



DISEASE CLAIMS - SCOTS PRE-ACTION PROTOCOL

A voluntary pre-action protocol has been agreed between The Law Society of Scotland and the Forum of Scottish Claims Managers. This new protocol covers Industrial Disease Claims and applies to any claim intimated on or after 01 June 2008.

The definition of Disease covered by the protocol is “any illness, physical or psychological, any disorder, ailment, affliction, complaint, malady or derangement, other than physical or psychological injury solely caused by an accident or other similar singular event. A singular sensitising event may be considered appropriate for this protocol”.

Although many, if not most claims falling within the protocol, will result from employment, the protocol is not restricted to Disease claims from the individual’s place of work.

The protocol sets out the procedure to be followed, which in general terms is along the lines of other protocols.

Before the stage of the Pursuer’s Solicitor sending a detailed letter of claim, there is provision for recovery of Occupational Health Records. The suggested procedure in the protocol may have to vary slightly if the case is one where the Pursuer is making a claim against someone who is not his/her employer.

It is provided that the letter of claim should be sent as soon as sufficient information is available to substantiate a claim. The Solicitor should not hold off until sufficient information is available to consider the quantum of the claim in detail.

As might be expected, the protocol provides that the letter of claim should include details of the Disease, the main allegations of fault, the Pursuer’s present condition, an outline of the financial loss and the employment history, etc. The protocol provides a specimen letter to encourage sufficiently detailed information to be provided.

The Insurer is obliged to acknowledge the letter of claim within twenty-one days of date of receipt and advise in the form of another specimen letter whether it is agreed the case is suitable for the voluntary protocol. If there is no reply from the Insurer or the Defender within twenty-one days, then the Pursuer is entitled to issue proceedings.

The protocol goes on to provide for further timetable details, for example the Insurer has three months from the date of the initial response letter to investigate the merits.



An Appendix provides a list of documents which are likely to be material in various types of disease claims. The letter of claim should indicate which types of document are considered relevant for early disclosure.

If the Insurer admits liability, then the protocol provides that a Medical Report will be instructed no later than five weeks from the date of admission of liability, subject to there being a valid reason for delaying obtaining a Report, their provision as to who should instruct a Medical Report and in what circumstances, although normally it will be done by the Pursuer's Solicitors.

If liability has been admitted by the Insurer, the Pursuer's Solicitors should send the Insurer a Statement of Valuation with supporting documents. Proceedings should not be issued for five weeks from the date of the Statement to allow the Insurer the opportunity to consider settlement.

A Table of Fees is set out applying to all Disease Claims under the voluntary protocol.

**If you wish any further information on the terms of the protocol or on the Fees, please e-mail:
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