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Error-Strewn Solicitors

1 Made Up Avenue

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23 March 2020

Dear Sirs

**Re: Mr Pretend vs Other Company**

We are instructed by your former client, Mr Pretend, reference Pretend001, in connection with a claim for professional negligence following the settlement of his personal injury claim by you on or around this date.

Given impending limitation, we are unable to provide you with a Preliminary Notice.

This a letter of claim sent in accordance with the Pre-action Protocol for Professional Negligence Claims (the “Protocol”). We will, therefore, deal with the matters which arise under that Protocol at this stage. We trust that your representatives will reciprocate, by meeting their obligations, as we consider compliance with the terms of the Protocol will be the best way of resolving this matter, or at least narrowing the issues, in a timely and proportionate way.

We attach a further copy of this letter for you to send to your Professional Indemnity Insurers.

We should, in particular, like to deal with liability as quickly as possible. We hope that will then allow us to enter negotiations on quantum and explore the possibility of outright settlement at the earliest opportunity.

We will deal with the matters arising at this stage, under the terms of the Protocol and more generally, in turn.

Please confirm your position on liability as soon as possible. If liability is not accepted and/or you blame anyone for our client’s losses, please give full details so that we may consider what you have to say.

We are of the view that liability in relation to this matter is very straightforward.

This letter gives a summary of the factual background and the reasons why it is considered you are liable for our client’s losses. However, this summary should not be taken to be comprehensive and we reserve the right to plead such particulars as may be appropriate when we have a response, in accordance with the Protocol, to this letter and when any further investigations that may then be required have been concluded.

Please be aware that our client has provided us with a copy of his file.

**Background:**

The reason for our instruction in this professional negligence claim against you is that our client had recently instructed us in relation to a personal injury claim as a result of a minor car accident which occurred in March 2020.

Upon taking our client’s instructions in relation to the recent RTA claim we asked our client whether he had been involved in any previous RTAs. Our client instructed us that he was involved in a major car accident on 23 March 2014, when he was 21 years old. On that date, our client was standstill at a roundabout when he was hit at 40mph by a taxi. The taxi driver had fallen asleep at the wheel.

Our client was shunted into the car in front: therefore there were two sudden movements. Our client’s heavy car was written off. Emergency services attended the scene. After extricating himself from his car, our client had to help the other injured drivers, covered in blood, from their vehicles. Our client thought that the young passenger in the taxi was dead. The taxi driver had not been wearing a seatbelt and was therefore significantly injured. The accident, therefore, was particularly stressful for our client, who was only 20 at the time.

Our client attended hospital with the other injured parties. The taxi driver was fined and made to complete a driver-improvement course.

After the accident, due to his physical injuries, our client was in so much pain that he struggled to wash himself. As a result of the psychological injuries, our client found it very difficult to sleep.

Upon taking our client’s instructions we were surprised to discover that the claim settled on a full liability basis for only £2,000, of which £1,700 was in respect of general damages.

**Assessment of Quantum:**

Our client was allocated to your firm by his car insurers. Your initial Accident Confirmation form notes that our client was suffering from recurring dreams and a psychological injury. Our client complained that he had found the accident “terribly stressful”.

Despite the severity of the accident, you allocated the case to a trainee paralegal, Miss Paralegal. Your initial checklist notes the following: “*Impact was very severe – forced the stereo out of the dashboard.”* We further note that your initial instructions confirmed that our client was suffering from headaches, dizziness, nausea and a loss of sex drive, which was impacting upon his relationship, amongst other physical injuries. Some of these injuries were not explained to the GP expert in your letter of instruction, nor were they cross-referenced when the medical report was analysed. No questions were put to the GP expert.

Your letter from Another Person dated 1 January 2019 states: “*It appears to me that you may have suffered a significant injury.”* This was correct, but the case was still allocated to Miss Paralegal. We further note that at the outset the wrong Defendant was pursued, with no good reason.

Our client reports to us that he recalls that his phone calls with Miss Paralegal were always short, and that he did not fully understand the process, as it was not properly explained to him. Our client had never instructed solicitors before. At no time did our client meet with her, nor did she suggest a meeting.

We note that a physiotherapy assessment dated 9 March 2019 noted that our client was struggling to drive, and couldn’t perform any sport.

We note that the GP was instructed rather quickly, and that the GP was not provided with our client’s GP or hospital records. We attach a copy of the report for your information. We are of the view that a GP expert was the incorrect expert, given the seriousness of the accident and the two attendances at hospital. Had a more specialist expert been instructed, our client’s case may not have been under-settled.

We note that the GP expert commented upon the psychological injury, stating that if the psychological injury persisted, then our client should undergo a psychological assessment. Our client’s psychological injury persisted and yet he was not sent for a psychological medico-legal expert for a report.

We note that, amongst other things, the GP expert stated that our client’s neck and back injuries would ease over 3-4 months from the date of examination (not from the date of the accident, as was Miss Paralegal’s analysis) with the assistance of physiotherapy. The prognosis for the neck and back injuries therefore was due to last until at least mid-July 2019, at least 8 months post-accident, but Miss Paralegal stated that our client recovered within 4 months when considering quantum. We further note that the GP expert recommended that our client required 3-6 sessions of physiotherapy, which would have taken our client to circa 11 sessions of physiotherapy. We trust that you agree that the requirement to undergo 11 sessions of physiotherapy is indicative of an accident claim in which general damages are worth more than £1,700, even by 2019 standards.

Furthermore, the GP expert made it patently clear that if the psychological injury persisted then a further psychological assessment should take place. Our client made it clear to Miss Paralegal over the telephone and in writing that he was still psychologically suffering significantly as a result of the accident, however, no instruction to a psychologist or psychiatrist was made. The GP report was not analysed by a qualified lawyer.

We note that Miss Paralegal misinterpreted the medical evidence when assessing the medical evidence. Miss Paralegal stated on 26 June 2019 that our client had made a full recovery in just over four months. This was manifestly inaccurate and should have been corrected had there been any supervision. Miss Paralegal failed to consider the value of the significant psychological injury.

We note that Miss Paralegal told our client on 26 June 2019 that an offer on generals of £1,700 was “good based on the time that they actually took to recover”. Please note that our client had not made a full recovery at the time of that call. Our instructions are that our client did not make a full recovery until mid-2019.

We note that there is no evidence on file that Miss Paralegal considered the JSB Guidelines or case law, when coming to her valuation. We note that the offer from the insurers was received on 26 June 2019 and that the negligent advice was communicated to our client on the same day. We note that for this serious accident, you recovered general damages on a full liability basis of only £1,700.

We further note that Miss Paralegal wrote to our client on 13 May 2019 to acknowledge the significant anxiety which our client was suffering from, yet for which he was not compensated for.

We note that our client informed Miss Paralegal that he was still in physical pain as at 13 May 2019, some seven months post-accident. We note that Miss Paralegal knew that our client needed quite a lot of physiotherapy and that he was having to undertake his own stretching routine.

We are firmly of the view that due to the seriousness of the accident, which necessitated two hospital attendances and quite a few sessions of physiotherapy, that a GP expert was the wrong expert. It would have been more appropriate for our client to have been examined by, at the very least, an Accident and Emergency Consultant. At that time, you would have no difficulty in recovering the cost of an Accident and Emergency Consultant’s report from the third party’s insurers. We further note that our client’s GP and hospital records should have been obtained, as they would have provided evidence as to the seriousness of the accident.

We note that there was a total lack of supervision of Miss Paralegal, who was a trainee paralegal tasked with dealing with a young client who had undergone a serious accident. Our client was just old enough to proceed without a Litigation Friend. It would have been sensible for Miss Paralegal to suggest that our client sought the assistance of a parent.

We are further of the view that the special damages calculation was inaccurate.

**Liability:**

We draw to your attention the criticism meted out to Raleys Solicitors in the recent case of *Barnaby v Raleys Solicitors 2014* by the Court of Appeal for not meeting with their client, and for relying upon questionnaires for special damages calculations.

Our client contends that his case was under-settled due to your negligence and/or breach of contract and/or breach of professional rules, in that you:

1. Allocated this case to a trainee paralegal instead of a much more senior lawyer;
2. Failed to supervise a trainee paralegal;
3. Failed to offer a proper level of service;
4. Failed to act in the best interests of the client;
5. Failed to properly analyse the medical evidence;
6. Failed to instruct the correct medical expert;
7. Failed to properly consider quantum;
8. Failed to instruct a Consultant Psychologist or a Consultant Psychiatrist;
9. Incorrectly valued the special damages;
10. Failed to obtain our client’s GP and hospital records;
11. Failed to understand that our client was a young person with no experience of dealing with solicitors;
12. Failed to properly explain to our client that he was at a substantial risk of having his claim under-settled;
13. Failed to properly negotiate a higher settlement.

We consider this summary is sufficient for the claim to be investigated, and a decision on liability given, so that the timescale provided for under the Protocol has started to run. Please note, however, that the above particulars of negligence and references to the Guide to Professional Conduct are not intended to represent a final or definitive list of our client’s allegations, and we reserve the right to raise further allegations in due course.

Unless liability is fully admitted, we will expect disclosure of all documents to be given.

Given the background to the matter, as already set out in this letter, we consider documents within the following categories are relevant and that, accordingly, copies should be supplied to us which should be provided without making a charge.

Please provide the following documents within the next three months, if liability is not admitted in full:

1. Any part of our client’s file which has not already been disclosed to him;
2. Training records and appraisals of Miss Paralegal and her supervisor;
3. Disciplinary action taken against Miss Paralegal and her supervisor;
4. Complaints made against Miss Paralegal and her supervisor;
5. All professional negligence claims made in connection with cases handled by Miss Paralegal and her supervisor;
6. All internal emails in which our client is mentioned.

Please note: your obligations of pre-action disclosure are not limited to the above range of documents.

If there are documents, within these categories which you contend are privileged, please state the grounds of the claim for privilege and identify the documents with sufficient detail for us to assess the validity of the claim for privilege.

Should you fail to give disclosure, we reserve the right to make the appropriate application to the court, whether pre-action or in the main action. We will also, if necessary, draw the content of this letter to the court’s attention at a later stage should any document not be preserved on the basis that, having specifically requested the same at this stage, any disposal of documents would be a deliberate non-compliance with your obligations.

We should like to get liability dealt with as quickly as possible, hence the request for information already made in this letter, so that we may move on, we hope, to negotiations on quantum.

Presently, we can only summarise our client’s losses. Our client instructs us that his physical and psychological symptoms resolved by around mid-2019, some nearly two years post-accident. The injury impacted upon our client’s ability to play hockey, which was our client’s main hobby. We are of the view that our client’s claim should have settled for around £6,000-7,000, at the very least. Given the settlement of £2,000, our client’s losses are therefore around £4,000-5,000 only.

Given the above, and given that both firms practice personal injury law, we are of the view that a medical report may not be required, particularly given that our client states that his injuries resolved by mid-July 2019, so that any expert would essentially regurgitate what our client stated. If, however,

you request the instruction of a medical expert, we will nominate three Consultant Orthopaedic Surgeons to you and will provide full medical records together with a proof of evidence.

We should like to see if it is possible to resolve, or at least narrow, any issues by ADR. Accordingly we trust that you will comply with your obligations under the Protocol.  Should you not do so we do reserve the right to refer to this, and further relevant, correspondence when seeking any orders that may be necessary from the Court, on case management, and also in connection with the costs of any specific application and, indeed, the matter generally.

Given that our client has only recently become aware of the under-settlement of his case, our client reserves the right to claim that limitation only runs from the date that he became aware of the negligence.

We look forward to hearing from you by return.

Yours faithfully

TRUTH LEGAL

Enc. Letter from Client and GP report