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

Your Ref: { MERGEFIELD TK\_PIDEF2DETAIL\_tkDEF2SOLREF }

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

{ MERGEFIELD TK\_PIDEF2DETAIL\_tkDEF2SOL\_name }  
{ MERGEFIELD TK\_PIDEF2DETAIL\_tkDEF2SOL\_address }

Dear Sirs

**Our Client:** { MERGEFIELD "LINKNAME\_FORENAME\_1" } { MERGEFIELD "LINKNAME\_SURNAME\_1" }

**Your Client:** { IF { MERGEFIELD TK\_PIDEF2DETAIL\_tkDEF2CONAME } = "" "{ MERGEFIELD TK\_PIDEF2DETAIL\_tkDEF2FORENAME } { MERGEFIELD TK\_PIDEF2DETAIL\_tkDEF2SURNAME }" "{ MERGEFIELD TK\_PIDEF2DETAIL\_tkDEF2CONAME }" }

**Accident Date:** { MERGEFIELD TK\_ACCDETS\_tkACCDATE\@"d"\\*Ordinal } { MERGEFIELD TK\_ACCDETS\_tkACCDATE\@"MMMM yyyy" }

We thank you for your letter of \* .

We will deal with the matters arising in turn.

### 1. Your interest

We confirm that we have noted your interest on behalf of the Defendant in this matter.

### 2. The Defence

We acknowledge safe receipt of the Defence.

### 3. Judgment

On the basis that it will be contended that your client has no real prospect of successfully defending liability, our client is making application for summary judgment, on liability, and a copy of the application notice and details of any written evidence to be relied on will follow. Consequential case management directions will be sought.

### 4. Admissions made under the protocol

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[ We are concerned that by the Defence, the Defendant seeks to resile from admissions made under the pre-action protocol. In the circumstances our client reserves the right to apply to the court for an order striking out those parts of the Defence which conflict with admissions made previously and/or for judgment on relevant issues. Before making such an application however we should like you to have the opportunity of explaining precisely why there is a change in stance and to deal, albeit retrospectively, with matters that should have been dealt with under the protocol had the stance the Defendant now seeks to take been adopted then. This will help us assess the extent to which our client is prejudiced and hence the approach to take to the Defence as it now stands. Accordingly, would you please:

- (1) explain precisely why the Defendant seeks to resile from the admissions made previously;
- (2) advise when and in what circumstances the decision to resile was made;
- (3) produce, insofar as this is disclosable under the protocol, any further evidence taken account of in the decision to resile;
- (4) produce forthwith all documents which would have been disclosable under the protocol if the Defendant had then adopted the stance which the Defence seeks to take; and
- (5) either confirm that there are no documents the Defendant did have but no longer has, which would have been disclosable under the protocol or identify such documents with details of when, and in what circumstances, the Defendant parted with those documents and what, to the best of the Defendant's knowledge, has now become of those documents.

Please would you respond to these questions as soon as possible given that, if the stance the Defendant now seeks to take had been adopted all along, much of this information should have been provided already. We can assess the question of prejudice and hence the need for an application which, in the absence of an appropriate response, is likely to seek an order striking out those parts of the Defence inconsistent with the earlier admission.]

## **5. The protocol**

We consider the Defendant has not complied with the protocol by [*details*].

The failure to comply with the protocol does of course prejudice the Claimant who has not known the full nature of the Defendant's case, despite the Claimant's case having been set out in detail in the letter of claim. This may have a bearing on the directions that are appropriate and of course in relation to costs.

Please let us know if you contend that the Defendant has complied with the protocol, giving reasons, or let us have any explanation there may be for the failure to deal with matters at the appropriate stage in accordance with the protocol.]

## **[6. Requirements of the Civil Procedure Rules 1998**

We consider that the Defence fails to comply with rule 16.5 of the Civil Procedure Rules 1998 or paragraph 12 of the Practice Direction to Part 16. In particular:

- (1) the Defence fails to state full and adequate reasons for the denials which have been made;
- (2) the Defence fails to identify which aspects of the medical evidence relied on by the Claimant are agreed and which are not agreed;
- (3) the Defence fails to give reasons for matters in the medical evidence relied on by the Claimant which are not agreed;
- (4) the Defence fails to identify which aspects of the Claimant's claim for expenses and losses are admitted and which are not admitted;
- (5) the Defence fails to deal properly with those items of expenses and losses that are not admitted or to attach a counter-schedule.

Please rectify these matters as soon as possible.]

#### **7. Statement of truth**

We note that the Defence does not contain an appropriate statement of truth. Please remedy this promptly, failing which we reserve the right to ask the court to strike out the Defence.

#### **8. Defendant's request for further information**

*Either*

[We acknowledge safe receipt of the request for further information sought from the Claimant. The information you are entitled to will be given without the need for you to obtain a court order.]

*Or*

[We acknowledge safe receipt of the request for further information sought from the Claimant.

The information sought is not, in our view, confined to matters which are reasonably necessary for the Defendant's case to be prepared or for the Defendant to understand the case which has to be met. Accordingly, we do not think that this information is required as a preliminary to disclosure and exchange of evidence.

If after disclosure and exchange of evidence you consider that any matters remain outstanding, you will remain able to renew your request for any such information, although we think it unlikely this will be required.

Accordingly our client objects to complying with the request at this stage as it is considered disproportionate given that, for the reasons already outlined, any information provided now is likely to be duplicated and rendered unnecessary as further stages of the case are dealt with.]

#### **9. Claimant's request for further information**

We enclose by way of service a request for further information from the Defendant. We serve this request as we do not consider that the Defence complies with the requirements of rule 16.5

of the Civil Procedure Rules 1998 and we wish to be made aware of the nature of the Defendant's case now.

If you do not provide further information and/or particulars and/or relevant documents and/or factual evidence, we will assume that you intend to raise only those affirmative allegations which you have already pleaded.

**10. Liability as a preliminary issue**

We suggest that there be a split trial with liability to be tried as a preliminary issue. Please let us know if you disagree, giving your reasons.

**11. Allocation and case management**

We are now moving on to prepare for allocation and case management.

We look forward to hearing from you

Yours faithfully

{ MERGEFIELD PRACTICEINFO\_PRACTICE\_NAME\\*UPPER }