PLEADINGS – THE KEY TO COST-EFFECTIVE
CASE MANAGEMENT AND MILESTONES

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TUESDAY 13TH APRIL 2010

➢ Hong Kong’s New Litigation Super-highway: Issue-driven litigation, openness in pleading and written evidence, pro-active case-management, a fundamental overhaul of expert evidence, offers to settle with a costs sanction, a curtailment of rights of appeal of interlocutory orders; and proportionality.

➢ The “Underlying Objectives”: The duty to co-operate [and “co-opetition?”]

➢ File management and the statement of truth: Clarity, focus and genuine analysis in the context of ADR.

➢ Risk analysis: The dividend from openness and statements of truth.

➢ Sanctioned offers: The mirror image of a risk analysis.

➢ Front end-loading: How to avoid disproportionate costs.

➢ The legal critical path analysis of a case: Conceiving the route map.

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“Reverse engineering”: Anticipating the shape of the final judgment to be argued for.

“On what issue do you say this case turns?” Anticipating the first question at the CMC?

Neutral evaluation? “Before we start, may I say where my thinking is at this stage?”

Pleadings: The agenda for trial; the art and science of pleading; the “DNA” of any breach of duty; foreshadowing the judgment.

Milestones: The efficient litigator’s case-management tool.

Witness statements as to fact: Quality control protocols and dovetailing with pleadings.

Facts and inferences: How to avoid the expense of proving what can be inferred.

Managing experts: Quality control protocols and dovetailing with pleadings; the reverse engineering of the expert’s product.

Skeleton argument: The litigator’s visiting card to the Judge.

Appendices:
o Appendix 1: Underlying Objectives

o Appendix 2: Milestones – a litigator’s case management tool.

o Appendix 3: Quality control protocol for witnesses as to fact.

o Appendix 4: Inferences and how to establish them

o Appendix 5: The shifting burden of proof.

o Appendix 6: Quality control protocol for expert evidence.

o Appendix 7: Protocols for client care.

o Appendix 8: Legal critical path analysis in medical negligence claims

o Appendix 9: Model Statement of Claim in a Medical Negligence Action.

o Appendix 10: UK personal injury case update.

o Appendix 11: HK PD 5.2 on Case Management.

o Appendix 12: HK’s PD on Personal Injuries.
Appendix 13: Specimen Order on Check List Review / Case management Conference
APPENDIX 1

The Underlying Objectives

1. The underlying objectives **EMPOWER** the litigator:

   a. to increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Court;

   b. to ensure that a case is dealt with as expeditiously as is reasonably practicable;

   c. to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;

   d. to ensure fairness between the Parties;

   e. to facilitate the settlement of disputes; and

   f. to ensure that the resources of the Court are distributed fairly.

2. **Order 1A (2):** this provides:

   “In giving effect to the underlying objectives of these rules, the Court shall always recognise that the primary aim in exercising the powers of the Court is to secure the just resolution of
disputes in accordance with the substantive rights of the parties.”

3. The significance of the phrase “the substantive rights of the parties”:

   a. This demonstrates that substantive law is in the hands of the litigator.

   b. It is that substantive law which is moulded into file management by procedural law.

   c. But procedural law is the case-management tool of substantive law – it is not an end in itself.

4. What is substantive law? For case-management purposes, substantive law is the **Legal Critical Path Analysis** of a case [see *Appendix 8* for an example].
Appendix 2

Milestones – a litigator’s case management tool:

1. **Striking the litigation highway:** There is a highway from the first contact with the client to judgment/settlement. Milestones are:

   a. Pre-action letter.

   b. Issue and service of proceedings.

   c. Claim;

   d. Defence;

   e. Service of evidence as to fact;

   f. Expert evidence: reasonably required [joint?]

   g. Discovery;

   h. Requests for further information?

   i. Questions of experts?

   j. Interlocutory hearings [e.g. interim payment];
k. Trial [split?]

2. In relation to that highway:

   a. What do you need?

   b. Who can provide it?

   c. By when do you need it?

   d. Can you afford it?

   e. Can you achieve the same result from another angle? Can you shift a burden of proof [see below]?

3. Reverse engineering the litigation product: What does the judge need for his judgment? And then reverse engineer his needs into the case management from the opening of the file.

   a. What does the judge need?

      i. A sturdy legal framework as the foundation of the case; as adumbrated in the pleading: consider the legal critical path analysis of the case which generates the essential issue[s] in the case; see below.
ii. The facts [as supported by the evidence] which the Judge is to be invited to find.

iii. Expert evidence as to the issues on which such opinion is necessary [such opinions must satisfy the quality control protocols for expert evidence; see below].

b. What are the quality control tests for case management:

i. What is the genuine issue in the case *[Issue! Issue!! Or We All Fall Down”]*; see below.

ii. That must be no daylight between the pleadings, the witness statements and the expert evidence;

iii. Each head of claim must be accurately supported by any relevant evidence as to fact / expert evidence [critical in any case, particularly catastrophic injury cases].

iv. The Skeleton argument should be in elegant and simple language, capable of immediate assimilation because the issue is so clearly articulated.

4. What is the issue in the instant case?
a. Per Lord Salmon – *Some Thoughts on the Traditions of the English Bar.*

“You must familiarise yourself with all the facts and documents of any case in which you are engaged and the law applicable to it. You must consider all the many points that could be made. But remember this, in few cases, however complex, is there usually more than one point that matters. Very seldom are there more than two and never, well hardly ever, more than three. Discover the points that really matter. Stick to them and discard the rest. Nothing is more irritating to a tribunal than the advocate who takes every point possible and impossible. To do so is a very poor form of advocacy because the good points are apt to be swept away with the bad ones. Stick to what matters.”

b. Note per Rose LJ in *Re Freudiana Holdings Ltd*[1995] Times 4th December

“Whether there should be a wasted costs hearing was clearly a matter for the judge’s discretion. In his Lordship’s judgment, unless the proceedings could take place in summary form on or very soon after judgment they were unlikely to be appropriate.

“....
“... Wasted costs orders were an imperfect means of seeking to control excess by the legal profession. They provided the courts with a tool which in some cases was equal to the task but which in many cases was inadequate.

“However the real remedy lay in the hands of the legal profession itself; the proper conduct of litigation did not require every point to be taken, it required all those involved to concentrate on the vital issues in the case.

“The legal profession must relearn, or reapply, the skill which was the historic hallmark of the profession but which appeared to be fast vanishing; to present to the court the few crucial determinative points and to discard as immaterial dross the minor points and excessive detail.”

5. **Importance of accurate definition of the issue:** The more precise the definition of the issue, the less opportunity for the expert evidence to be ill-focussed (the quality of the expert evidence is directly relevant to a risk analysis), the more focussed will be the witness evidence as to fact and the narrower the ambit of proportionate documentary discovery.
6. **Given litigation focussed to issues, consider counsel’s closing submissions:**

   “May it please you My Lord; the facts I invite the Court to find are:…”

Those facts must be relevant to the issue[s] on which the case is going to turn.
APPENDIX 3

Witnesses as to fact – the quality control checklist – dovetailing with documents.

1. Witness statement format?

   a. What about starting in the following way: “This statement goes to the following issue:…” That helps focus the mind of the litigator – and tells the court clearly what the route map of the statement is.

   b. There should be sub-titles to cover each discreet topic: why should a statement be a voyage of discovery for the judge?

   c. Cross-referencing clearly with an indexed and paginated core bundle: If the litigator does not do it – why expect the judge to do it?

   d. Short sentences: The clearer the issue is articulated, the shorter the sentences can be.

   e. Simple words.

   f. What about -
i. No more than one comma per sentence?

ii. No more than four sentences per paragraph?

2. **Make it easy on the eye:** These witness statements are like the skeleton argument – they are your visiting cards to the Judge. Just as the food in Alice and Wonderland had “Eat Me” written on it; so your witness statements should have written implicitly all over them: “Read me.”
APPENDIX 4

Facts and inferences

1. The difference? Facts can be proved directly. Inferences are to be proved inferentially. Per Lord McMillan in Jones v. Great Western Railway:

“The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible, but of no legal value, for its essence is that it is a mere guess. An inference, in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction may have the validity of legal proof. The attribution of an occurrence to a cause is, I take it, always a matter of inference. The cogency of a legal inference of causation may vary in degree between practical certainty and reasonable probability. Where the coincidence of cause and effect is not a matter of actual observation there is necessarily a hiatus in the direct evidence, but this may be legitimately bridged by an inference from the facts actually observed and proved.”

2. Why is this relevant? You may have a factual bridge to cross. Can you do it on logical deduction from fact – rather than seeking other evidence and/or engaging expensive expert evidence?
3. Counsel’s advocacy?

“May it please you my Lord, I invite you to find the following facts.... And having found those facts I invite you to draw the following inferences. ........... The grounds for my inviting you to draw the following inferences are:.....”

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APPENDIX 5

The Shifting Burden of Proof

1. When onus shifts to the Defendant [taken from Bingham’s Cases on Negligence]:
   a. Bollard unlit – D under a continuing duty to light:
   b. Vegetable on shop floor;
   c. Burst tyre on bus;
   d. Hatch cover giving way;
   e. Guard rope too low;
   f. Hoist rope cut by third party;
   g. Wedge removed from staging;
   h. Sudden descent of load of crane;
   i. Unattended barge adrift;
   j. Over-hard chisel;
k. Hot water bottle bursting;

l. Defect on premises – attributable to occupier unless he proves otherwise;

m. Proof of disease and of conditions likely to cause disease – inference that disease due to conditions; Object falling form sling;

n. Bolt in machine breaking;

o. Latent defect – corrosion of brake fluid pipe;

p. Spillage on shop floor – calls for explanation from Ds.

q. Departure from generally accepted practice – damage occurs which the practice is designed to prevent – onus shifts to defendant to show no breach of duty.

r. Car leaving road and hitting trees.

s. Coach crossing central reservation.

t. Van brakes failing due to detachment of pin.

u. Car going out of control due to tyre burst;
v. Driving in fog with one rear light not working;

w. Pot of boiling water falling from tray carried by nurse;

x. Motorist losing control and skidding off road.

2. Res ipsa loquitur:

   a. Inrush of water into submarine;

   b. Vegetable on shop floor;

   c. Fire – in bilge of motor launch;

   d. Mine’s haulage rope breaking;

   e. Tooth extraction – choked by swab;

   f. Barge adrift unattended;

   g. Child of four escaping into road;

   h. Explosion in gas tank – operated by Plaintiff.

   i. Object falling into road from building;
j. Aircraft crashing;

k. Loud explosion in oxygen pipe in steel works;

l. Gas explosion at meter, if P can establish improbability of any outside interference;

m. Epidural anaesthetic causing quadriplegia;

n. Car leaving road and hitting tree;

o. Coach crossing central reservation;

p. Van brakes failing due to detachment of pin;

q. Sciatic damage during hip replacement;

r. Brian damage through hypoxia

s. Cardiac arrest under anaesthesia;

t. Lump of metal falling from factory table;

u. Escape of water from loft into tenant’s flat;

v. Fire emanating from gas heating appliance in house,
3. **Rules relating to Res Ipsa:**

   a. D does not necessarily have to explain the cause of the accident; all he has to do is to show that he was not negligent;

   b. D may displace presumption of negligence by showing reasonable way accident could have happened without negligence;

   c. D does not necessarily have to explain cause of the accident;

   d. Rule has no application where the cause of the accident is known;

   e. Rule has no application if P taking part in the operation complained of;

   f. Res ipsa is not a doctrine – it is a rule as to the weight of evidence.
APPENDIX 6

QUALITY CONTROL PROTOCOL FOR EXPERTS

1. **The essential DNA of all expert evidence**: If an expert’s report is an amalgam of fact, inference, speculation and opinion, the inevitable corollary is that at the experts’ meeting such amalgam has the potential to solidify into a settled view, the validity of which becomes increasingly difficult to challenge/disentangle. The opinion of an expert should be readily capable of refraction through the following prism (and it will be more transparent if the format of the report dovetails with the 6 parameters set out below in the order in which they are given):

   a. What is the issue(s) upon which advice is sought?

   b. What are the facts which the expert invites the court to find to establish his / her opinion; identifying the evidential source for such facts (eg by cross-referencing with a core bundle);

   c. Does the expert invite the court to draw any inferences from the primary facts (reasoned decisions as contrasted with speculation?) If yes, what are those inferences and on what grounds does he invite the court to infer them?

   d. What is the expert’s clear focussed opinion on the *issue(s)* the subject matter of the report?
e. In relation to any opinion on any issue expressed, what precisely are the grounds for that opinion setting them out clearly and succinctly?

f. Are there any other reasonable opinions / options capable of being explained? Why is one opinion / option preferable to another?

g. There should also be provided:

   a. A glossary of any learned texts relied upon setting out the core material where necessary [including that core material as a separate indexed and paginated bundle];

   b. Passages specifically relied upon should be highlighted in fluorescent ink which will register on a black and white photocopier.

2. **Taking issue with an expert, given the above expert report template:** If issue is to be taken by any party as to any opinion advanced by a professional, then the basis of any dispute is to be made clear:

   ➢ *Is it by reference to the facts upon which an opinion of a professional is based?* If yes, precisely what are the facts challenged and what are the grounds for contending that even if
such facts are successfully challenged, that such challenge should affect the conclusion to which the professional comes?

- **Similarly, is it by reference to any inference from those facts?**

- **If the facts (and any inferences) are substantially accepted, is the ground of challenge by reference to the opinion of the professional?** If yes:
  
  i. Precisely what part of the opinion of the professional is challenged?

  ii. On what basis is it to be contended that such opinion is wrong; what is challenged precisely in the context of the other expert’s reasoning process and why?

  iii. What instead is the view contended for, and on what grounds is that to be advanced?

3. **Consider the structure of the initial report:**

- If it is anticipated that there will be a conference with counsel after the expert has first reported [e.g. clinical negligence], why have a long initial report?

- Why not a very short report, homing in on the bull point?
If in fact the expert has got hold of the wrong end of the stick, then a short report abridges the waste of costs.

If the report proves to be properly honed, then its succinctness is a crucial feature of its own advocacy.

Note: Experts who have written very long initial reports are so often remarkably reluctant to amend them, even in the face of a counsel’s conference where it is plainly obvious that they are wrong in some essential understanding of a feature of the case. This can doom a case to failure.

4. Working protocol for experts and causation:

PART 1: The expert’s personal quality control check:

i. You will be cross-examined on your opinion;

ii. What are the grounds for your opinion?

iii. How carefully have you thought through the reasoning process which generates your opinion?
iv. Is there another field of expertise which should be invoked to target the issue? If yes, what field, and on what basis do you so advise?

PART 2: Causation protocol

i. What pain, suffering and loss of amenity was caused by the accident?

ii. In relation to that disability what are the consequences for employment? Is the capacity to work impaired? If yes, for what type of work, for how long and what are the grounds for so contending? Will employment capacity be impaired in the future? If yes, when and in respect of what sort of work? On what grounds do you advise?

iii. Does the disability suffered necessitate care/attendance? If yes, now and / or in the future? (If in the future, when?), for how many hours each day, by what status of carer? What are the grounds for your view?
iv. Would a supervening disability have arisen in any event not related to the accident? If yes, what disability and when? What are the grounds for your view?

➤ **PART 3: Aetiology and causation protocol:**

i. What tests could be done?

ii. Who does them?

iii. When could they be done?

iv. How would results of tests be relevant?

➤ **PART 4: Literature protocol –**

i. To what issue does the literature refer?

ii. How well researched is the literature?

iii. What is the status / authority of those who are responsible for the literature relied on?

iv. Is there any qualification to the authority of the paper?
v. To what part of the literature in particular should the court’s attention be focussed?

vi. Is there any counter-argument to the point made in the literature? If yes, has it been taken into account when arriving at the expert opinion?

vii. vis-à-vis any literature produced by the other side which we have not relied on, can we show that it is not relevant to the issue; or that it is not from a reliable or authentic source?

viii. Is it founded on propositions of fact which can be properly challenged?

PART 5: Critique of expert opinion from the other side –

i. Is there any part of the other side’s expert evidence with which our expert disagrees? Go through it phrase by phrase, sentence by sentence, paragraph by paragraph.

ii. Are there matters excluded which should have been included, because relevant? If yes, what
are those matters and what are the grounds for our expert’s view?

iii. Are there matters covered which should have been excluded for non-relevance? If yes, what are those matters and what are the grounds for our expert’s view?

PART 6: Techniques of Advocacy – experts:

i. If the issue is not clear and focussed in your mind, the other side has the opportunity to discredit you in public and on the shorthand transcript;

ii. The more reports from an individual expert, the greater the opportunity for confusion. Why are there so many reports from individual experts?

iii. Burden and standard of proof; for example, prognosis is not an absolute, but on the balance of probabilities.

iv. Vis-à-vis the opinion reached, what are the sources of information? Are they reliable? Can
they be substantiated by other data? If yes, has that data been accessed. For example, medical records, social background, work records, DSS records?

v. An inappropriate word can enable counsel to focus cross-examination, reveal a lack of judgment on the issue and unravel the expert’s credibility.

vi. Do you know the seriousness of alleging fraud? An allegation of malingering is an allegation of fraud? What do you mean by “functional overlay”? Weasel words need to be clarified.

vii. Note the points that can be made by counsel in an appropriate case; the following are taken from actual High Court transcripts:

1. “These reports are worthless and misleading.”

2. “He sets out in his report to argue the other side’s case.”
3. “He has recorded in his report, an opinion which he was not able to support in evidence in the witness box.”

4. “He has expressed fanciful suggestions. His second report is argumentative, inaccurate and back-pedals.”

5. “The report set out to mislead.”

6. “There are features in the report which caused acute embarrassment in the witness box.”

7. “References which were grossly misleading.”

8. “If that is what he meant he totally failed to say so.”

9. “Faced with the back-pedalling of the two medical experts from the more extreme opinion in their reports.”
10. “I do not think that the report he wrote was wholly frank and explicit on causation.”

➢ PART 7: Characteristics to avoid –

i. The appearance of flippancy and levity (in particular, do not try to be funny);

ii. Expressing an opinion without sufficient reflection on how that opinion will be tested;

iii. Expressing a view either glibly or with the appearance of being glib.

iv. Don’t see the need to answer immediately: If the question is not covered by your report; either say so – or allow yourself time to think and reflect.

v. Language: avoid jargon, vernacular, convolution, lengthy sentences.

vi. Avoid an appearance of “mateyness” with the legal team. It contra-indicates detachment and objectivity.
vii. Avoid spelling or grammatical errors; the more serious the case the more slipshod the appearance of thought couched in the opinion. Note the limitation of the spell-checker.

viii. Avoid the throw-away remark. If a point has to be made, make it clearly and explain why it is made.

ix. Do NOT amend a report, yet keep the original date. This results both in the report telling a lie about itself and is fraught with hazard.

➤ PART 8: Consider the following risks of litigation through the medico-legal reporting prism:

i. Not being given the legal issue(s) on which to report;

ii. Not understanding the matrix of the legal principles involved, and the legal principles by which the court service runs;

iii. Failing to identify medical issues;
iv. Not having the relevant medical experience;

v. Not having the relevant forensic experience;

vi. Not being prepared to make the effort to come to conferences when required;

vii. Not being prepared to accommodate court appointments;

viii. Being partisan before one takes the case in the first place;

ix. Being a crusader;

x. Treating medico-legal reporting as “pin money” rather than as central to access to justice.

5. The quality control protocols for expert evidence:

➢ *The Ikarian Reefer [1993] 2 Lloyd’s Rep 68* per Cresswell J:

“1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation …”
“2. Independent assistance should be provided to the court by way of objective unbiased opinion regarding matters within the expertise of the expert witness … An expert witness in the High Court should never assume the role of advocate.

“3. Facts or assumptions upon which the opinion is based should be stated together with material facts which could detract from the concluded opinion.

“4. An expert witness should make it clear when a question or issue fell outside his expertise.

“5. If the opinion was not properly researched because it was considered insufficient data was available then that had to be stated with an indication that the opinion was provisional … If the witness could not assert that the report contained the truth, the whole truth and nothing but the truth then that qualification should be stated in the report.

“6. If after exchange of reports, an expert witness changed his mind on a material matter then the change of view should be communicated to the other side through legal representatives without delay and, when appropriate, the court.”

➤ *Loveday v. Renton*[1990] 1 Med LR 117 at 125:

“In reaching my decision a number of processes have to be undertaken. The mere expression of opinion or belief by a
witness, however eminent, that the vaccine can or cannot cause brain damage, does not suffice. The court has to evaluate the witness and soundness of his opinion. Most importantly this involves an examination of the reasons given for his opinions and the extent to which they are supported by the evidence. The judge also has to decide what weight to attach to a witness’s opinion by examining the internal consistency and logic of his evidence; the care with which he has considered the subject and presented his evidence; his precision and accuracy of thought as demonstrated by his answers; how he responds to searching and informed cross-examination and in particular the extent to which a witness faces up to and accepts the logic of a proposition put in cross-examination or is prepared to concede points that are seen to be correct; the extent to which a witness has conceived an opinion and is reluctant to re-examine it in the light of later evidence, or demonstrates a flexibility of mind which may involve changing or modifying opinions previously held; whether or not a witness is biased or lacks independence. Criticisms have been made by Counsel of some of the witnesses called on either side and I shall have to consider these in due course.

“There is one further aspect of a witness’s evidence that is often important; that is his demeanour in the witness box. As in most cases where the court is evaluating expert evidence, I have placed less weight on this factor in reaching my assessment. But it is not wholly unimportant; and in particular in those instances where criticisms have been made of a witness, on the grounds of bias or lack of independence, which in my view are not justified, the
witness’s demeanour has been a factor that I have taken into account.”
APPENDIX 7

PART 1

Clinical Negligence: Protocol for Taking a Statement From Client

1. The primary vehicle for issues of fact is the witness statement from the client, or his witnesses as to fact. By way of example, an agenda for the plaintiff statement as to fact in a clinical negligence action can be expressed as follows:

   a. Name and address of each GP you have had.

   b. Name and address of any hospital at which you ever have had treatment and the name of any doctor at the hospital whom you remember dealing with you.

   c. What was your condition prior to the clinical treatment you complain of?

   d. What clinical treatment do you complain of?

   e. Who administered the treatment?

   f. Where was it administered and when?

   g. What result did you expect from the treatment? Why did you expect that result?
h. What in fact is the result from the treatment?

i. Have you complained already to someone – if yes, to whom and with what result?

j. Do you want to claim money compensation, or are you really looking for an apology?

k. When did you first think that the clinical treatment had gone wrong?

l. What made you think it had gone wrong?

m. When did you first think of going to a solicitor and why?

n. Has anyone said anything to you which makes you think that something has gone wrong? If yes – who, when where, in what words?

[Do remember to bring with you any document which may be relevant, including: All your correspondence with the hospital and any notes you made at the time or at all].

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PART 2

Client Care Agenda

Why not give to the client at your first meeting, a statement-taking check-list dedicated to the relevant field of litigation, accompanied by the following:

“Please look at this carefully. It will be the agenda when we next meet. If you have any documents which are relevant, please bring them along. If in doubt – bring it. If you want to make notes, or draft a statement yourself, do feel free. I cannot over-emphasise however, how essential it is for you to be accurate. Please also remember: When I have finished taking your statement, you will have to sign it as being “true.” And that means nothing less than truth and accuracy – the sanction for not telling the truth can be committal to prison. Also, if you do not tell me the truth, I cannot make a proper analysis of the merits of your case.”
APPENDIX 8

CLINICAL NEGLIGENCE – THE LEGAL CRITICAL PATH ANALYSIS THROUGH THE MEDICAL PRISM – TERMS OF INSTRUCTION TO MEDICAL EXPERTS


Mistreatment:

1. Set out clearly when and why our client came to be in the care of the allegedly negligent staff – with an account of the disease / condition if any from which he was suffering, and for which he required their attention.

2. Identify and itemise clearly the medical care which was in fact administered to our client, and the date / times when it was so administered.

3. As a matter of ‘mechanics’ – what do you say went wrong: the ‘occurrence’?

4. As to the risk of that occurrence resulting:
a. what was the likelihood of it occurring; and

b. how serious was the damage which would result if that risk materialised?

5. What measures were in fact available to reduce that risk of damage so that it would not have materialised?

6. Should such measure in fact have been adopted taking into account:

   a. the risk to the patient of adopting such measures;

   b. the benefit to the patient from adopting such measures.

**Note:** If your view is that measures should have been taken, then could you set out with precision (because this will form part of the pleading):

   a. what measures?

   b. by whom?

   c. when?

   d. on what grounds do you so advise?

**Failure to diagnose:**
1. As to the diagnosis actually made:
   
a. was it incorrect?
   
b. if yes, what were the factors (assuming this is clear from the medical case notes) for the making of that actual diagnosis?

2. As to the symptoms complained of:
   
a. what were they?
   
b. should they have prompted further questioning to elicit information about other symptoms of which the patient did not complain, or other history?
   
c. if further information should have been elicited, what information and on what grounds is that contended for?
   
d. given the information which either was, or should have been available to the diagnostician, what potential diagnoses beckoned?
   
e. in relation to each particular diagnosis which did so beckon, what was the risk of harm to the plaintiff if that diagnosis was not made – against the precautions / steps to be taken to make such diagnosis?
f. what in fact was the correct diagnosis, and why?

g. what steps were capable of being taken to make that correct diagnosis?

h. should such steps have been taken to make that correct diagnosis and if yes, when; and what are the grounds for your view [taking into account the risk/benefit ratio]?

3. If a wait/see approach was adopted:

a. why was it adopted?

b. what was the risk to the patient of so waiting?

c. what was the benefit to the patient of so waiting?

4. Balancing risk against benefit, was the balance properly struck? If no, on what grounds (as precisely as you can) do you so advise?

**Informed Consent:**

1. Was our client warned as to the risks inherent in the treatment?

2. If yes:
a. in what terms?

b. were those terms sufficient?

c. if yes – on what grounds do you so advise?

3. If no – or if inadequately informed – on what grounds do you say he should have been better informed – and in what terms should he have been so informed?

4. Was our client told of non-surgical alternatives to the treatment proposed? If not, should he have been informed? In this respect, is there a body of responsible medical opinion which would have acted as the medical personnel did in the instant case?

**Check:** There will be no claim unless it can be proved that had the plaintiff been properly informed, he would not have undergone the treatment.

**Resulting damage and causation:**

If you are of the view that the treatment /diagnosis was negligent, please go on to cover the following:

1. State in relation to each failure of medical care, what injury / damage was sustained by our client as a result, and:

   a. the pain, suffering and loss of amenity flowing from that injury / damage?
b. what pain, suffering and loss of amenity our client would have endured had the medical men not fallen below the standard of care?

c. what is the condition and prognosis resulting from the failure of medical care?

2. If it is not possible to advise as to whether or not such failure actually caused the pain / damage, can you advise as to whether or not it materially increased the risk of such pain / damage? If yes:

   a. on what grounds do you so advise?

   b. by what proportion was there such contribution?

3. What is the condition of the Plaintiff today, in respect of which he claims damages?

4. What did the Plaintiff have the right to expect by way of outcome, if correctly treated (for example, restoration to ordinary physical fitness and capability, and to his pre-treatment employment)?

5. Can failure of the medical men (if any) be rectified? If yes, when, how and to what extent will such medical intervention help the client? Would private treatment (as opposed to treatment under the NHS) be beneficial? If yes, why and at what cost?

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APPENDIX 9


MODEL STATEMENT OF CLAIM IN A MEDICAL NEGLIGENCE CLAIM

JOHN DOE Plaintiff

and

BARCHESTER HEALTH AUTHORITY Defendant

STATEMENT OF CLAIM

1. Introduction: The Defendant at all material times pursuant to the National Health Service Act 1977, managed and administered the Hospital ….. and provided medical specialist and other services including ….. services at and for the purposes of that hospital.

2. Chronology: The chronology of events is set out as a schedule to this pleading.
3. **Matters to be set out in brief, as agenda for opening speech to the Court:**

   a. *P’s Condition:* The condition of the plaintiff now, in respect of which he or she claims;

   b. *The condition requiring treatment:* How, when and why the Plaintiff came to be in the care of the allegedly negligent staff – with an account of the disease / condition if any from which he or she was suffering, and for which medical attention was required.

   c. *What happened (the ‘occurrence’):* Set out as an exercise in succinctness [reminding oneself that this will be the factual matrix which the experts must be inviting the court to find]:

      i. What factually was the medical care provided?

      ii. How did that medical care (as a matter of ‘mechanics’) cause the damage?

      iii. With what result to the Plaintiff?

   d. *Which individuals to blame:* Who is said to have been to blame for the occurrence, and what were their statutory duties
at the material time, briefly setting out the basis for any vicarious liability.

e. What should have happened? Explain what treatment should have been administered, when and by whom?

4. The said occurrence was caused by the negligence of the Defendant by itself, its servants or agents:

**PARTICULARS**

A. The risk of the said occurrence was reasonably foreseeable. The grounds for that averment are:

   a. …
   b. …
   c. …

B. Precautions capable of being which would have averted such occurrence were:

   a. …
   b. …
   c. …

C. Such precautions ought to have been taken in that: [here adopt the ‘risk benefit’ ratio, per *Bolitho]*;
a. …

b. …. 

c. …

D. Because of the medical care provided, the Plaintiff who was born on the …. has sustained pain, suffering and loss of amenity and has suffered loss and damage:

PARTICULARS OF PAIN, SUFFERING AND LOSS OF AMENITY

Note: This covers causation.

PARTICULARS OF LOSS AND DAMAGE

Please see Schedule of Loss served herewith.

And the Plaintiff claims damages and interest thereon pursuant to section 35A of the Supreme Court Act 1981

[NOTE THE DEMANDS OF THE PD FOR THE DETAIL OF THE PLEADING AND IN PARTICULAR SPECIAL LOSS]
APPENDIX 10
Case Law Update
July 2008 to November 2009 UK

Animals:

1. Whippey v. Jones [2009] EWCA Civ 452: Claim under the Animals Act and in negligence as to injury caused by a great dane to a member of the public. Definitive judgment as to how a court should approach the issues of foreseeability and risk in the context of findings of fact.


Armed Forces:

- Secretary of State for Defence v. Duncan and another [2009] EWCA Civ 1043. These two appears raised important questions concerning the proper construction of The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005.

Asbestos:
Loyola Lea Watson v. Cakebread Robey Ltd [2009] EWHC 1695 (QB). Issue was whether one could claim for funeral expenses in an asbestosis action by a living claimant.

Abraham v. Ireson and Son (Properties) Ltd and another [2009] EWHC 1958 per Swift J. Definitive judgment as to liability in respect of exposure to the risk of asbestos, trawling back to 1930 to explain the development of the duty of care.


HMRC v. Silcock [2009] EWHC 3025 per Sweeney J. Law relating to “show cause” hearings under para 6.2 CPR PD 3D; and inter-action with claims in respect of asbestos exposure leading to mesothelioma.

Burden of Proof:

3. Hall v. Holker Estate Co Ltd [2008] EWCA Civ 1422. Father injured by an insecure goal net when keeping goal on a caravan site when playing football. What were the issues? Who bore the burden of proof in relation to which issue. Ward v. Tesco Stores. Jones v. Caddies Wainwright. A paradigm example of how the identification of the issue and where the burden of proof lies can have the effect of either
avoiding litigation or at the very least reducing its ambit. Framework
for first instance judges for their decision making process.

**Carriage by Air:**

air balloon designed for passengers, an “aircraft” within the Carriage
by Air Acts (Application of Provisions) Order 1967 Sch 1, art. 1. 2
year limitation period. Issues covered: the statutory framework,
principles of statutory construction, the primary authorities; the fact
that the flight was for recreational purposes; aircraft; carriage; the
meaning of the word “passenger”; the effect of the voluntary
liquidation of the company during the limitation period.

**Causation:**

5. *Lindsay v. Wood* [2007] EWHC 3141 Fam: Catastrophic brain
damage. Exceptional circumstances in which a Judge could re-open a
judgment.

a material contribution is sufficient for “causation” even if it cannot
satisfy the “but for” test. Application of *Fairchild* etc. A very
important gloss on the issue of causation by the Court of Appeal in the
context of clinical negligence.
7. **Environment Agency v. Christopher Ivan Ellis** [2008] EWCA Civ 1117: C had a pre-existing spinal condition. He suffered injury in a works accident in 1998, another injury in 1999, and he fell at home in 2000 suffering severe knee injury. Medical expert evidence that but for the 1998 accident, he would not have suffered the 2000 accident. D sought to argue that damages should be apportioned between the pre-existing disability, the 1998 accident, the 1999 accident [for which there was no recovery] and the 2000 accident. *Fairchild, Clough, Holtby and Allen* considered in the context of the “eggshell skull” principle. Definitive judgment on apportionment demonstrating the very strict limits of *Fairchild, Holtby and Allen*.

8. **Sanderson v. Hull** [2008] EWCA Civ 1211: Crucial findings of fact required to fulfil the “but for test” which had they been found would have avoided recourse to the exception flowing from *Fairchild*. Guidance to first instance judges as to how to approach findings of fact in relation to negligence and caution in the context of industrial injury. CA scrutinised expectations to the “but for” test. Definitive resume of the law relating to causation [critical reading to all those involved in such litigation]. The jurisdiction of first instance judges to issue a draft judgment and then to re-consider their judgment.


10. **Haithwaite v. Thomson, Snell and Passmore** [2009] EWHC 647 QBD. Valuing loss of chance to pursue a claim against a health trust...
for clinical negligence, arising through the admitted fault of solicitors. Guidance as to assessing percentage chance vis a vis liability and separately from that, the causation of damage.

**Clinical Negligence:**


**Conflicts of law:**


13. *Hornsby v. Rumic Ltd and others* [2008] EWHC 1944 QBD: Wales resident injured during employment in the coastal waters of the United Arab Emirates; which law? Application of Private International Law (Miscellaneous Provisions) Act 1995 and in PARTICULAR section 12. No allegation of fault was made against a UAE national and no party to the claim lived in the UAE. English company D1 employed C who
was providing a service to D2 [a German company]. If claim subject to UAE law, would be time-barred.


**Contributory Negligence:**


17. **Smith v. Finch** [2009] EWHC 53. Alleged contributory negligence when a pedal cyclist failed to wear a crash helmet; burden of proof; approach of the court to the medical evidence; definitive judgment on the issue. On the fact, no contrib.. found.

**Costs**

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18. **C v. W** [2008] EWCA Civ 1459: Appeal raised in important question relating to the assessment of the appropriate uplift on base costs payable under a conditional fee agreement entered into between the plaintiff and her solicitor at a time when the defendant had already admitted liability.

19. **Widlake v. BAA Ltd** [2008] EWHC 3311 QBD: W had deliberately withheld from her own medical experts material information as to her previous medical history in an attempt to manipulate the civil justice system on a grand scale. She beat the PART 36 payment in. Costs?

20. **Morgan v. UPS**: [2008] EWCA Civ 1476 – beating payment-in by a narrow margin; discretion on costs – issues of reasonableness on both sides.

**Costs:**

21. **Onay v. Brown** [2009] EWCA Civ 775: An offer to settle an issue of contributory negligence on the basis of “Part 36” resulted in D being liable in costs up to the 21 day expiration of the offer. The issue was who recovered; not who won the “contrib.” issue.

22. **Cunningham v. AST Express Ltd and Another** [2009] EWCA Civ 767. Proper approach to costs where C fails to beat an offer made before the commencement of proceedings.
23. **Hullock v. East Riding of Yorkshire County Council** [2009] EWCA Civ 1039. Costs consequences when the central issue in the case [quantum] was the validity of a claim which proved to have been seriously exaggerated. The category of case which comes before courts around the country regularly.

24. **Tryudom v. Vendside Ltd** [2009] EWHC 2130; was a miner bound to pay a fee to a claims handling company when unbeknown to him that company would already receive a fee under s government scheme?

**Damages:**

25. **Ben Brewis v. Heatherwood** [2008] EWHC 2526 QBD: Very large interim payment for cerebral palsy victim in the context of anticipated PPO; parents had consistently been models of prudence; calculation of figure in the context of he overall financial shape of the case. Comprehensive review of the interim payment cases.


27. **Cobham Fire Service Ltd v. Eeles** [2009] EWCA Civ 204: Definitive guidance as to the method of quantifying an interim payment in the context of a likely PPO award in a catastrophic injury claim.

29. **Roublt v. North West Strategic Health Authority** [2009] EWCA Civ 444: Does a Court have power to vary or revoke an order, after approving a final settlement in a case of severe injuries?


**Damages and Life Expectation:**

31. **Rowe v. Dolman** [2008] EWCA Civ 1040. Critique as to the assessment of life expectation in the context of 3 medical experts; and also how to address the issue of a lump sum as contrasted with a PPO.

**Duty of Care:**


34. **Craggy v. Chief Constable Cleveland Police** [2009] EWWCA Civ 1128: Duty on police car vis a vis other emergency vehicles when negotiating a cross road with the lights in his favour.

**Indexation:**

35. **Mealing v. Chelsea and Westminster Healthcare NHS Trust** [2008] EWHC 1664 QBD. Appeal against refusal of Master to permit adducing of expert evidence vis a vis earnings index in France where family intended to live. Matters which should be taken into consideration.

**Foreign accidents:**


**Fraud:**
Shah v. Wasim Ul-Haq and others [2009] EWCA Civ 542: Is a genuine claim contaminated by the Claimant supporting also the fraudulent claim of another?

Illegality:

Gray v. Thames Trains Ltd [2009] UKHL 33, [2009] All ER (D) 162 (June) where it was held that loss flowing from a sentence of the court could not be recovered. In that case C had committed manslaughter as a result of PTSD caused by the negligence train operators in the Ladbroke Grove rail crash. C was precluded from recovering from the train operator, general damages and loss of earnings flowing from that crime. Definitive expressions of the law in relation to ex turpi causa and novus actus.

Industrial injury:

Baker v. Quantum Clothing Group (1); Meridian Ltd (2) and Pretty Polly Ltd (3) [2009] EWCA Civ 499. Definitive judgment as to the assessment of liability in an industrial deafness claim.

Interim Payments:

in the context of a child with congenital abnormalities which should have been picked up during an ante-natal scan.

- **Marc Preston v. City Electrical Factors Ltd and Thomas Adam Stockham** [2009] EWHC 2907 per Walker J. Definitive judgment as to how to handle the inter-action of an interim payment and PPO in a catastrophic injury claim, particularly when there is a discount for contrib. etc.


**Limitation:**


37. **White v. Eon and Others** [2008] EWCA Civ 1463 – constructive knowledge in the context of vibration white finger; explanation as to how a judge at first instance should address the relevant issues.

38. **Pierce v. Doncaster MBC:** [2008] EWCA Civ 1416 – Plaintiff fixed with constructive knowledge when years earlier he had access to his local authority care records: Claim – failed to take him into care.
39. **Rogers v. East Kent Hospitals NHS Trust:** [2009] EWHC 54 QBD. Surgical removal of bunion in 1996. Claim issued in 2003. Need for judicial conclusions to be supported by the evidence; the extent to which a court needs to be specific about a date of actual or constructive knowledge; the extent to which the court should take into account re-assuring statements by doctors post 1997 but before 2003. Definitive wide-ranging legal disposition as to the current state of the law vis a vis “date of knowledge.” Issue of “what would have happened” had C voiced her concerns to doctors subsequently.

40. **McDonnell v. Walker** [2009] EWCA Civ 1257. Definitive judgment as to how to approach issues of delay and forensic prejudice in an application to disapply the time bar under s. 33 in proceedings issued after the limitation period, when proceedings had been originally issued [and not proceeded with] during the litigation period.

41. **Whiston v. London Strategic Health Authority** [2009] EWHC 956 per Eady J: Definitive judgment as to how to handle an application by an adult cerebral palsy victim of high intellect in the context of s. 14 and s. 33 of the Limitation Act 1980

**Local authority funding / financial provision:**

42. **Peters v. East Midlands Strategic Health Authority and others** [2009] EWCA Civ 145. If local authority care is available, to what extent is a
plaintiff entitled to have recourse exclusively against the tortfeasor? And how does a tortfeasor protect itself against double recovery? Definitive judgment distinguishing *Sowden v. Lodge*.

**Loss of future earnings:**

43. *Benjamin Collett v. Cary Smith and others* [2008] EWHC 1962 (QBD): Prospects of successful footballing career ruined by a negligent tackle causing fractures to the right leg. C would have been under contract with Manchester United until aged 21 at least. Consideration of comparators and contingencies. Multiplier. Discount for alternative earnings capacity. Measure of damages for future loss of earnings?

**Nervous Shock:**

44. *Monk v. Harrington Ltd and Others* [2008] EWHC 1879 QBD: A self-employed contractor volunteered himself as a rescuer [making a real contribution] when a temporary platform fell 60ft at the construction of the new Wembley Stadium. He did not put his own physical safety at risk nor was he the cause of the danger. Definitive and very clear review of the authorities: *White v. Chief Constable of South Yorkshire; Alcock; McFarlane v. Wilkinson; Dooley v. Cammell Laird*. Nervous shock. Did he fall into a relevant category to recover? Issue of whether belief in being in danger had to be reasonable.
Procedure:


46. *Toropdar v. D* [2009] EWHC 567. Claim for a negative declaration by a driver who at 27.5mph drove into a child who ran into the highway form in front of a bus whilst engaged in noticeable boisterous activity. Laws relating to negative declarations considered and also duty of a driver in a street with other vehicles and children in vicinity.

Psychiatric Injury and Damage to Sperm:


Road Traffic:

48. *Stewart v. Glaze* [2009] EWHC 704 QB: – The defined parameters of admissible road traffic re-construction evidence; and the need for medical evidence on the issue of whether injuries would have been
reduced if the impact was at a lower speed. Reference to the full judgment provides a template for the handling of catastrophic injury claims arising out of an RTA.

49. *Lambert v. Clayton* [2009] EWCA Civ 237: 80mph motor cyclist fatally injured when he came over a hill on a country [60mph] road and drove into the nearside of the D vehicle which was turning right into his farmstead. Failure of judge at first instance to justify his conclusion that L should have aborted the turn, opening up the jurisdiction of the CA. Guidance as to how judges should find facts in cases such as this in the context of speed, distance and the relevant precision. “. . . a danger of doing injustice if judges make unwarrantedly precise findings of fact.”

**Schools – duty of care and liability of pupil:**

APPENDIX 11

PREAMBLE TO THIS APPENDIX

There can never be more than 4 primary issues in a case:

1. Fact.
2. Inference from facts.
3. Law.

Those issues can only be identified by a legal critical path analysis of the case.

The Hong Kong Practice Direction re paradigm examples of jurisprudence which demand such analysis.

PRACTICE DIRECTION - 5.2

CASE MANAGEMENT

A Scope of Application of this Practice Direction

1. This Practice Direction applies to all civil actions in the Court of First Instance (subject to Practice Direction 5.7) and the District Court, except cases in the specialist lists save to the extent that the Courts in charge of such lists may choose to adopt these directions in a particular case or in general.

2. The aim of this Practice Direction is to facilitate the more efficient, expeditious and fair disposal of cases.

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3. Although the Court will encourage parties to compromise their disputes, the primary function and objective of the Court should be the just resolution of disputes in accordance with the substantive rights of the parties.

4. It is important for parties and their legal advisers to appreciate that efficient and cost effective resolution of disputes cannot be achieved without due diligence and cooperation on their part. The Courts will be proactive in case management in accordance with the underlying objectives set out in Order 1A.

B Preparation After Close of Pleadings

5. Discovery

The parties should proceed with discovery without the need to wait for an order of the Court and try to agree on the directions for modifying discovery obligations (e.g. limiting discovery to specified issues) or on the manner of their implementation (e.g. exchanging copy documents without the need to prepare lists of documents) with a view to achieving economies in respect of discovery.

6. Interlocutory applications:

(1) parties should actively consider what interlocutory applications they will take out and endeavour to reach agreement on directions.

(2) parties should focus on the relevant issues. Proliferation of efforts on irrelevant factual or legal disputes should be avoided.

(3) If they cannot reach agreement, the proper course is to take out the appropriate application as soon as possible. They should not send copies of correspondence to the Court for adjudication on the papers and the Court will not respond to it.
(4) Unnecessary and disproportionate interlocutory applications should not be made and will not be entertained. The same applies to unnecessary and unreasonable opposition. They will be met with adverse costs orders summarily assessed.

(5) Unnecessary hearings will be cut down. In circumstances where directions could fairly be given on paper without any oral hearing, the Court will do so.

C Timetabling Questionnaire

7. The Timetabling Questionnaire shall be filed and served in the form as per PART A.

8. The parties should consult each other but the process of consultation must not delay the filing of the Timetabling Questionnaire.

9. Each Party shall give as much information as is required in the Timetabling Questionnaire to enable the Court to give directions relating to management of the case and to fix a timetable for the steps to be taken. PART A contains examples of such information.

10. Each Party shall make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them in the Timetabling Questionnaire. Any unreasonable refusal to make any admission or agreement may be visited with costs sanctions.

11. The plaintiff of the original action shall consider whether, in the light of the information in the Timetabling Questionnaire of the defendant(s) and other parties, he ought to modify any of his initial proposals or incorporate other parties’ directions and identify those directions that he disputes. The duty remains on him to communicate with the other parties with a view to
agreeing the directions and timetable for the further progress of the case.

12. For cases in the Court of First Instance (but not in the District Court) the trial of which are likely to last 15 days or longer, parties shall also comply with Practice Direction 5.7 on Long Cases and apply to have the matter assigned to a trial judge.

D Steps to be Taken Where There is Agreement as to Directions

13. If the parties are able to reach agreement, the plaintiff shall, within 14 days after receiving the Timetabling Questionnaire from all defendants or when the time for all defendants to file the Timetabling Questionnaire expires (whichever is the earlier) procure and file a consent summons containing the agreed directions or timetable for the Court's consideration and approval.

14. Additionally, if a trial date or trial period is sought, it shall be attached to the consent summons referred to in paragraph 13 a certificate prepared by trial counsel or solicitor of each Party giving time estimates (without taking into account the time estimates of other parties) of:

(1) his own opening submission;

(2) evidence-in-chief of each of his own witnesses;

(3) cross-examination of each of the other side's witnesses; and

(4) his own closing submission.

15. Nothing in the foregoing paragraphs prevent the parties from filing a single set of Timetabling Questionnaire containing the joint views of the parties together with a consent summons containing the directions which they invite the Court to make.
E  **Steps to be Taken Where There is No Agreement as to Directions**

16. If the parties are unable to agree all directions or the timetable or if the defendant does not file a Timetabling Questionnaire, the plaintiff shall take out a case management summons:

(1) within 14 days after receiving the Timetabling Questionnaire from all defendants; or

(2) within 14 days upon expiry of the period for the defendant(s) to file and serve a Timetabling Questionnaire

 whichever is the earlier.

17. For cases involving litigants in person, the plaintiff (whether legally represented or not) must take out a case management summons for directions within the time limit prescribed under paragraph 16 above.

18. The case management summons shall set out:

(1) all directions and timetable that can be agreed; and

(2) each Party's proposal in respect of the directions and the timetable that cannot be agreed.

A sample form of a case management summons is annexed at PART B.

F  **The Court's Approach to Timetabling and Directions**

19. The Court will consider the Timetabling Questionnaires and other documents lodged / filed to decide what directions are needed and what the timetable should be. It will give great weight to agreed directions and time limits put forward by the parties, although it will retain discretion to override the
agreement where it considers the agreed directions and time limits to be unreasonable.

20. **Regarding expert evidence:**

(1) the Court will not give permission for a Party to adduce expert evidence unless that Party has:

(a) identified the expert by name and field;

(b) identified the issue to which the expert evidence will relate (a mere reference to adducing expert evidence "limited to the issue of liability" or "limited to the issue of quantum" is not sufficient); and

(c) considered the appropriateness of appointing a single joint expert in the case.

(2) A Party who obtains expert evidence before obtaining leave does so at his own risk as to costs, except where he obtained the evidence in compliance with a pre-action protocol.

21. Unless it appears to the Court that a hearing is necessary, the Court will make orders nisi giving case management directions and fix a timetable for the proceedings in the light of the Timetabling Questionnaires and other documents filed / lodged and without a hearing.

22. Any Party who objects to one or more of the directions given in an order nisi should apply to the Court for variation within 14 days after the order is made, failing which the directions shall become absolute.

G **Case Management Conference ("CMC")**

23. A CMC will be held pursuant to the timetable laid down by the Court.
24. Not less than 7 days before the date fixed for a CMC, each Party shall file and serve the Listing Questionnaire at PART C and paragraphs 25 to 32 below will apply.

25. If a trial date is sought, the parties should file and serve together with his Listing Questionnaire a certificate (preferably prepared by counsel who will handle the trial) *giving time estimates* (without taking into account the time estimates of other parties) of:

(1) his own opening submission;

(2) evidence-in-chief of each of his own witnesses;

(3) cross-examination of each of the other side's witnesses; and

(4) his own closing submission.

26. Not less than 3 clear days before the date fixed for a CMC, the plaintiff shall lodge with the Court a bundle ("the CMC bundle") containing copies of pleadings, witness statements, expert reports and a draft index of the document bundle. Where possible the CMC bundle should be updated and re-used at subsequent CMC(s) (if any) and Pre-Trial Review(s) ("PTR") (if any). The index to the CMC bundle should highlight the updated parts to assist the master or judge.

27. At the initial stage of an action, a CMC is generally heard by a master. A master may, if he considers appropriate, either adjourn the CMC to a judge or refer the action to a judge for holding a CMC. The decision of a master in this regard is final.

28. A CMC is a critical stage in the proceedings and for most of the cases virtually the only milestone event before trial. It is not a second opportunity for the parties to ask for directions which they could have sought after they have first filed their Timetabling Questionnaires.
29. Parties are expected to have complied with the timetable laid down by the Court by the time of the CMC. Unless sufficient grounds have been shown to it, the Court will not grant extensions of time for compliance. If it does, the grant of extension will most likely be on an unless order basis with self-executing sanctions.

30. The parties are also expected to indicate accurately and fully the extent of further interlocutory applications or appeals to be made.

31. The later in time and the closer to a trial date an application is made, the less likely it is for the Court to entertain it.

32. The Court will at a CMC:

(1) review the steps which parties have taken in the preparation of the case, and in particular their compliance with any directions that the Court may have given;

(2) decide and fix a timetable for the steps which are to be taken by the parties to secure the progress of the case in accordance with the underlying objectives;

(3) ensure as far as it can that all admissions that can be made and all agreements that can be reached between the Parties about the matters in issue and the conduct of the claim are made and recorded;

(4) adjourn the CMC to another date, fix a date for PTR, or fix the trial date or a trial period; and

(5) ascertain the Parties’ attempt or intention to undergo alternative dispute resolution.

H PTR
33. Where the Court decides to hold a PTR, it will normally be held about 8 to 10 weeks before the trial date or the beginning of the trial period. A PTR is generally dealt with by the trial judge.

34. A PTR is not an extension of the CMC. The Court expects a case to be ready for trial. Late interlocutory applications may be dismissed on the basis of delay alone.

35. Not less than 3 clear days before the date fixed for a PTR, the plaintiff shall lodge with the Court an updated bundle containing copies of documents as specified under paragraph 26 herein.

36. At the PTR, the Court will:

(1) fix the starting date for the trial if a trial period has been fixed;

(2) confirm or vary the estimated length of the trial in the light of completed interlocutory steps;

(3) give any further directions needed (including any needed extensions of time for interlocutory tasks not yet completed, or any appropriate unless order on terms as to costs) provided that such directions will not impinge upon the trial date; and

(4) give directions in relation to the trial under Order 35, rule 3A.

I Setting Down for Trial

37. The Party setting a case down for trial must file with the Registry the form at PART D.

J Variation of Court-Determined Directions or Timetable

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38. The parties should note that case management decisions are matters within the discretion of the master or the judge making that decision and are generally not susceptible to appeals.

39. Where there has been a change in the circumstances since the directions were given and the timetable was fixed, the Court may set aside or vary a direction it has given or give further directions either on application or on its own initiative.

40. Where all the parties agree to a variation of the time limits for non-milestone events in the timetable, they may effect such variations by recording the agreement in a consent summons, provided that the agreed variations do not involve or necessitate changes to any milestone date.

41. Where the Parties cannot agree on extension of time:

(1) The Party in default should take out the appropriate application as soon as possible. Such an application will not be granted as a matter of course, but only on sufficient grounds being shown and on the applicant satisfying the Court that he would be able to comply with an extension without impinging on the trial date or trial period.

(2) Alternatively, any other Party may apply for an order to enforce compliance or for a sanction to be imposed or both of these.

An application for extension will only be granted, if at all, on the basis of an immediate unless order prescribing a suitable sanction should there be any further non-compliance.

42. **Milestone** dates will be *immovable* save in the *most exceptional circumstances* and for that purpose, for instance, late instructions from client, change in the team of lawyers, the *absence* of prejudice to the other Party which
cannot be compensated for by costs, will not be treated as exceptional circumstances.

K Attendance at Hearings for Directions, CMCs or PTRs

43. The Court may hold a hearing on its own motion especially where litigants in person are involved.

44. All hearings for CMC and PTR should be attended by the Parties themselves or, if they are represented, by their legal representatives.

45. Unless otherwise directed by the Court, all hearings for CMC and PTR before a judge should be attended by the trial counsel.

46. A legal representative who attends a hearing should be the person responsible for the case and must in any event be familiar with it, be able to provide the Court with the information it is likely to need to make its decisions about case management, and having sufficient authority to deal with any issues that are likely to arise.

L Costs Sanction

47. Where a hearing is necessitated due to the fault or default of a Party (such as failure to comply with this Practice Direction or failure to cooperate), the Court may consider ordering that Party to pay the costs of any other Party who has attended the hearing, summarily assess the amount of those costs, and / or order them to be paid forthwith.

48. Where the inadequacy of the person attending or of his instructions leads to the adjournment of a hearing, he will likely be visited with an order for the costs wasted.

M Commencement Date
49. This Practice Direction supersedes the previous Practice Direction 5.2 on Setting Down for Trial in the Court of First Instance.

50. This Practice Direction shall come into effect on 2 April 2009.

Dated this 12th of February 2009.

(Andrew Li)
Chief Justice
APPENDIX 12

PREAMBLE

This Practice Direction is a Case Management Quality Control Protocol and should help guide the litigator from first contact with the client.

In identifying litigation steps, it indirectly has as its imperative, the defining of the legal critical path analysis of the case.

PERSONAL INJURIES PD

This questionnaire is completed by, or on behalf of:

The _____ [Plaintiff / Defendant / ____________]* in this case.

Case No.:

Questionnaire for PI Actions

Instructions: 1. Please read Practice Direction 18.1 before completing this questionnaire.

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2. Please complete all sections by ticking the appropriate box.
3. Please delete the inappropriate in the square brackets denoted by *.
4. Please note that it is not necessary to complete PART A before [_______].

### A Alternative Dispute Resolution (“ADR”)

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<tr>
<td>A1</td>
<td>□ [I confirm that the Parties have attempted to settle this case by ADR but are not successful. / [I / The Plaintiff / The Defendant] have no intention to settle this case.]*&lt;br&gt;□ I am willing to try to settle this case by ADR or other means and request a stay of _____ weeks whilst the Parties try to settle this case.</td>
</tr>
<tr>
<td>A2</td>
<td>□ I confirm that I have filed the Mediation certificate.</td>
</tr>
<tr>
<td>A3</td>
<td>□ I confirm that I have filed the Mediation Notice / Response*.</td>
</tr>
</tbody>
</table>

### B Parties

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>B1</td>
<td>□ I confirm that I do not intend to add another Party to this case.&lt;br&gt;□ I intend to add the following person(s) as the [plaintiff / defendant / ……………]*&lt;br&gt;________________________________________________________________<strong><strong>&lt;br&gt;</strong></strong>_________________________________________________________________</td>
</tr>
</tbody>
</table>
## Employees’ Compensation Claim

<table>
<thead>
<tr>
<th>C</th>
<th>Employees’ Compensation Claim</th>
</tr>
</thead>
</table>
| C1 | □ I confirm that there is no corresponding *Employees’ Compensation Claim.*  
    | □ I confirm that there is a corresponding Employees’ Compensation Claim as particularized below:  
    | |  
    | | The Employees’ Compensation Claim has reached the following stage:  
<p>| |
| |</p>
<table>
<thead>
<tr>
<th>D</th>
<th>Pleadings</th>
</tr>
</thead>
</table>
| D1 | □ I confirm that I do not intend to amend my pleadings.  
    | □ I intend to apply within _____ days to amend the following pleading:  
    | |  
| D2 | □ I confirm that I do not intend to request *Further and Better Particulars* of any pleadings.  
    | □ I intend to take out an application within _____ days for Further and Better Particulars of the following pleadings:  
    | |  
| D3 | □ I confirm that there is no outstanding request(s) for Further and Better Particulars.  
    | □ The request(s) for Further and Better Particulars as set out in the following [letter of request(s) / request(s) / summons]* is / are outstanding:  
    | |  
    | | and I intend to [provide an answer / take out an application]* within _____ days.  

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D4  ☐ I confirm that all my pleadings have been verified by *Statements of Truth*.

☐ The following pleading(s) have not been verified by Statement of Truth:

___________________________________________________________

because:

___________________________________________________________

E  Evidence

E1  ☐ I confirm that I have filed and served a *list of documents*.

☐ [I have no documents to disclose. / I intend to file and serve a list of documents within _____ days.]*

E2  ☐ I confirm that I do not intend to call any witnesses of fact including myself at the trial.

☐ There will be _____ witness(es) at the trial [including myself]* as follows:

<table>
<thead>
<tr>
<th>Witness’s Names</th>
</tr>
</thead>
</table>

and [witness statement(s) has been exchanged / I need _____ days to file and exchange the witness statement(s)]*.

E3  ☐ I confirm that all the witness statements have been verified by Statements of Truth.

☐ The following witness statement(s) have not been verified by Statement of Truth:

___________________________________________________________

because:

___________________________________________________________
### Expert Evidence

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>F1</td>
<td>I confirm that I do not intend to adduce <em>expert evidence</em> on liability at the trial.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F2</td>
<td>I confirm that I do not intend to adduce expert evidence on quantum at the trial.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F3</td>
<td>There will be ____ expert(s) at the trial as follows:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>On liability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expert’s Name</td>
<td>Field of Expertise</td>
<td>Date of Examination</td>
<td>Oral Evidence</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F4</td>
<td>Please state the precise issues and subjects within such issues to be addressed by the liability expert(s):</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>On quantum</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expert’s Name</td>
<td>Field of Expertise</td>
<td>Date of Examination</td>
<td>Oral Evidence</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F5</td>
<td>I confirm I am agreeable to the appointment of a single joint__________ expert.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>I am not agreeable to appoint a <em>single joint expert</em> for the following reasons:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F6</td>
<td>I confirm agreement to arrange a <em>joint examination</em> of [the injured person] by the __________ experts of each of the parties.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>I do not agree that there be a joint examination of [the injured person] by experts of the parties for the following reasons:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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The joint examination of [the injured person] by experts of each of the Parties was held / is to be held on __________.
F8  □ I confirm agreement to a joint report by experts of each of the Parties.

□ I do not agree that there be a joint report by experts of the Parties for the following reasons:

_____________________________________________________________________

_____________________________________________________________________

F9  □ I confirm there is joint report(s) by experts of each of the Parties dated _____.

F10 □ I confirm expert reports are ready as follows:

<table>
<thead>
<tr>
<th>Expert’s Name and Field of Expertise</th>
<th>Date of Report</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

F11 □ I need ____ days to prepare for the following expert reports:

<table>
<thead>
<tr>
<th>Expert’s Name and Field of Expertise</th>
<th>Expected Date of Report</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

F12 □ I confirm that all the expert reports have been verified by Statements of Truth.

□ The following expert report(s) have not been verified by Statement of Truth:

_____________________________________________________________________

because:

_____________________________________________________________________

G  Interlocutory Applications

G1 □ I confirm that there is no outstanding direction to be complied with.
☐ The following direction(s) has / have not been complied with:

_____________________________________________________________________
_____________________________________________________________________

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<table>
<thead>
<tr>
<th>G2</th>
<th>I confirm that there are no <em>outstanding interrogatories</em>.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>There are outstanding interrogatories and I intend within _____ days to [provide an answer / take out an application]*.</td>
</tr>
<tr>
<td>G3</td>
<td>I confirm that I do not intend to administer interrogatories.</td>
</tr>
<tr>
<td></td>
<td>I intend to apply within _____ days for leave to serve interrogatories.</td>
</tr>
<tr>
<td>G4</td>
<td>I confirm that I do not intend to apply for <em>security for costs</em>.</td>
</tr>
<tr>
<td></td>
<td>I intend to apply within _____ days for security for costs.</td>
</tr>
<tr>
<td>G5</td>
<td>I confirm that there is no other <em>outstanding interlocutory application</em>.</td>
</tr>
<tr>
<td></td>
<td>The following interlocutory application(s) is / are outstanding:</td>
</tr>
<tr>
<td></td>
<td>____________________________________________________________</td>
</tr>
<tr>
<td></td>
<td>____________________________________________________________</td>
</tr>
<tr>
<td>G6</td>
<td>I confirm that I do not intend to take out other interlocutory applications.</td>
</tr>
<tr>
<td></td>
<td>I intend to apply within _____ days for:</td>
</tr>
<tr>
<td></td>
<td>____________________________________________________________</td>
</tr>
<tr>
<td></td>
<td>____________________________________________________________</td>
</tr>
</tbody>
</table>

**H Case Management Conference / Pre-Trial Review**

| H1 | I confirm that I do not ask for a *Case Management Conference* because: |
|    | ____________________________________________________________ |
|    | ____________________________________________________________ |
|    | I request a Case Management Conference because: |
|    | ____________________________________________________________ |
| H2 | I confirm that I do not ask for a *Pre-Trial Review*. |
I request a Pre-Trial Review because:

_____________________________________________________________________
_____________________________________________________________________

| I confirm that it is appropriate in all the circumstances to set the case down for trial. |
| I [have / have not]* attached hereto a certificate giving time estimates for the trial prepared by [myself / solicitor / trial counsel]*. |
| The certificate is not attached because: |
|_____________________________________________________________________
|_____________________________________________________________________
| It is inappropriate to set the case down for trial at this stage because: |
|_____________________________________________________________________
|_____________________________________________________________________

| I confirm that this case is suitable for trial in the Running List. |
| This case is not suitable for trial in the Running List because: |
| [(1) This case is not covered by Practice Direction … ]*; |
| [(2) The estimated length of trial of this case exceeds … days]*; |
| (3) Others: |
|_____________________________________________________________________
|_____________________________________________________________________

| I confirm that I do not request that the case be tried by a bilingual Judge. |
| I request that the case be tried by a bilingual Judge because: |
|_____________________________________________________________________
|_____________________________________________________________________
| and the approximate number of Chinese documents is _____ pages.
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>□</td>
<td>I confirm that my preferred language for the trial is [Chinese / English]*. _____ interpreter is required</td>
</tr>
<tr>
<td>15</td>
<td>□</td>
<td>[I / my solicitors / my trial counsel]* estimate the length of trial to be _____ days.</td>
</tr>
</tbody>
</table>
|16 | □ | I confirm that the earliest date I believe I can be ready for trial is ________________.

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J Proposed Directions

J1 □ I confirm I have attached my proposed directions / timetable / our consent summons to this questionnaire.

OR

□ I have not proposed any directions / timetable because I am not legally represented.

K Other Matters

K1 Please set out below any other information you consider will help the Court in case management:

____________________________________________________________________________
__________________________________________________________________________

L Declaration

L1 I, ____________________, the _____ [Plaintiff / Defendant / __________]* declare that the above answers are true and accurate to the best of my information and belief.

OR

I, ____________________, solicitor for the _____ [Plaintiff / Defendant / __________]*, having the conduct of this case declare that the above answers are true and accurate to the best of my information and belief.

Signed: ___________________________ Date: ____________

[Solicitors for the _________________]*

To: ___________________________
Specimen Order on Check List Review / Case Management Conference

(Heading of Action)

BEFORE MASTER ___________ / THE HONOURABLE MR JUSTICE __________
IN CHAMBERS

ORDER ON CHECK LIST REVIEW / CASE MANAGEMENT CONFERENCE

Upon hearing Counsel / Solicitors for the Plaintiff and Counsel / Solicitors for the
Defendants and Counsel / Solicitors for the Third Party [and upon reading the Affidavit /
Affirmation of A__________ B__________ ]

IT IS ORDERED THAT:

1. The Plaintiff / Defendant file and serve within ____ days / by the ____ day of
   _______ 20___, Further and Better particulars of the Statement of Claim /
   Defence under paragraphs ____ of the Request dated the _____ day of ________
   20__.

2. The Plaintiff / Defendant has leave to amend / re-amend its Statement of Claim /
   Defence in accordance with the draft annexed to the application. The Defendant /
   Plaintiff has leave to amend / re-amend its Defence / Statement of Claim, if
   necessary within 14 days. The costs of and occasioned by the amendments shall
   be the Defendant’s / Plaintiff’s in any event / costs in the cause / there shall be no
   order for costs.

3. The Application of the Plaintiff / Defendant to amend / re-amend its Statement of
   Claim / Defence be dismissed with costs to the Defendant / Plaintiff / with no
   order as to costs.

4. The Plaintiff / Defendant is to serve / exchange the witness statement as to fact of:
   A_____ B_____
   C____ D_____ and
   E____ F_____
   within ____ days / by the ___ day of _________ 20__.

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5. The Plaintiff / Defendant is to serve a copy of all statements to the Police / Declarations to the Department of Labour within ____ days.

6. The Plaintiff / Defendant is to serve / exchange the reports of:

A____ B____ and

C____ D____

as to liability within ___ days / by the ___ day of _________ 20___. The issue of admissibility of such reports is to be determined at the Pre-Trial Review / by the trial Judge.

or:

No expert evidence as to liability shall be adduced in written or oral form save in the form of the report of the Occupational Safety Officer and / or the oral evidence of the Occupational Safety Officer.

7. The Plaintiff / Defendant is to file and serve a List of Documents [verified by Affidavit / Affirmation] relating to the following matters within ____ days / by the ___ day of ____ 20___:

8. The Plaintiff is to serve medical reports from the following experts within ____ days / by the ___ day of _____ 20___.

Dr. A ________ B________

Prof. C ________ D________

Dr. E ________ F________

9. The Defendant is to serve medical reports from the following experts within ___ days / by the ______ day of _______ 20___.

Prof. A ________ B________

Dr. C ________ D________

Dr. E ________ F________

10. The medical evidence is to be limited to one / two orthopaedic / neurological / ophthalmic / cardiology / obstetric / gynaecological / psychiatric / psychological consultant(s) for each party.
11. The parties are to instruct jointly an occupational therapist / physiotherapist / rehabilitation expert / nursing consultant / architect / surveyor whose agreed report is to be lodged with the Court no later than 7 days prior to the Pre-Trial Review / Trial.

12. The reports of the Government hospitals as to the treatment and care of the Plaintiff are to be adduced as agreed evidence without calling the makers thereof.

13. The Plaintiff is to file and serve a [Revised] Statement of Damages, together with any further statements as to quantum and any documentary support not already disclosed within ___ days / by the ___ day of _______ 20__.

14. The Defendant is to file and serve a [Revised] Answer thereto within ___ days thereof / by the ___ day of _______ 20__.

15. The Plan prepared by the Police in relation to the accident in which the Plaintiff was injured and the photographs taken by Police Officers / Department of Labour are agreed and are to be admitted in evidence at trial without calling the plan drawer / photographer.

16. The Defendants are to pay the sum of $____ by way of interim payment of damages into Court / to the Plaintiff’s solicitors / to the Plaintiff / to the Director of Legal Aid within ____ days.

17. A composite bundle of medical records is to be agreed between the parties, fully paginated and indexed, with any original illegible entries in typed transcribed form in addition to the original entries and lodged with the Court with the trial bundle and separate therefrom.

18. There be a Case Management Conference / Pre-Trial Review on the day of _______ 20__ at ___ a.m. / p.m. before ________.

19. The issue of liability be tried separately from the issue of damages on the ___ day of _______ 20__.

20. The Plaintiff have leave to set this action down for trial within ____ days / by the ___ day of ______ 20__, before a ____ Judge without a jury, in the Fixture / Running List to commence on the ___ day of _______ 20__ / not to be warned before the ___ day of ______ 20__. The estimated length of trial is ___ days.

21. Judgment be entered for the Plaintiff against the Defendants with damages to be assessed. The estimated length of the trial on damages is ______ days.

22. The costs of the Check List Review / Case Management Conference shall be costs in the cause / the Plaintiff’s costs in any event / the Defendant’s costs in any event
/ There shall be no order for costs. The Plaintiff’s own costs are to be taxed in accordance with the Legal Aid Regulations.

23. The parties shall ensure that (a) Counsel’s advice on evidence, liability and quantum have been obtained; and (b) all outstanding interlocutory applications as advised by Counsel have been sought by __________.

24. Upon application to set down, the Plaintiff’s Solicitors shall provide the Listing Clerk with a letter stating that all the directions have been complied with.

25. The solicitors for the Plaintiff shall send a copy of this Order to the Legal Aid Counsel in charge of this case, to ensure that there is no delay in compliance with these directions due to late assignment of Counsel or due to late issuance of an appropriate Certificate.

26. PI Master shall be notified at once if any of the dates herein are not met.

27. Liberty to apply.

Dated the ____ day ________ 20__.
CURRICULUM VITAE

Iain Goldrein QC
goldhaas@tiscali.co.uk

Chambers
7 Bell Yard, London WC2A 2JR
7 Harrington Street, Liverpool L2 9YH
St. Johns Buildings, Manchester M3 4DJ

Mob: 001 44 7831 703 156

Academics:


- **University**: Cambridge 1971-1974: University Squire Scholarship for Law, Pembroke College Exhibitioner [x3] and Ziegler Prize for Law.


- **Royal Air Force**: Flying Scholarship.

Judicial Appointments:

(1) Deputy High Court Judge.
(2) Recorder of the Crown Court.

(3) Queen's Counsel.

**Other appointments:**

- Visiting Professor [The Sir Jack Jacob Chair in Litigation], Nottingham Law School 1992.;

- Companion of the Academy of Experts 1992 appointed by Lord Slynn for assistance to the Academy in developing the jurisprudence on expert evidence.

- Advisory Editor: Hong Kong White Book;

- Qualified Mediator accredited by the Academy of Experts [1991] and the ADR Group [2009]. Iain Goldrein's assistance with a leading book on mediation published in HK ["Hong Mediation Handbook" 2010] is expressly acknowledged in that work by the Editor, Dr. Raymond Leung.

- Fellow of the Royal Society of Arts [1992].

- Fellow of the Institute of Advanced Legal Studies [1998].

**Assistance to the Ministry of Justice and the Lord Chancellor's Department:**

**Judicial Shadowing:** In 1999 Iain Goldrein responded to a request from Lord Irvine as to equality and diversity by volunteering what is now the Judicial Shadowing Scheme [JSS]. His concept was to advance equality of opportunity and respect for diversity by giving ethnic minorities a stake-holding in the administration of justice, and enable them to secure respect, through their being immediately identified [by sitting alongside the judiciary] with the judicial process. At the request of the MoJ in October 2009 to assist further with diversity etc, he has suggested [amongst other initiatives] expanding the JSS to embrace youth at
schools [including inner city], ["JJSS" – Junior Judicial Shadowing Scheme]; again to secure a stake-holding in the administration of justice, to promote equality and diversity at all levels and to stimulate applications from talented candidates from all backgrounds.

**Family Proceedings Public Law Outline**: He helped to develop and draft the Family Proceedings Public Law Outline [2005-2008], having had experience of the HMCS/civil service environment in the context of procedural codification, with the CPR and "Woolf.", see below. Also see “Child Case Management Practice” below, under bibliography.

**“Woolf” reforms**: In 1994 he accepted an invitation to help Lord Woolf on his Report/CPR.

**Structured settlements**: Assisted the LCD in relation to Structured Settlements; representatives from the LCD were in Lynchburg, Virginia [USA] to hear him speak for GE Capital on this topic, giving the UK [as contrasted with the USA] experience.

**Practice:**

**Inter-disciplinary experience**: Iain Goldrein QC’s extensive inter-disciplinary experience affords him the opportunity for imaginative case analysis to achieve creativity in advocacy and dispute resolution [he is also a qualified mediator].

**QBD**: Catastrophic injury; clinical negligence; PPOs;

**Family**: Sudden infant death syndrome including genetics issues; non-accidental head injury; public interest immunity, factitious induced injury [Munchausen’s], judicial review and human rights, ethnicity and human rights, international child abduction; ancillary relief; Sch. 1 Children Act proceedings, human fertilisation and embryology issues [Acts of 1990 and 2008].
**Crime:** Major lengthy high profile cases, including cutting edge forensic issues such as phonetics, anonymous witness, complex ballistic and DNA issues, and sophisticated statistical issues vis a vis telephone evidence; health and safety.

**Other:** Alder Hey Body Parts Enquiry – acting for 400+ parents; acted for estate developer in the context of the failed foundations to a large housing estate; acted for directors of a major airline on an issue of alleged secret profits; Appearance in the House of Lords. He has worked in the Isle of Man and have been recently licensed to appear there.

**Sensitivity to ethnicity and diverse backgrounds:** Underpinning the whole of Iain Goldrein QC’s practice and bibliography has been a drive to achieve a level playing field irrespective of race, sex, colour or creed. By making litigation technique a publishing genre in its own right, he broke the mould of legal publishing. He gave expression to his commitment and zeal in this goal in the following words in his Inaugural Professorial Paper:

> “If legal knowledge and wisdom are widely and clearly disseminated, then in any particular case there is the better opportunity to exercise a sharper judgment by all those who practice law irrespective of colour or creed… … A level procedural playing field has to be a pre-requisite to any consideration of “Equality before the Law” and “Access to Justice”. Such a premise is an overwhelming priority in our contemporary multi-racial society.”

**Bibliography:**

The authority of the major works has been endorsed in forewords from members of the judiciary including Lords Phillips, Woolf [x3], Griffiths, Donaldson, Goff,
Steyn and Mance; and also LJJs Russell, Otton, Rix and Anthony Evans. An asterisk [*] indicates books also with HHJ Margaret de Haas QC. “[A]” indicates publications where there is express reference to his agenda of equality and a level playing field for all. The bibliography is:

**Cost Effective Case Management:**

These two works were intended to demonstrate that juridically, Equality and Diversity were co-extensive with a genuinely fair and Cost-Effective product.

- *Medical Negligence: Cost-Effective Case Management* [Butterworths/Tottels, 1997-2008] “[A]” [Developed the concept of starting with the framework of a judgment and working cost-effective file-management backwards: Justice Anselmo Reyes [Hong Kong] has independently explored the same theme and defines this approach as “Reverse Engineering” in his book *Reflections on Civil Procedure under Civil Justice Reform*, in which he expressly acknowledges Iain Goldrein in this context].

- *Personal Injury Major Claims Handling: Cost Effective Case Management* “[A]” [Butterworths/Tottels, with sub-editors, with a view also to empowering the stakeholders in the market and to harmonise the conflicting interests between claimant and insurer;]

**Procedural Law:**

- **Bullen and Leake and Jacob: Precedents of Pleadings** 13th ed [1990, with Sir Jack Jacob and sub-eds];
- Pleadings: Principles and Practice [1990], with Sir Jack Jacob.

- Civil Court Practice ["Green Book" – co-editor since 1999];

**Personal Injury And Clinical Negligence:**

- *Personal Injury Litigation: Practice and Precedents* [Butterworths, 1985];

- *Butterworths Personal Injury Litigation Service “[A]”; ["BPILS"-1988, in 6 volumes, loose-leaf with sub-eds];

- *Structured Settlements* [Butterworths, 1993&1996 with sub-eds];

**Family, Human Rights and Genetics:**

- Oyez Matrimonial Tax Model [1980 – 1987, a case management tool to assist the court in assessing the effect of tax on PPOs];

- *Property Distribution on Divorce* [1983 and 1985], Longmans

- *Genetics Law Monitor* [Informa Plc]; Editor [1999-2002; the concept was triggered by the sequencing of the genome, the need to regulate what then appeared to be an immediate genetics revolution;

• **Child Case Management Practice** [2009, Jordans; with Ryder J and sub-editors [This book highlights the importance of focus on the key issue[s] in the context of the Public Law Outline].

• **Media Access to the Family Courts** [2009, Jordans – which covers the latest procedure and legislative changes].

• **Family Law [Jordans]:** Several features.

• **Genetics paper:** Under the auspices of Clifford Chance, delivered [March 2009] a paper at Westminster to particularly gifted law students on “*Genetics and Human Rights in the 21st. Century.*”

**Commerce:**

• **Ship Sale and Purchase: Law and Technique** [Lloyds of London Press/Informa: 1985, now in 5th ed, with Clyde and Co].

• **Commercial Litigation: Pre-Emptive Remedies** [1987 Sweet and Maxwell; now loose-leaf with sub-eds; and see Hong Kong, below].

• **Insurance Disputes** [Informa; 1999&2003 now in 2nd. Ed. with Lord Mance, Prof. Merkin and sub-editors];

• **Commercial Litigation – Pre-Emptive Remedies: International Edition** [General Editor: 2005]
Hong Kong:

- Editor of the forthcoming Hong Kong Bullen and Leake, Precedents of Pleadings [with HK sub-editors]; and of the forthcoming Hong Kong edition of Commercial Litigation: Pre-Emptive Remedies [again, with HK sub-editors].

Professorial [And Equivalent] Papers:

- **First:** The Inaugural Paper [formally appraised]: “Issue! Issue!! Or We All Fall Down.” “[A]”; [Feb 1994, pre-“Woolf”]; The explicit agenda of the paper was: levelling the playing field with equality for all irrespective of ethnicity, gender or creed; with “Justice” as the driving force. Its themes anticipated precisely the focus of the CPR: The CPR and its “Overriding Objective” resonate very closely with the Paper’s themes.

- **Second:** “Tayloring Case Management to Woolf’s Litigation Superhighway” “[A]”; [Spring 1995] which refined the themes of the Inaugural Paper.

- **Third:** “Lex Britannica” “[A]” [1998] which explored the thesis that only a transparent and overriding just process of dispute resolution available to all can generate a jurisprudence of genuine integrity, and only such jurisprudence can empower stakeholding for all in a diverse citizenry.

Major Papers delivered:

In the UK and abroad [London, Edinburgh, Glasgow, Oxford, USA [Virginia, for GE Capital], HK, Paris, Stockholm and Tel Aviv {in Hebrew}], inter alia with Lords Woolf, Ackner, Goff, Scott and Steyn [Civil Justice Reform; Clinical Negligence, Pre-emptive Remedies, Brain Damage, ADR in the UK, Structured Settlements, UK Advocacy, Liability Insurance, Genetics etc].

Professional Committee Service etc:
• Current member of the FLBA Regional Committee.
• Current Member of the Muslim-Jewish Forum:
• Young Barristers’ Committee;
• Bar Technology Committee;
• Northern Circuit Commercial Bar Association;
• Bar Council Law Reform Committee;
• Current Member of FLBA, CBA, PIBA, Admin Law BA and the British Insurance Law Association.
• Current Member Bar Pro Bono Panel.