

(Paper 3.1A, PIC, 16 December 2014)

Pre-Action Protocols: Comparison of existing Law Society model with models proposed by respondents to the Information Gathering Exercise

	Letter of claim – content	Issue of letter of claim - timing	Acceptance or rejection of liability – timing	Obtaining of medical reports – timing	Obtaining of other documents (specification)	Issue of valuation of claim - timing	Offers and settlement – timing	Fees	Sanctions for non-compliance: expenses	Application of protocol and additional features
<p>Law Society:</p> <p>existing voluntary pre-action protocol</p>	<p>summary of the facts underlying claim, including alleged negligence, breach of common law or statutory duty</p> <p>indication of the nature of any injuries suffered and of any financial loss incurred</p> <p>name and address of hospital where treatment</p>	<p>as soon as sufficient info. is available to substantiate a claim (and before issues of quantum are addressed in detail)</p>	<p>Insurer to acknowledge claim letter within 21 days advising whether it is agreed that the case is suitable for the voluntary protocol (claimant entitled to issue proceedings if no reply within 21 days).</p> <p>Insurer has 3 months (from issue of their</p>	<p>Instructed within 5 weeks of admission of liability by Insurer (in whole or in part).</p> <p>Usually instructed by pursuer’s agent, but if it has been agreed that the Insurer will obtain these, the pursuer’s agent will agree to disclosure of all medical records relevant to the accident.</p> <p>Medical reports obtained, and on which a party</p>	<p>Letter of claim may identify classes of documents relevant for early disclosure. If Insurer denies liability, in whole or in part, they must disclose any relevant documents at the same time as giving their decision on liability.</p> <p>Annex A to protocol lists documents likely to be material in different types</p>	<p>Following insurer’s admission of liability (in whole or in part) pursuer’s agents will send insurer a Statement of Valuation of Claim</p>	<p>Insurer to offer to settle claim, incl. a counter-schedule of valuation of amount disputed, within 5 weeks of receipt of valuation of claim, supporting documents, etc.</p> <p>Pursuer’s agent must confirm whether offer accepted within 5 weeks of receipt.</p> <p>If insurer does not offer to settle within 5 weeks of issue of valuation of claim, pursuer entitled to issue proceedings.</p> <p>Damages and agreed expenses</p>	<p><i>Scheme of fixed fees in place:</i></p> <p><i>Instruction fees:</i></p> <p>£370 -for settlements up to £1500;</p> <p>£810 – for settlements over £1500.</p> <p><i>Completion fees:</i></p> <p>25% on settlements up to £2,500</p> <p>15% on the excess over £2,500 up to £5,000</p> <p>7.5% on the excess over £5,000 up to</p>	<p>None</p> <p>(although where proceedings are raised in a Voluntary Protocol case, parties can lodge Voluntary Protocol communications for the sole purpose of assisting the court in any determination of expenses)</p>	<p>Protocol is voluntary</p> <p>If entered into, will apply in all cases which include a claim for personal injury (excepting Clinical Negligence and Disease and Illness cases) and will apply not merely to the personal injury element of a claim but also to other heads of loss</p>

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	obtained if relevant, name and address of claimant's motor Insurer Letter should be sent direct to insurer, if known, or to defender asking for details of Insurer.		acknowledge (letter) to investigate claim and reply stating whether liability is admitted or denied, including all available documents supporting their position.	intends to rely, will be disclosed to the other party within 5 weeks of receipt.	of claim.		must be paid within 5 weeks of settlement.	£10,000 5% on the excess over £10,000 up to £20,000 2.5% on the excess over £20,000		and damage. It is primarily designed for road traffic, tripping and slipping and accident at work cases where the value of the claim is up to £10k (although in cases where the claim is above £10k, the protocol can still be used with agreement of the parties).
Forum of Scottish Claims Managers	Intimation of claim to include allegations and heads of claim	No timescale – within limitation period	Response on liability : 15 days – motor cases 30 days employer's liability	Pursuer to submit medical and other evidence with statement of valuation – no time limits - within limitation	Pursuer to submit medical and other evidence with statement of valuation – no time limits - within	Pursuer to submit medical and other evidence with statement of valuation – no time	Defender to consider evidence and respond to valuation of claim within 20 days Further period of negotiation if required – 15 days		Breach by defender entitles pursuer to litigate without penalty If pursuer litigates in breach of	Suggests use of an electronic portal by both sides to carry out the various steps Pre-litigation

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			40 days – public liability	period All medical evidence obtained during pre-action protocol communications should be disclosed pre-litigation.	limitation period	limits - within limitation period	Pursuer entitled to issue proceedings if no agreement in 15 day period.		Protocol, expenses should be modified to pre-action protocol expenses, or nil, at discretion of court. If pursuer litigates but fails to beat a defender’s pre-litigation offer, their expenses should be modified to pre-action protocol expenses. If pursuer litigates and beats a defender’s pre-litigation offer, pursuer’s damages should be uplifted by 10%	admissions of liability ought to be binding as regards claims worth less than £25k. The practice of pre-litigation offers being treated as ‘pre-litigation tenders’ should apply to claims exceeding the limits of the compulsory pre-action protocol.
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									the defender will be entitled to recover expenses of the litigation if unreasonable conduct by pursuer	
Forum of Insurance Lawyers (FOIL)	Full details of pursuer (name, DOB, occupation, etc) Injuries sustained, time off work, employer's details, details of GP or hospital visits, treatment received, details of material		Response on liability : 40 working days employer's or public liability cases 20 working days – other cases Insurer can request further time to investigate –	Pursuer must instruct medical report within 20 working days of receipt of insurer's response liability. Medical report must be disclosed to insurer within 20 working days of receipt. Insurer may ask questions of the medical expert within 20 working days of	Statement of valuation of claim must be submitted by pursuer at the same time as disclosing medical report – including all heads of claim and supporting documents Pursuer can ask insurer for any info held subject to normal rules	Statement of valuation of claim must be submitted by pursuer at the same time as disclosing medical report – including all heads of claim and supporting documents.	Insurer must offer to settle case within 20 working days of receipt of medical report and statement of claim. Issuing of offer invokes 2 month period of negotiation during which pursuer will not litigate (unless time-bar an issue). Pursuer must accept offer, or issue counter-offer, within 20 days.	Separate fee structures proposed for motor claims and employers/public liability claims Motor claims: <u>up to £1k -£300</u> payable on settlement <u>betw.£1k and £25k- £200</u> (up to and incl. insurer's response on liability) plus £200 – where 90 day extension	Breach by insurer entitles pursuer to litigate without penalty plus 10% on top of any solatium award made If pursuer litigates in breach of protocol, their expenses will be reduced to nil Other breaches by pursuer results in 50%	Suggests use of an electronic portal by both sides to carry out the various steps If case proceeds to litigation, any offers made under the protocol will be treated as pre-litigation tenders with expenses consequences

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<p>witnesses (including copies of their evidence), summary of the fact (including allegations of negligence).</p>			<p>this invokes a 90 day extension.</p> <p>If liability denied, insurer must disclose all documents supporting their position and pursuer can litigate without penalty.</p> <p>If contributory negligence claimed, insurer must give reasons and disclose all supporting documents.</p>	<p>receipt of medical report.</p>	<p>on recoverability of docs. Insurer must respond within 20 working days.</p>		<p>Bare rejection of the offer will be treated as a breach.</p> <p>Damages and agreed expenses must be paid within 20 working days.</p>	<p>period sought by defenders</p> <p>plus £300 on settlement (in cases betw. £10k and 25k, this figure is increased to £600)</p> <p>EL/PL claims</p> <p><u>up to £1k -£400</u> payable on settlement</p> <p>betw.£1k and <u>£25k- £300</u> (up to and incl. insurer's response on liability)</p> <p>plus £200- where 90 day extension period sought by defenders</p> <p>plus £600 on settlement (in cases betw. £10k and 25k, this figure is increased</p>	<p>modification of expenses</p> <p>Unreasonable conduct by pursuer entitles insurer to recover expenses of litigation</p> <p>If pursuer litigates and beats their counter-proposal, the pursuer's damages should be uplifted by 10%</p>	<p>running from date of offer.</p> <p>Insurer can offer to settle at any time.</p>
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BLM	<p>Full details of pursuer (name, DOB, occupation, etc)</p> <p>Full account of accident (incl. date and location), registration numbers in RTA cases, witness details, account of injuries sustained and heads of claim sought, request for any info held that may assist pursuer</p>					<p>Detailed statement of valuation of claim showing all heads of claim should be issued along with all medical reports and vouching following upon admission of liability (incl. admissions subject to contributory negligence).</p> <p>No new heads of claim allowed after statement of valuation of</p>	<p>Offers should be sent recorder delivery or via email with a delivery and read receipt.</p> <p>There should be an extended period allowing for negotiating settlement. Parties should be required to make offers and counter proposals to elicit settlement</p>	<p>Suggests introduction of fixed fees. Considers fees in Law Society model excessive. Supports level of fees in FOIL model.</p>	<p>Breach by defender entitles pursuer to litigate without penalty</p> <p>If pursuer litigates in breach of protocol, their expenses will be reduced to nil</p> <p>If the pursuer fails to beat a defender's pre-litigation offer, their expenses should be nil</p> <p>If a pursuer beats a defender's pre-litigation offer, the pursuer's damages should be uplifted by</p>	<p>Suggests use of an electronic portal by both sides to carry out the various steps</p> <p>A list of agreed addresses for receipt of letters of claim by insurers should be posted on the Law Society's website</p>

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	(accident reports or wage records).					claim lodged unless special cause is shown			10%	
									Unreasonable conduct by pursuer entitles defender to recover expenses of litigation	
									A significantly over-stated valuation ought to be penalised with sanctions in the event of litigation	
									For claims worth less than £25,000, all pre-litigation offers should be treated as pre-litigation tenders with associated financial consequences	

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Assoc. of British Insurers	<p>Suggest use of a standard letter of claim, similar to the Claims Notification Form used in England and Wales.</p> <p>Agrees with mandatory categories of information suggested by FOIL above.</p>		<p>Time limit for a defender's response on liability should not commence until the claimant has provided all mandatory information</p>	<p>A standard template should be used for medical reports obtained under the protocol.</p>			<p>A rigid time frame for settlement should be applied from the date of issue of the statement of valuation and supporting docs.</p> <p>If settlement cannot be reached, a streamlined litigation procedure should follow allowing for a decision on damages by a sheriff (either on papers or a short oral hearing) based on parties' final offer and statement of valuation.</p> <p>Additional heads of claim should be allowed in exceptional circumstances only and at the</p>	<p>Suggests a staged fixed costs scheme, to reflect stage at which claim is settled. (akin to protocols in England and Wales).</p>	<p>Sanctions proposed same as those suggested by Forum of Scottish Claims Managers</p>	<p>Suggests development of an electronic portal by both sides to carry out the various steps</p> <p>Pre-litigation admissions of liability ought to be binding as regards claims worth less than £25k.</p>

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							discretion of the sheriff			
Direct Line Group	<p>Suggest use of a standard letter of claim, similar to the Claims Notification Form used in England and Wales.</p> <p>Agrees with mandatory categories of information suggested by FOIL above.</p>		<p>Time limit for a defender's response on liability should not commence until the claimant has provided all mandatory information</p>	<p>A standard template should be used for medical reports obtained under the protocol. Pursuer must disclose any relevant medical records and any photographs upon which they intend to rely. Fees for medical reports should be proportionate and fixed.</p>			<p>As suggested in ABI response, if settlement cannot be reached, a streamlined litigation procedure should follow allowing for a decision on damages by a sheriff (either on papers or a short oral hearing) based on parties' final offer and statement of valuation.</p>	<p>Suggests a staged fixed costs scheme, to reflect stage at which claim is settled. (akin to protocols in England and Wales).</p> <p>1st payment made by defender on receipt of statement of valuation and all supporting info.</p> <p>2nd payment of expenses made by defender upon settlement.</p> <p>If settlement not agreed within time limit, streamlined litigation should follow as suggested in ABI response.</p>	<p>Suggests introduction of appropriate rules and sanctions where either party fails to comply with the protocol.</p> <p>Where settlement is not reached, expenses to be awarded to the pursuer if they are awarded damages in excess of defender's final offer. If the award is less than the defender's final offer, the defender should receive an expenses award.</p>	<p>Suggests development of an electronic portal by both sides to carry out the various steps</p>

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<p>PSV Claims Bureau Ltd</p>	<p>Specified information must be provided</p>	<p>No timescale – within limitation period</p>	<p>Response on liability : 15 working days – motor cases 40 days – public liability and employer’s liability cases Where liability denied or contributory negligence alleged, claim is dealt with under separate part of protocol with sanctions for poor conduct</p>	<p>Following admission of liability, Pursuer to submit medical reports and other evidence along with offer of settlement – no time limits - within limitation period</p>	<p>Following admission of liability, Pursuer to submit medical reports and other evidence along with offer of settlement – no time limits - within limitation period</p>	<p>Following admission of liability, Pursuer to submit medical reports and other evidence along with offer of settlement – no time limits - within limitation period</p>	<p>Defender to consider offer and accept, or make counter-offer, within 20 working days. Where counter offer made, a further 15 working days permitted for negotiation. Where agreement cannot be reached, both parties must submit their final offer along with supporting documentation for review by sheriff with a view to binding determination on quantum being provided.</p>	<p>Suggests use of fixed recoverable costs. In line with the Taylor Review, qualified one way costs shifting could be implemented to remove the potential barrier of an adverse costs order preventing a Pursuer from seeking damages.</p>	<p>Where evidence submitted to sheriff for determination on quantum, sheriff will be able to impose sanction for poor pre-litigation conduct or conduct delaying settlement. If the defender fails to engage with the protocol, the pursuer should receive an additional 10% solatium If the pursuer fails to adhere to the protocol, this should forego part or all of their entitlement to expenses.</p>	<p>Recommends use of an electronic process, similar to the Ministry of Justice Portal Admissions of liability made using electronic process ought to be binding as regards claims worth less than £25k.</p>
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<p>CPR and PI Protocol (England and Wales)</p>	<p>Letter of claim must contain a clear summary of the facts on which the claim is based together with an indication of the nature of any injuries suffered and of any financial loss incurred. In RTA cases, the letter should give the name and address of the hospital where treatment has been</p>	<p>As soon as information is available to substantiate a realistic claim and before issues of quantum are addressed in detail</p>	<p>The defendant should pass a copy of claim letter to insurers and an acknowledgment letter should be sent within 21 calendar days (or 42 days if the accident occurred outside England and Wales, and/or where the defendant is outside England and Wales). If there has been no</p>	<p>The protocol encourages joint selection of, and access to, experts. The protocol promotes the practice of the claimant obtaining a medical report, disclosing it to the defendant who then asks questions and/or agrees it and does not obtain his own report. Where the defendant admits liability, before proceedings are issued, the protocol requires parties to disclose any</p>	<p>Letter of claim may identify classes of documents relevant for early disclosure. If Insurer denies liability, in whole or in part, they must disclose any relevant documents at the same time as giving their decision on liability. Annex B to protocol lists documents likely to be material in different types of claim</p>	<p>Where the defendant admits liability the claimant should send the defendant schedules of special damages and loss at least 21 days before proceedings are issued</p>	<p>Ch 36 of the CPR permits claimants and defendants to make formal offers to settle pre-proceedings. The protocol encourages parties to consider making a Ch 36 offer before issuing proceedings.</p>	<p>PI Protocol requires parties to provide other parties with information about any funding arrangements entered into. Staged fixed costs apply in cases dealt with under RTA and Employers'/Public Liability protocols (different levels of fixed cost apply depending on value of claim). Court has general power to make an award of the costs of proceedings and this includes incidental costs – which will include costs incurred</p>	<p>The CPR allow the court to take into account the extent of the parties' compliance with the Practice Direction on Pre-Action Conduct, and any relevant pre-action protocol, when giving directions for the management of claims (rules 3.1(4) and (5)) and when making orders in relation to costs (rule 44.2(5)(a)).</p>	<p>PI Protocol applies to all claims up to £25k which include a claim for personal injury, except clinical negligence and disease and illness cases which are dealt with in separate protocols. Whilst there are now separate protocols for road traffic and employers' liability and public liability cases up to £25k, these only apply where liability is accepted in full.</p>
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	<p>obtained and the claimant's hospital reference number.</p>		<p>reply within this timescale, claimant will be entitled to issue proceedings.</p> <p>defendant has up to 3 months (or 6 months if accident occurred outside England and Wales, and/or the defendant is outside England and Wales) to investigate and reply on question of liability (including</p>	<p>medical reports upon which they intend to rely.</p>				<p>during pre-action protocol process.</p>		
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			details of alternative version of events relied upon)							
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