the reports a decision will be made:

- (i) allocating the case to a particular 'track'. I will explain in more detail what this involves when the allocation has taken place but briefly there are particular tracks suited to particular types of case, designed to achieve the overall objective of a just outcome;
- (ii) the court will also give appropriate directions, which again I will explain in more detail once made. The purpose of the directions is to help guide the case, again as justly as possible, through the remaining stages towards a final hearing.

(5) *Disclosure of documents*

The directions given by the court will normally direct all parties to give disclosure of documents.

This involves the preparation of a list containing all documents which that party has, or has had, possession of relating to the issues in the case, as these have been defined by the Particulars of Claim and the Defence. That list must also contain written confirmation that the list is complete and that it has been prepared after an appropriate search for any documents that might be relevant.

Sometimes, particularly if the issues are narrowed or there is unlikely to be any relevant documentation, the court may dispense with the need for a formal list from one or more parties but, in the meantime, I think it best to assume that disclosure will take place and to give advance warning of what this will involve.

I may well already have all relevant documents from you but to ensure that I will be ready to deal with this stage of the case promptly, it would be helpful if you could give the matter some thought, and if necessary search for any further relevant documents, so that as and when we reach this stage of the process I will be able to ask you for:

- (i) any further documents still in your possession (except for the letters and documents I have sent you as of course I already have these), including documents that have come into existence or into your possession since the claim started. If at that stage you are in doubt as to the relevance of any documents it would be best to let me have them;
- (ii) a list of any documents you once had but no longer have, relating to the case in any way, stating the identity of those documents and if known when you last had them and what became of them.

As disclosure of documents is such an important stage of the case, I will write to you again confirming what is required when we reach it.

(6) *Dealing with the documents disclosed*

Any party is entitled to ask for copies of documents disclosed in another's list.

Of course in accordance with the protocol, documents have already been obtained from the Defendant but I will, nevertheless be reviewing the matter once we have the Defence to see if there are any further documents which the Defendant should be disclosing. If so I will check the Defendant's list to ensure that disclosure has been given and seek copies of such documents so that I can send further copies to you for your information and comment.

If there are any further specific documents you expect the Defendant to have concerning the issues that have emerged, it would be helpful to have a list from you when we reach this stage of the case, identifying either particular documents or if necessary, categories of document.

(7) *Exchange of witness statements*

The court will also usually give a direction that each party must disclose to any other party the statements of any witness of fact on whose evidence it is intended to rely.

The court will generally stipulate that this exchange should take place on the same day so that no party has the advantage of seeing the other's statements first.

As I mentioned when preparing your statement, that statement is not necessarily intended for disclosure to the Defendant and before dealing with this stage of the action I shall most likely be preparing an up-to-date statement concentrating on the main issues of the case and covering any further points that may arise out of the earlier stages. Once any up-to-date statement is completed or I have decided we can rely on the existing statement, this together with any statements from other witnesses on whose evidence you rely will be sent to the Defendant. I will let you have copies of statements produced by the Defendant.

(8) *Exchange of expert evidence*

To assist the court in making a decision on the case it is helpful to have expert evidence – that is guidance from a suitably qualified expert to help the court in deciding any issues arising in the case.

However the court's permission is required for any party to rely on any expert evidence at a hearing. Permission to rely on expert evidence is one of the matters the court will deal with when giving case management directions (although initially the court may simply direct the arrangements for disclosure of evidence, with permission to rely on the evidence being considered once that disclosure has taken place).

I will now deal with some specific points concerning expert evidence.

(i) Expert medical evidence

I have sent to the Defendant with the court papers the medical evidence obtained from our expert/experts.

The Defendant must decide whether to agree that evidence (and medical evidence is very often agreed) or if it is not agreed, to try and identify points of disagreement by the Defence.

I hope that the medical evidence already obtained and disclosed should be all we need to confirm the injuries suffered and the effect of these, although I will let you know at the appropriate stage if I think anything further is required.

(ii) Other expert evidence

Any other expert evidence will be exchanged at or soon after the time when witness statements are exchanged. Like witness statements, it may be appropriate for reports to be exchanged, if the Defendant has corresponding evidence, on the same day.

Once the Defence has clarified the issues, I will advise you on whether I think it is necessary to rely on further expert evidence.

(iii) Agreement of expert evidence

I hope that it may be possible for the expert evidence to be agreed as the agreed opinion can then be used in written form by the court to help reach a decision. That avoids the need for oral expert evidence to be given, which usually makes any final hearing date easier to arrange.

If there should be more than one expert in any particular field, the court, with a view to encouraging agreement, will normally direct the experts to confer and prepare a joint statement either confirming agreement or identifying points of disagreement. This is very useful in helping to narrow the issues and can often help promote a settlement of the case.

(iv) Permission to rely on expert evidence

As already mentioned, the court needs to give permission before any party can rely on expert evidence at any hearing. I will ask the court for permission to rely on the expert evidence disclosed to the Defendant when the court reviews progress, although it may be that the court will not be able to deal with this or give a final decision about whether the evidence in written form should suffice until after exchange of evidence.

Once further expert evidence has been exchanged, or we can confirm that we are content to rely on the evidence already obtained, most of the preparatory stages of the case will have been dealt with and each party will have a very clear idea about the case of the other.

(9) *Review*

After all these preparatory stages have been dealt with, the court will expect further reports from the solicitors for the parties confirming the progress made. This is a further

opportunity for the court to give any further directions that may be appropriate to ensure the case reaches a just conclusion as soon as possible.

I would hope that at or soon after this review, the court will arrange a final hearing date, if appropriate, for any issue the court considers ought to be dealt with before other issues in the case.

Whilst sometimes the court may arrange a final hearing date when first reviewing the case, it is more likely the court will give what is known as a 'trial window'. That will provide a general indication of when the case is likely to be heard so that I can, when reporting on progress to the court, confirm dates that would be convenient to those involved.

(10) *The final hearing*

Once a final hearing date has been arranged, I will carefully review all the evidence to offer any further advice that may be appropriate at that stage and to ensure that the case is ready to be heard.

The hearing will often deal with all the issues in the case, so that the matter reaches a conclusion there and then. However as already indicated, it may be appropriate for a particular issue to be dealt with as a preliminary, in which case some of the stages already outlined will be confined to that issue and the final hearing will be on that issue only. I will explain in more detail how issues can be dealt with separately, if this seems appropriate, when we receive the Defence or if the court directs issues to be dealt with separately.

At the final hearing a judge will read the statements of case and consider the documents, witness statements and expert evidence disclosed. The judge will then reach a decision on the issues the hearing is concerned with, so this may involve a ruling on liability, an assessment of the appropriate level of compensation, or both.

Should a final hearing be necessary, I would arrange for you to be represented, usually by a barrister.

I think it best to summarise all the stages in the case as I hope this overview will assist when I write to report to you as we deal with each stage. It may however be possible to avoid some of the stages, if the issues in the case can be narrowed and of course a settlement of the case can be achieved at any stage during the court process if suitable terms are offered by the Defendant. Should terms be agreed, the court can then be asked to make a final order in those terms without the need for a hearing which goes into the issues.

## **2. Timescale**

At this stage, I am able to give only a very broad indication of timescale. You will gather from the stages in the court process, that it is likely to be about a month before the Defence is received and it may be a further month or so after that before the court can deal with allocation and case management directions. However once case management directions have been given we should have a much better idea of when the case is likely to reach a conclusion, as the court will normally aim to ensure any final hearing date takes place within about 6 months of those directions being given. Of course the actual timescale must depend on the circumstances of

each case and the time by which the evidence required by the court to make any final decision will become available.

I will therefore provide a more detailed timetable for you once the court has had the opportunity of giving appropriate directions.

### **3. Negotiations and settlement**

Most cases of this kind do reach settlement without the need for a hearing in which you would need to give evidence. As I have already mentioned, the issue of court proceedings does not prevent the parties reaching agreement at any stage, and the exchange of offers (either informally or on the more formal Part 36 basis) which I explained to you at an earlier stage, is just as applicable after the issue of proceedings as it is prior to those proceedings being commenced.

Accordingly, although court proceedings have been issued, it is unlikely that you will have to give evidence at any court hearing as I will deal with all the steps in the case, although you would need to attend any final hearing. The intention of issuing proceedings is essentially, to try and force a settlement of the claim sooner rather than later.

### **4. Costs**

Finally, now that proceedings have been issued, may I remind you that there is a change in the position on costs. The principal changes are outlined below.

(1) *Your own costs*

The issue of proceedings does not affect the conditional fee agreement we have already made in respect of your own costs.

(2) *Recovery of costs from the Defendant*

If your claim succeeds, you would not usually have any significant liability for the costs of the Defendant and moreover the Defendant would have to pay most, though not all, of your legal costs.

(3) *The Defendant's costs*

Should the claim not succeed, the Defendant would be entitled to ask the court to order that you pay the Defendant's own legal costs. Of course you would only potentially be responsible for the costs of the Defendant if the claim were to fail or the claim were to be dropped. Should you have any such liability then this would be met under the terms of the insurance policy you took out at the time of entering the conditional fee agreement for legal expenses.

I will of course write to you further at each stage of the case, but hope this letter brings you fully up to date in the meantime and usefully summarises the action I will need to take on your behalf to deal with the stages of the court process.

Yours sincerely

{ MERGEFIELD CALCULATION\_FEE\_EARNER\_DESCRIPTION }  
{ MERGEFIELD PRACTICEINFO\_PRACTICE\_NAME\\*UPPER }