

SCHEDULE 2

Paragraph 3(3)

APPENDIX 1A

THE PERSONAL INJURY PRE-ACTION PROTOCOL

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**Application of the Protocol**

1. This Protocol applies to claims for damages for, or arising from personal injuries, unless:
  - (a) the claimant reasonably estimates that the total liability value of the claim, exclusive of interest and expenses, exceeds £25,000;
  - (b) the accident or other circumstance giving rise to the liability occurred before 28th November 2016;
  - (c) the claimant is not represented by a solicitor during the stages of the Protocol; or
  - (d) the injuries for which damages are claimed—
    - (i) arise from alleged clinical negligence;
    - (ii) arise from alleged professional negligence; or
    - (iii) take the form of a disease.

In this paragraph—

“clinical negligence” has the same meaning as in rule 36.C1 of the Ordinary Cause Rules 1993; and

“disease” includes—

- (a) any illness, physical or psychological; and
- (b) any disorder, ailment, affliction, complaint, malady or derangement, other than a physical or psychological injury solely caused by an accident or other similar single event.

**Definitions**

2. In this Protocol:

“claimant” means the person who is seeking damages from the defender;

“defender” means the person against whom a claim is made.

“next-day postal service which records delivery” means a postal service which—

  - (a) seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases; and
  - (b) provides for the delivery of documents or other things by post to be recorded.

**Aims of the Protocol**

3. The aims of the Protocol are to assist parties to avoid the need for, or mitigate the length and complexity of, civil proceedings by encouraging:
  - the fair, just and timely settlement of disputes prior to the commencement of proceedings; and
  - good practice, as regards:
    - early and full disclosure of information about the dispute;

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- investigation of the circumstances surrounding the dispute; and
- the narrowing of issues to be determined through litigation in cases which do not reach settlement under the Protocol.

#### **Protocol rules**

4. Where, in the course of completing the stages of the Protocol, the claimant reasonably estimates that the total value of the claim, exclusive of interest and expenses, has increased beyond £25,000, the claimant must advise the defender that the Protocol threshold has been exceeded. Parties may agree to continue following the stages of the Protocol on a voluntary basis with a view to facilitating settlement before commencing proceedings.
5. Anything done or required to be done by a party under this Protocol may be done by a solicitor, insurer or other representative dealing with the claim for, or on behalf of, that party.
6. Where a party is required under this Protocol to intimate or send a document to another party, the document may be intimated or sent to the solicitor, insurer or other representative dealing with the claim for, or on behalf of, that party.
7. Documents that require to be intimated or sent under the Protocol, should, where possible, be intimated or sent by email using an email address supplied by the claimant or defender. Alternatively, such documents are to be sent or intimated using a next-day postal service which records delivery.
8. Where there is a number of days within which or a date by which something has to be done (including being sent or intimated), it must be done or sent so that it will be received before the end of that period or that day.
9. The claimant is expected to refrain from commencing proceedings unless:
  - all stages of the Protocol have been completed without reaching settlement;
  - the defender fails to complete a stage of the Protocol within the specified period;
  - the defender refuses to admit liability, or liability is admitted on the basis that the defender does not intend to be bound by the admission in any subsequent proceedings;
  - the defender admits liability but alleges contributory negligence and the fact or level of contributory negligence is disputed by the claimant (see paragraph 18).
  - settlement is reached but the defender fails to pay damages and agreed expenses/outlays within 5 weeks of settlement (see paragraph 35 below); or
  - it is necessary to do so for time-bar reasons (in which case, proceedings should be commenced and a sist applied for to allow the stages of the Protocol to be followed).
10. Parties are expected to co-operate generally with each other with a view to fulfilling the aims of the Protocol.

#### **The stages of the Protocol**

##### ***Stage 1 – issuing of Claim Form***

11. The claimant must send a Claim Form to the defender as soon as sufficient information is available to substantiate a claim. The Claim Form should contain a clear summary of the facts on which the claim is based, including allegations of negligence, breaches of common law or statutory duty and an indication of injuries suffered and financial loss incurred. A suggested template for the Claim Form can be found in **Annex A** at the end of this Appendix.

***Stage 2 – the defender’s acknowledgement of Claim Form***

12. The defender must acknowledge the Claim Form within 21 days of receipt.

***Stage 3 – the defender’s investigation of the claim and issuing of Response***

13. The defender has a maximum of three months from receipt of the Claim Form to investigate the merits of the claim. The defender must send a reply during that period, stating whether liability is admitted or denied, giving reasons for any denial of liability, including any alternative version of events relied upon. The defender must confirm whether any admission made is intended to be a binding admission. Paragraph 9 above confirms that the claimant may raise proceedings if a non-binding admission is made.
14. If the defender denies liability, in whole or in part, they must disclose any documents which are relevant and proportionate to the issues in question at the same time as giving their decision on liability.
15. Paragraph 14 does not apply to documents that would never be recoverable in the course of proceedings, or that the defender would not be at liberty to disclose in the absence of an order from the court.
16. A suggested list of documents which are likely to be material in different types of claim is included in **Annex B** at the end of this Appendix.
17. If an admission of liability is made under this Protocol, parties will be expected to continue to follow the stages of the Protocol, where:
- the admission is made on the basis that the defender is to be bound by it (subject to the claim subsequently being proved to be fraudulent); and
  - the admission is accepted by the claimant.

***Stage 4 – disclosure of documents and reports following admission of liability***

18. Where the defender admits liability to make reparation under the Protocol but alleges contributory negligence, the defender must give reasons supporting the allegations and disclose the documents which are relevant and proportionate to the issue of contributory negligence. The claimant must respond to the allegation of contributory negligence before proceedings are raised.
19. Medical reports are to be instructed by the claimant at the earliest opportunity but no later than 5 weeks from the date the defender admits, in whole or part, liability (unless there is a valid reason for not obtaining a report at this stage).
20. Any medical report on which the claimant intends to rely must be disclosed to the other party within 5 weeks from the date of its receipt. Similarly, any medical report on which the defender intends to rely must be disclosed to the claimant within 5 weeks of receipt.
21. Parties may agree an extension to the issuing of medical reports if necessary.

***Stage 5 – issuing of Statement of Valuation of Claim***

22. The claimant must send a Statement of Valuation of Claim to the defender (in the same form as Form P16 in Appendix 1 of the Ordinary Cause Rules), together with supporting documents. The Statement of Valuation of Claim should be sent as soon as possible following receipt of all the other relevant information, including medical reports, wage slips, etc.
23. If the defender considers that additional information is required in order to consider whether to make an offer in settlement, the defender may request additional information from the claimant. Any such request is to be made promptly following receipt of the

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Statement of Valuation of Claim and supporting documents. The claimant must provide the information requested within 14 days of receipt of the request.

**Stage 6 – offer of settlement**

24. Any offer in settlement to be made by the defender may be made within 5 weeks from the date of receipt of the Statement of Valuation of Claim, medical reports and supporting evidence (including any additional information requested under paragraph 23).
25. Where the claimant’s injuries are minor and no formal medical treatment is sought, a settlement offer may be made in the absence of medical evidence; otherwise, settlement offers may only be made following the submission of satisfactory medical evidence of injury.
26. An offer in settlement is only valid for the purposes of this Protocol if it includes an offer to pay expenses in accordance with the expenses provisions (at paragraphs 30-33) in the event of acceptance.

**Stage 7 – claimant’s response to offer of settlement**

27. If a settlement offer is made, the claimant must either accept the offer or issue a reasoned response within 14 days of receipt of the offer. Alternatively, if the claimant considers that additional information is required to allow full and proper consideration of the settlement offer, the claimant may make a request for additional information from the defender within 14 days of the receipt of the offer.
28. Where additional information or documentation is requested to allow the claimant to give full and proper consideration to the settlement offer, the claimant must accept the offer or issue a reasoned response within 21 days of receipt of the additional information or documentation.
29. In any reasoned response issued, the claimant must:
  - reject the offer outright, giving reasons for the rejection; or
  - reject the offer and make a counter-offer, giving reasons.
30. The expenses to be paid to the claimant in the event of settlement comprise—
  - (a) a payment in respect of the claimant’s liability for solicitors’ fees calculated in accordance with paragraph 31, and
  - (b) reimbursement of all other reasonably incurred outlays.
31. The payment in respect of liability for solicitors’ fees is the sum of—
  - (a) £546;
  - (b) 3.5% of the total amount of agreed damages up to £25,000;
  - (c) 25% of that part of the agreed damages up to £3,000;
  - (d) 15% of the excess of the agreed damages over £3,000 up to £6,000;
  - (e) 7.5% of the excess of the agreed damages over £6,000 up to £12,000;
  - (f) 5% of the excess of the agreed damages over £12,000 up to £18,000;
  - (g) 2.5% of the excess of the agreed damages over £18,000; and
  - (h) a figure corresponding to the VAT payable on the sum of the foregoing.
32. Where an expert report has been instructed, any associate agency fee is not a reasonably incurred outlay for the purpose of paragraph 30(b).

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33. Any deduction from damages in accordance with section 7 of the Social Security (Recovery of Benefits) Act 1997 is to be disregarded for the purpose of paragraph 31.

*Stage 8 – stocktaking period*

34. The claimant must not raise proceedings until at least 14 days after the defender receives the claimant’s reasoned response (even in cases where the settlement offer is rejected outright). This period allows parties to take stock of their respective positions and to pursue further settlement negotiations if desired.

**Stage 9 – payment**

35. Damages and Protocol expenses must be paid within 5 weeks of settlement (with interest payable thereafter at the judicial rate).

**Annex A**

1. This form is to be used where the details of the defender’s insurers are known:

<b>Pre-Action Protocol Claim Form</b>	
<b>TO:</b> <i>(name of insurance company)</i>	
<b>FROM:</b> <i>(name of solicitor and firm representing claimant)</i>	
<b>DATE:</b> <i>(date of issue of Claim Form)</i>	
This is a claim which we consider to be subject to the terms of the Personal Injury Pre-Action Protocol as set out in the Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016.	
<b>Please acknowledge receipt of this claim within 21 days of the date of this Form.</b>	
<b>CONTACT:</b> <i>(postal and email address of solicitor representing claimant)</i>	
<b>Claimant’s details</b>	
<b>Claimant’s Full Name</b>	
<b>Claimant’s Full Address</b>	
<b>Claimant’s Date of Birth</b>	
<b>Claimant’s Payroll or Reference Number</b>	
<b>Claimant’s Employer (name and address)</b>	
<b>Claimant’s National Insurance Number</b>	
<b>Details of Claim</b>	
We are instructed by the above named to claim damages in connection with: <i>[state nature of accident an accident at work/road traffic accident/tripping accident]</i> on <i>[Xth]</i> day of <i>[year]</i> at <i>[state place of accident – which must be sufficiently detailed to establish location]</i> .	
The circumstances of the accident are:- <i>[provide brief outline and simple explanation e.g. defective machine, vicarious liability]</i> .	
Your insured failed to: <i>[provide brief details of the common law and/or statutory breaches]</i> .	
Our client’s injuries are as follows: <i>[provide brief outline]</i> .	
<b>i.</b>	Our client received treatment for the injuries at <i>[give name and address of GP/treating hospital]</i> .

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[In cases of road accidents...]
<p><b>ii.</b> Our client’s motor insurers are:-</p> <p>Our client is still suffering from the effects of his/her injury. We invite you to participate with us in addressing his/her immediate needs by use of rehabilitation.</p> <p>He/she is employed as <i>[insert occupation]</i> and has had the following time off work <i>[provide dates of absence]</i>. His/her approximate weekly income is <i>[insert if known]</i>.</p>
<b>Reports</b>
We are obtaining a police report and will let you have a copy of same upon your undertaking to meet half the fee.
At this stage of our enquiries we would expect the undernoted documents to be relevant to this claim.
(...)

**2.** This form is to be used where the details of the defender’s insurers are not known:

<b>Pre –Action Protocol Claim Form</b>	
<b>TO:</b> <i>(name of defender)</i>	
<b>FROM:</b> <i>(name of solicitor and firm representing claimant)</i>	
<b>DATE:</b> <i>(date of issue of Claim Form)</i>	
This is a claim which we consider to be subject to the terms of the Personal Injury Pre-Action Protocol as set out in the Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016.	
<b>You should acknowledge receipt of this claim and forward it to your Insurers as soon as possible, asking them to contact us within 21 days of the date of this Form.</b>	
<b>CONTACT:</b> <i>(postal and email address of solicitor representing claimant)</i>	
<b>Claimant’s details</b>	
<b>Claimant’s Full Name</b>	
<b>Claimant’s Full Address</b>	
<b>Claimant’s Payroll or Reference Number</b>	
<b>Claimant’s Employer (name and address)</b>	
We are instructed by the above named to claim damages in connection with: <i>[state nature of accident an accident at work/road traffic accident/tripping accident]</i> on <i>[Xth]</i> day of <i>[year]</i> at <i>[state place of accident – which must be sufficiently detailed to establish location]</i> .	
The circumstances of the accident are:- <i>[provide brief outline and simple explanation e.g. defective machine, vicarious liability]</i> .	
You failed to:- <i>[provide brief details of the common law and/or statutory breaches]</i> .	
Our client’s injuries are as follows:- <i>[provide brief outline]</i> .	
<b>i.</b>	Our client received treatment for the injuries at <i>[give name and address of GP/treating hospital]</i> .

[In cases of road accidents...]
<b>ii.</b> Our client's motor insurers are:- Our client is still suffering from the effects of his/her injury. We invite you to participate with us in addressing his/her immediate needs by use of rehabilitation. He/she is employed as <i>[insert occupation]</i> and has had the following time off work <i>[provide dates of absence]</i> . His/her approximate weekly income is <i>[insert if known]</i> .
<b>Reports</b>
We are obtaining a police report and will let you have a copy of same upon your undertaking to meet half the fee.
At this stage of our enquiries we would expect the undernoted documents to be relevant to this claim. (...)

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## **Annex B – Standard Disclosure**

### **1. Road Traffic Cases**

#### **Section A – cases where liability is at issue**

- (i) Documents identifying nature, extent and location of damage to defender's vehicle where there is any dispute about point of impact.
- (ii) MOT certificate where relevant.
- (iii) Maintenance records where vehicle defect is alleged or it is alleged by defender that there was an unforeseen defect which caused or contributed to the accident.

#### **Section B - accidents involving a potential defender's commercial vehicle**

- (i) Tachograph charts or entry from individual control book, where relevant.
- (ii) Maintenance and repair records required for operators' licence where vehicle defect is alleged or it is alleged by defender that there was an unforeseen defect which caused or contributed to the accident.

#### **Section C - cases against local authorities where a highway design defect is alleged**

- (i) Documents produced to comply with section 39 of the Road Traffic Act 1988 in respect of the duty designed to promote road safety to include studies into road accidents in the relevant area and documents relating to measures recommended to prevent accidents in the relevant area.

### **2. Road/footway tripping claims**

Documents from the Highway Authority or local authority for a period of 12 months prior to the accident–

- (i) Records of inspection for the relevant stretch of road/footway.
- (ii) Maintenance records including records of independent contractors working in relevant area.
- (iii) Statement of the Roads Authority's policy under the Code of Practice for Highway Maintenance Management (2005) or alternatively records of the Minutes of Highway Authority or Local Authority meetings where maintenance or repair policy has been discussed or decided.

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- (iv) Records of complaints about the state of roads/footway at the accident locus for a 12 month period prior to the accident.
- (v) Records of other accidents which have occurred on the relevant stretch of road/footway within 12 months of the accident.

### **3. Workplace claims – general**

- (i) Accident book entry.
- (ii) First aider report.
- (iii) Surgery record.
- (iv) Foreman/supervisor accident report.
- (v) Safety representatives' accident report.
- (vi) RIDDOR (Reporting of Injuries, Disease and Dangerous Occurrences Regulations 2013) report to the Health and Safety Executive (HSE).
- (vii) Other communications between defenders and HSE.
- (viii) Minutes of Health and Safety Committee meeting(s) where accident/matter considered.
- (ix) Report to the Department for Work and Pensions.
- (x) Documents listed above relative to any previous accident/matter identified by the claimant and relied upon as proof of negligence.
- (xi) Earnings information where defender is employer.

### **4. Workplace claims -**

#### **Documents produced to comply with requirements of the Management of Health and Safety at Work Regulations 1991/3242**

- (i) Pre-accident Risk Assessment required by Regulation 3.
- (ii) Post-accident Re-Assessment required by Regulation 3.
- (iii) Accident Investigation Report prepared in implementing the requirements of Regulation 5.
- (iv) Health Surveillance Records in appropriate cases required by Regulation 6.
- (v) Information provided to employees under Regulation 10.
- (vi) Documents relating to the employee's health and safety training required by Regulation 13.

### **5. Workplace claims – Disclosure where specific regulations apply**

#### **Section A – Manual Handling Operations Regulations 1992/2793**

- (i) Manual Handling Risk Assessment carried out to comply with the requirements of Regulation 4(1)(b)(i).
- (ii) Re-assessment carried out post-accident to comply with requirements of Regulation 4(1)(b)(i).
- (iii) Documents showing the information provided to the employee to give general indications related to the load and precise indications on the weight of the load and the heaviest side of the load if the centre of gravity was not positioned centrally to comply with Regulation 4(1)(b)(iii).
- (iv) Documents relating to training in respect of manual handling operations and training records.



- (v) All documents showing or tending to show the weight of the load at the material time.

**Section B – Personal Protective Equipment at Work Regulations 1992/2966**

- (i) Documents relating to the assessment of Personal Protective Equipment to comply with Regulation 6.
- (ii) Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7.
- (iii) Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7.
- (iv) Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7.
- (v) Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 9.
- (vi) Instructions for use of Personal Protective Equipment to include the manufacturers' instructions to comply with Regulation 10.

**Section C – Workplace (Health Safety and Welfare) Regulations 1992/3004**

- (i) Repair and maintenance records required by Regulation 5.
- (ii) Housekeeping records to comply with the requirements of Regulation 9.
- (iii) Hazard warning signs or notices to comply with Regulation 17.

**Section D – Provision and Use of Work Equipment Regulations 1998/2306**

- (i) Manufacturers' specifications and instructions in respect of relevant work equipment establishing its suitability to comply with Regulation 4.
- (ii) Maintenance log/maintenance records required to comply with Regulation 5.
- (iii) Documents providing information and instructions to employees to comply with Regulation 8.
- (iv) Documents provided to the employee in respect of training for use to comply with Regulation 9.
- (v) Any notice, sign or document relied upon as a defence to alleged breaches of Regulations 14 to 18 dealing with controls and control systems.
- (vi) Instruction/training documents issued to comply with the requirements of Regulation 22 insofar as it deals with maintenance operations where the machinery is not shut down.
- (vii) Copies of markings required to comply with Regulation 23.
- (viii) Copies of warnings required to comply with Regulation 24.

**Section E – Lifting Operations and Lifting Equipment Regulations 1998/2307**

- (i) All documents showing the weight of any load to establish lifting equipment of adequate strength and stability to comply with Regulation 4.
- (ii) All notices and markings showing the safe working load of machinery and accessories to comply with Regulation 7.
- (iii) All documents showing lifting operations have been planned by a competent person, appropriately supervised and carried out in a safe manner to comply with Regulation 8.
- (iv) All defect reports to comply with Regulation 10.

**Section F – Pressure Systems Safety Regulations 2000/128**

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- (i) Information and specimen markings provided to comply with the requirements of Regulation 5.
- (ii) Written statements specifying the safe operating limits of a system to comply with the requirements of Regulation 7.
- (iii) Copy of the written scheme of examination required to comply with the requirements of Regulation 8.
- (iv) Examination records required to comply with the requirements of Regulation 9.
- (v) Instructions provided for the use of operator to comply with Regulation 11.
- (vi) Records kept to comply with the requirements of Regulation 14.

**Section G – Control of Substances Hazardous to Health Regulations 2002/2677**

- (i) Risk assessment carried out to comply with the requirements of Regulation 6.
- (ii) Reviewed risk assessment carried out to comply with the requirements of Regulation 6.
- (iii) Copy labels from containers used for storage handling and disposal of carcinogenics to comply with the requirements of Regulation 7.
- (iv) Warning signs identifying designation of areas and installations which may be contaminated by carcinogenics to comply with the requirements of Regulation 7.
- (v) Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 7.
- (vi) Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7.
- (vii) Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7.
- (viii) Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7.
- (ix) Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 7.
- (x) Instructions for use of Personal Protective Equipment to include the manufacturers' instructions to comply with Regulation 7.
- (xi) Air monitoring records for substances assigned a maximum exposure limit or occupational exposure standard to comply with the requirements of Regulation 7.
- (xii) Maintenance examination and test of control measures records to comply with Regulation 9.
- (xiii) Monitoring records to comply with the requirements of Regulation 10.
- (xiv) Health surveillance records to comply with the requirements of Regulation 11.
- (xv) Documents detailing information, instruction and training including training records for employees to comply with the requirements of Regulation 12.
- (xvi) Labels and Health and Safety data sheets supplied to the employers to comply with the CLP (Classification, Labelling and Packaging) Regulations.

**Section H – Control of Noise at Work Regulations 2005/1643**

- (i) Any risk assessment records required to comply with the requirements of Regulation 5.

- (ii) Manufacturers' literature in respect of all ear protection made available to claimant to comply with the requirements of Regulation 7.
- (iii) Health surveillance records relating to the claimant to comply with the requirements of Regulation 9.
- (iv) All documents provided to the employee for the provision of information to comply with Regulation 10.

**Section I – Construction (Design and Management) Regulations 2015/51**

- (i) All documents showing the identity of the principal contractor, or a person who controls the way in which construction work is carried out by a person at work, to comply with the terms of Regulation 5.
  - (ii) Notification of a project form (HSE F10) to comply with the requirements of Regulation 6.
  - (iii) Construction Phase Plan to comply with requirements of Regulation 12.
  - (iv) Health and Safety file to comply with the requirements of Regulations 4 and 12.
  - (v) Information and training records provided to comply with the requirements of Regulations 4, 14 and 15.
  - (vi) Records of consultation and engagement of persons at work to comply with the requirements of Regulation 14.
  - (vii) All documents and inspection reports to comply with the terms of Regulations 22, 23 and 24.
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