

ANNEX B

INFORMATION GATHERING EXERCISE
QUESTIONNAIRE

1. Are the stated aims and purposes of the current voluntary pre-action protocols adequate to comply with the recommendations of the Scottish Civil Courts Review if made compulsory? *(Please tick as appropriate)*

Yes

No

No Preference

Comments

North Lanarkshire Council is Scotland's fifth largest Council and Scotland's largest social landlord. The Council is self-insured in respect of all Employers' Liability and Public Liability personal injury claims. The Council's Legal Services team defends all Sheriff Court litigation and administers all Court of Session litigation. As a Public Sector organisation, we confirm to pursuing solicitors that, although we are excused from the voluntary protocol due to being self-insured, we will administer the claim in the spirit of the voluntary protocol.

This Council supports the objective that a compulsory protocol provides a genuine attempt by the parties to resolve the matter without resorting to litigation.

However, it has been our experience that the pursuing solicitors are more interested in the enhanced protocol fee structure than the interests of their client. We have seen many cases where pursuing solicitors ignore our advices, thus prolonging the investigation period. For example, solicitors address their Letters of Claim to incorrect Council addresses even though we continually remind them of the correct claims administration address. These reminders are largely ignored. This causes unnecessary delays in receipt of their correspondence and can result in unnecessary litigation due to delay in response. Delays are also experienced by solicitors not providing the required information relating to their client while still insisting on protocol fees.

However, many claims against the Council are raised on a direct basis without any legal representation and this will not change should a mandatory system be put in place.

It is believed that the aims and purposes of the current voluntary pre-action protocol complies with the recommendations of the Scottish Civil Courts Review.

2. **If not, what changes, if any, should be made to the voluntary pre-action protocols to make them more effective in achieving their stated aims and purposes?**

Comments

It has been noted that the Forum of Scottish Claims Managers has recommended changes to the Liability response time-frames. **This recommendation is not acceptable to this Council.** Such is the size of the organisation, with over 14,000 full time equivalent employees spread throughout multiple departments, that it is often impossible to gather the necessary investigative information, even within the current 90 day liability response period. However, with additional training but at additional cost to the taxpayer, it may be possible to meet the current VPAP requirement of 90 days. Certainly any further reduction in time-frames will not be achievable by this Council.

It is recommended that it become compulsory for pursuers agents to provide, at earliest opportunity and, at best within the initial Letter of Claim, the pursuers full name, date of birth, NI number, full residential address (including post code), details of injuries sustained, employers name and address, identification of hospital attended, details of treatment received, identification of material witnesses, copies of witness evidence and a clear summary of the facts of the event including allegations of negligence. Too many times the bulk of the aforementioned information is omitted, resulting in delays.

Pursuers solicitors are entitled to a fee for their services but these fees should correctly reflect the value of the claim. It has been noted that the current voluntary pre-action protocol fee structure far exceeds the structure south of the border. It is supported that a fee structure be created, not dissimilar to that in place in England and Wales, which are reasonable and proportionate.

3. Are changes required to ensure that pre-action protocols better reflect the needs of party litigants?

Yes

No

No Preference

It should be recognised that many Public Sector organisations are self-insured in respect of such personal injury claims and the **protocol should not apply to such organisations.**

It is supported that consideration be given towards the establishment of an electronic claims portal procedure similar to that used in England and Wales. This would discourage both spurious and exaggerated claims being submitted.

In addition, we would support the following:

1. When a pursuer litigates in breach of the protocol, their expenses should be limited to protocol costs, subject to Sheriffs' discretion.
2. When a pursuer fails to beat a pre-action offer, expenses should be limited to protocol costs.
3. In cases of unreasonable behaviour by the pursuer, the defender should be entitled to recover the expenses of the litigation.
4. Any additional headings of claim which have been added following litigation should be at the sole discretion of the Sheriff.
5. Any pre-litigation offer should be treated as a pre-litigation tender with any expense consequences running from the date of that offer.

4. Should a compulsory pre-action protocol apply to higher value cases involving fatal or catastrophic injury?

Yes.

No. If not, what should the “cut off” threshold be?

No Preference

Comments

While the spirit of the protocol can be applied to higher value cases, it is often the case that these cases are too complex and require a considerable amount of investigation to be met within the protocol time-frames.

It is suggested that a maximum threshold of £25,000 be considered.

It is supported that pre-litigation offers be treated as “pre-litigated tenders” and to be applied to claims which exceed the pre-action protocol limits.

5. Is it necessary to consider any additional protocols, or maintain exceptions, for specific types of injury or disease claim, for example, mesothelioma?

Yes

No

No Preference

Comments

This Council has not had any exposure to the voluntary protocol being applied to any asbestos or mesothelioma claim

6. How successful has the use of separate pre-action protocols for professional negligence and industrial disease claims been?

Comments

This Council has not had any exposure to the voluntary protocol being applied to any professional negligence and/or industrial disease claims.

7. Should a pre-action protocol for medical negligence claims be developed?

Yes.

No

No Preference

Comments

This Council has not had any exposure to the voluntary protocol being applied to any medical negligence claims.

8. If you answered yes to Question 7, what should the key features be?

Comments

N/A

9. Are there any issues relating to the operation of the [Pre-action Protocol for the Resolution of Clinical Disputes in England and Wales](#) that should be taken into account?

Yes

No

No Preference

Comments

This has no relevance in respect of this Council.

10. Should a new pre-action protocol regime be introduced in advance of the creation of the specialist Personal Injury Court? Please give reasons for your answer.

Yes

No

No Preference

Comments

The Council is of the view that the introduction of a compulsory protocol will be for the benefit of the injured party. Accordingly, any progress in simplifying the process is to be welcomed. Consideration should be given to dovetailing any changes to cater for the recommendations contained both the Court Reform Bill and Sheriff Taylor's recommendations.

It is considered that any compulsory protocol should prepare all cases for the Courts, prior to any litigation. It should cater for lower value claims and thus enable access to justice.

It is believed that a compulsory protocol will prepare cases for the Courts prior to litigation and will suit lower value personal injury cases; it will allow for access to justice with quicker resolution of cases and allow for proportionate use of resources by both sides.

It is the view of this Council that any compulsory pre-action protocol should be introduced at the same time as the establishment of the specialist Personal Injury Court. A correctly presented mandatory pre-action protocol will ensure that the Personal Injury Court will only be exposed to cases where a satisfactory pre-action conclusion is genuinely impossible to achieve.

11. Are you or your organisation aware of variations in awards of expenses where the pre-action protocol has not been adhered to?

Yes

No

No Preference

Comments

This Council has not, to date, been exposed to any financial sanctions being applied by the Courts. While every effort is undertaken to meet the terms of the voluntary protocol, there are cases which require time-consuming investigation and/or time delays. A time-delay example would be a personal injury claim involving an injury to a teacher or pupil which is raised just prior to school summer holidays (end June) with no access to investigative information being available until the school returns after the summer break (end August). This puts obvious pressure in the provision of a decision on liability within the required time period.