PRACTICE DIRECTION No 2 of 2021

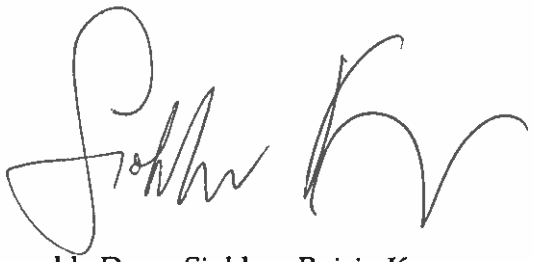
IN THE COURT OF JUDICATURE OF NORTHERN IRELAND

QUEENS BENCH DIVISION

PROTOCOL FOR CLINICAL NEGLIGENCE LITIGATION IN THE HIGH COURT AND PRACTICE DIRECTION FOR EXPERTS

1. This Practice Direction and Protocol have effect from 1st October 2021
2. This Practice Direction dis-applies Practice Direction No 1 of 2015 Commercial List Practice Direction: Expert Evidence in so far as it applies to Clinical Negligence Litigation
3. The Practice Direction accompanies and supports the Clinical Negligence Protocol which sets out best practice and procedure to be followed by practitioners on both sides of clinical negligence litigation and should allow practitioners to meet the expectations of the court.
4. The Protocol revokes and replaces both the Protocol for Clinical Negligence Litigation dated 6 September 2012 and its initial draft, the Pre-Action Protocol for Clinical Negligence Litigation dated 27 February 2009.

Signed this 27th day of September 2021



The Honourable Dame Siobhan Roisin Keegan

Lady Chief Justice

PRACTICE DIRECTION NO. 2 OF 2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

(CLINICAL NEGLIGENCE)

EXPERT EVIDENCE

Introduction

1. This Practice Direction applies to all Clinical Negligence Actions with effect from 1st October 2021. On that date, practitioners should reference this Practice Direction and not No 1 of 2015 "Commercial List Practice Direction: Expert Evidence". Before an expert is instructed, practitioners should also consider the Protocol for Clinical Negligence Litigation.

2. When an expert has been instructed to give or prepare evidence for the purposes of court proceedings, the expert owes a duty to assist the court on matters within his or her expertise and this duty overrides any obligation to the party from whom the expert has received instruction or by whom the expert is to be paid. A statement of the expert's duties, known as the Ikarian Reefer Rules, is set out in Appendix 1.

3. Expert witnesses should follow best practice as set out in the Code of Practice for Experts issued by the Academy of Experts and the Expert Witnesses Institute and attached as Appendix 2 (code-of-practice.pdf (ignition-learn.co.uk)).

4. Experts should be mindful of the overriding objective of the Rules of Court which is to enable the court to deal with cases justly, which includes, so far as is practicable–

(a) Ensuring that the parties are on an equal footing.

(b) Saving expense.

(c) Dealing with the case in ways which are proportionate to –

(i) the amount of money involved.

(ii) the importance of the case.

(iii) the complexity of the issues.

(iv) financial position of each party.

(d) Ensuring that it is dealt with expeditiously and fairly.

(e) Allocating to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

5. Experts should have regard to the objectives of the Protocol for Clinical Negligence Litigation, namely:

(i) Early communication between patients and healthcare providers of any perceived concerns about medical care or treatment.

(ii) The development by healthcare providers of early reporting and investigation systems.

(iii) Disclosure of sufficient information so as to enable patients and healthcare providers to understand the issues and encourage early resolution.

(iv) The timely provision of relevant medical records by healthcare providers to patients or their legal representatives.

(v) Placing the parties in a position where they may be able to resolve cases fairly and early without litigation together with the consideration of mediation and/or other forms of Alternative Dispute Resolution, where appropriate.

(vi) The promotion of an overall "cards on the table" approach to litigation in the interests of keeping the amount invested by the participants in terms of money, time and stress to a minimum, consistent with the requirement that the issues be resolved in accordance with the accepted standards of fairness and justice for both parties.

6. Ordinarily, the court will expect an expert witness to be familiar with, and have a knowledge of, matters relevant to medico-legal litigation and, specifically, in relation to those matters upon which they have been asked to report.

7. Experts should be aware that any failure to comply with the Rules of Court or the directions of the court or this Practice Direction, or any excessive delay for which they are responsible, may result in the parties who instructed them being penalised in costs, or debarred from relying upon the expert evidence. In addition, the expert may be held responsible for wasted costs and may have some or all fees and expenses disallowed.

8. Model Forms of Experts Reports have been produced by The Academy of Experts (www.academy-experts.org) (Model Form of Expert Report - The Academy of Experts) and the Expert Witness Institute (www.ewi.org.uk). A Model Form of Expert Witness CV has been produced by the Academy of Experts (Expert witness CV - The Academy of Experts).

9. Some professional bodies have produced guidance for members acting as expert witnesses, for example, the General Medical Council (Acting as a witness in legal proceedings - GMC (gmc-uk.org)) and (Domain 4 - Maintaining trust - GMC (gmc-uk.org)), the Academy of Medical Royal Colleges (expert_witness_guidance_final.pdf (ficm.ac.uk)), and the Royal College of Psychiatrists (college-report-cr193.pdf (rcpsych.ac.uk)).

The need for an expert witness

10. Those intending to instruct an expert to give, or prepare evidence for, the purpose of civil proceedings should consider whether expert evidence is necessary and, if so, from which specialism(s).

11. Any party intending to call an expert witness or witnesses, or to serve reports from experts, should notify this intention at the earliest opportunity at review before the Master or Judge. Any party should be prepared to explain the justification for retaining an expert and the relevance of his/her expertise.

12. Consideration should be given to the appointment of a single joint expert for the purposes of the litigation or for the purposes of dealing with any one or more separate issues.

13. The parties should bear in mind that there may well be cost implications for the use of unnecessary expert evidence.

Duties and obligations of experts

14. Experts always owe a duty to exercise reasonable skill and care to those instructing them, and to comply with any relevant professional code. However, when they are instructed to give or prepare evidence for civil proceedings, they have an overriding duty to help the court on matters within their expertise. This duty overrides any obligation to the person instructing or paying them. Experts must not serve the exclusive interest of those who retain them.

15. Experts must provide opinions that are independent, regardless of the pressures of litigation. A useful test of 'independence' is that the expert would express the same opinion if given the same instructions by another party. Experts should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocates or mediators. The General Medical Council's 'Acting as a witness in legal proceedings' states:

"You must give an objective, unbiased opinion and be able to state the facts or assumptions on which it is based. If there is a range of opinion on an issue, you should summarise the range of opinion and explain how you arrived at your own view. If you do not have enough information on which to reach a conclusion on a particular point, or if your opinion is qualified (for example, as a result of conflicting evidence), you must make this clear."

16. Experts should confine their opinions (including those that might detract from their opinions) to matters which are material to the disputes and provide opinions only in relation to matters which lie within their expertise. Experts should indicate without delay where particular questions or issues fall outside their expertise. The General Medical Council's 'Acting as a witness in legal proceedings' states:

"You must only give expert testimony and opinions about issues that are within your professional competence or about which you have relevant knowledge including, for example, knowledge of the standards and nature of practice at the time of the incident or events that are the subject of the proceedings. If a particular question or issue falls outside your area of expertise, you should either refuse to answer or answer to the best of your ability but make it clear that you consider the matter to be outside your competence."

17. Experts should take into account all material facts before them. Their reports should set out those facts and any literature or material on which they have relied in forming their opinions. They should indicate if an opinion is provisional, or qualified, or where they consider that further information is required or if, for any other reason, they are not satisfied that an opinion can be expressed finally and without qualification. If the expert considers that an examination of the plaintiff is required before being able to complete his/her report, he/she should inform his/her instructing solicitor without delay.

18. Experts should inform those instructing them without delay of any change in their opinions on any material matter and the reasons for this.

The appointment of experts

19. Before experts are instructed, it should be established whether the experts:

a. have the appropriate expertise and experience for the particular instruction;

b. are familiar with the general duties of an expert;

c. can produce a report, deal with questions and have discussions with other experts within a reasonable time, and at a cost proportionate to the matters in issue;

d. are available to give evidence at trial, if attendance is required; and

e. have any potential conflict of interest.

f. have knowledge of any of the parties to the action and, if so, the extent of that knowledge.

20. Terms of appointment should be agreed at the outset and should normally include:

a. the capacity in which the expert is to be appointed (e.g. party appointed expert or single joint expert);

b. the services required of the expert (e.g. provision of an expert's report, answering questions in writing, attendance at meetings and attendance at court);

c. time for delivery of the report;

d. the contractual basis on which the expert's fees and expenses will be charged and paid (e.g. legal aid or private funding, daily or hourly rates and an estimate of the time likely to be required, or a fixed fee for the services), which contractual basis should not conflict with the duties and responsibilities of the expert;

e. travelling expenses and disbursements;

f. cancellation charges;

g. any fees for attending court;

h. time for making the payment;

i. whether fees are to be paid by a third party;

j. if a party is publicly funded, whether the expert's charges will be subject to assessment; and

k. guidance that the expert's fees and expenses may be limited by the court.

21. When necessary, arrangements should be made for dealing with questions to experts and discussions between experts, including any directions given by the court.

22. Experts should be kept informed about deadlines for all matters concerning them. Those instructing experts should send them promptly copies of all court orders and directions that may affect the preparation of their reports or any other matters concerning their obligations.

Instructions to experts

23. Those instructing experts should ensure that they give clear written instructions (and attach relevant documents), including, but not limited to, the following (as per the Law Society's template Letter of Instruction to Expert (attached)):

a. basic information, such as names, postal and email addresses, telephone numbers and any relevant claim reference numbers;

b. the nature of the expertise required;

c. the purpose of the report, a description of the matter(s) to be investigated, the issues to be addressed and the identity of all parties;

d. the (pre-issue) protocol correspondence, the pleadings, those documents which form part of disclosure and witness statements and expert reports that are relevant to the report, making clear which have been served and which are drafts and when the latter are likely to be served;

e. an outline programme, consistent with good case management and the expert's availability, for the completion and delivery of each stage of the expert's work; and

f. the dates of any directions issued by the Master or Judge, negotiations, mediation, court hearings (including any reviews) as appropriate, any requirements for the attendance of experts at or the production of information by experts for any negotiations, mediation, court hearing (including any review), the dates fixed by the court or agreed between the parties for the exchange of experts' reports and any other relevant deadlines to be adhered to;

g. bringing to the attention of the expert this Practice Direction and the Protocol for Clinical Negligence Litigation.

Acceptance of instructions by experts

24. Experts should confirm without delay whether they accept their instructions.

25. They should also inform those instructing them (whether on initial instruction or at any later stage) without delay if:

a. instructions are not acceptable because, for example, they require work that falls outside their expertise, impose unrealistic deadlines, or are insufficiently clear. Experts who do not receive clear instructions should request clarification and may indicate that they are not prepared to act unless and until such clear instructions are received;

b. they consider that instructions are insufficient to complete the work;

c. they become aware that they may not be able to fulfil any of the terms of appointment;

d. the instructions and/or work have, for any reason, placed them in conflict with their duties as an expert. Where an expert advisor is approached to act as an expert witness they will need to consider carefully whether they can accept a role as expert witness; or

e. they are not satisfied that they can comply with any directions of the court that have been made.

26. Experts must neither express an opinion outside the scope of their field of expertise, nor accept any instructions to do so.

27. Where an expert identifies that the basis of his instruction differs from that of another expert, he should inform those instructing him.

28. Experts should agree the terms on which they are to be paid with those instructing them.

Instructions to single joint experts

29. When appropriate in clinical negligence litigation, the parties may agree joint instructions to single joint experts. Where they do so, the parties are referred to paragraphs 41-50 of Practice Direction 1/2015 for guidance in respect of the said single joint instruction.

Experts' access to information held by the parties

30. The Instructing Solicitor should try to ensure that they have provided access to all relevant information held by the parties, and that the same information has been disclosed to each expert in the same discipline. Experts should seek to confirm this soon after accepting instructions, notifying their instructing solicitors of any missing omissions.

31. If experts require information which has not been disclosed, they should discuss the position with those instructing them without delay, so that a request for the information can be made and, if not forthcoming, an application can be made to the court.

32. Any request for further information from the other party made by an expert should be in a letter to the expert's instructing Solicitor party and should state why the information is necessary.

Experts' reports

33. The content of experts' reports should be governed by their instructions and general obligations, any court directions, and the experts' overriding duty to the court. The report should identify the individual who prepared the report and any individuals who contributed to its preparation.

34. An expert's report must:

(1) give details of the expert's qualifications. (The details of experts' qualifications in reports should be commensurate with the nature and complexity of the case. It may be sufficient to state any academic and professional qualifications. However, where highly specialised expertise is called for the report should include the detail of particular training and/or experience that qualifies them to provide that specialised evidence);
(2) give details of any literature or other material which has been relied on in making the report;

(3) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;
(4) make clear which of the facts stated in the report are within the expert's own knowledge;
(5) state who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
(6) where there is a range of opinion on the matters dealt with in the report –

(a) summarise the range of opinions; and
(b) give reasons for the expert's own opinion;
(c) contain a summary of the conclusions reached;
(d) if the expert is not able to give an opinion without qualification, state the qualification;

(7) contain a statement that the expert –

(a) understands their duty to the court, and has complied with that duty; and
(b) is aware of this Practice Direction and the Protocol for Clinical Negligence Litigation.

(8) be verified by signing, dating and appending of the Expert's Declaration set out at Annex A of Appendix 3.

35. In preparing reports, experts should maintain professional objectivity and impartiality at all times.

Simultaneous exchange of breach of duty and causation reports

36. The parties will agree a date and time to simultaneously exchange all expert reports upon which they intend to rely in relation to breach of duty and causation. This is normally arranged by exchange of correspondence setting out a list of the expert reports held, identifying the discipline of each expert. The exchange of liability evidence (including causation) is on a like-for-like basis. There is no obligation on a party to disclose evidence obtained from any medical expert on liability except where the party or parties to whom exchange is to be made is also relying on such evidence and simultaneous exchange is to take place.

Sequential exchange of quantum reports

37. Where there is to be sequential exchange of quantum reports, the defendant's expert's report usually will be produced in response to the plaintiff's. The defendant's report should then:

a. confirm whether the background set out in the plaintiff's expert report is agreed, or identify those parts that in the defendant's expert's view require revision, setting out the necessary revisions. The defendant's expert need not repeat information that is adequately dealt with in the plaintiff's expert report;

b. focus only on those material areas of difference with the plaintiff's expert's opinion. The defendant's report should identify those assumptions of the plaintiff's expert that they consider reasonable (and agree with) and those that they do not; and

c. in particular where the experts are addressing the financial loss (for example, wage loss, care costs or loss of profits), the defendant's report should contain a reconciliation between the plaintiff's expert loss calculation and the defendant's, identifying for each assumption any different conclusion.

Experts' Withdrawal

38. Where experts' instructions are incompatible with their duties, through incompleteness, a conflict between their duty to the court and their instructions, or for any other reason, the experts may consider withdrawing from the case. However, experts should not do so without first discussing the position with those who instruct them. If experts do withdraw, they must give formal written notice to those instructing them.

Meetings between experts

39. The Master will direct meetings to be convened between the experts on a set date in advance of the trial of the action and after a mutual exchange of reports between the parties. The meetings will be conducted between experts of the same discipline, unless agreed by the parties or otherwise directed by the court that experts of more than one discipline should attend.

40. No later than 35 days prior to the experts' meeting, the plaintiff's solicitor will prepare and circulate a draft agenda as between the parties. The defendant(s) solicitor(s) shall provide their comments on the draft within 14 days. The agenda should be agreed by the parties and sent to the experts no later than 7 days prior to the date of the experts' meeting.

41. When preparing the agenda, the parties should endeavour to adopt a neutral agenda, seeking to avoid leading questions. The agenda should not be an exhaustive list of issues to be discussed, but rather should focus on a small number of issues, permitting the experts to express themselves beyond a 'yes' or 'no' response, and to provide an explanation for their view only if necessary.

42. No later than 21 days prior to the experts' meeting, the parties shall agree a properly collated, paginated, and indexed core bundle of documents, including any literature on which the experts seek to rely, for use at the experts' meetings. The parties will also agree which expert is to take the minute of the meeting.

43. The purpose of meetings between experts should be, wherever possible, to:

a. discuss the expert issues in the proceedings as identified by the parties and as set out in the agreed agenda for the meeting;
b. reach agreed opinions on those issues, and, if that is not possible, narrow the issues between the parties;
c. discuss the questions included within the agenda for the meeting, their respective answers to those questions being set out in the Scott Schedule in the minute of the meeting;
d. identify those issues on which they agree and disagree and summarise their reasons for disagreement on any issue; and
e. identify what action, if any, may be taken to resolve any of the outstanding issues between the parties.

44. Arrangements for discussions between experts should be proportionate to the value of cases. The meeting of experts between the respective experts for the parties to the action should ordinarily be convened by telephonic means (or whichever method of communication is most timely and convenient).

45. Legal representatives instructing experts must not instruct experts to avoid reaching agreement (or to defer doing so) on any matter within the experts' competence. Experts are not permitted to accept such instructions.

46. At the conclusion of the meeting, or when this is not possible, as soon as practicable thereafter, and in any event no later than 7 days after the date of the meeting, a minute of the meeting will be prepared by the expert assigned that task, in the form of a Scott Schedule identifying;

(a) issues that have been agreed and the basis of that agreement;
(b) issues that have not been agreed and the basis of the disagreement;
(c) any further issues that have arisen, that were not included in the original agenda for discussion, and a summary of the reasons for agreement / disagreement;
(d) a record of further action, if any, to be taken or recommended, including if appropriate a further discussion between experts.

47. The minute should be agreed and signed by all the experts participating in the discussion at the conclusion of the meeting, and when this is not possible, the minute should be prepared as soon as possible after the meeting has concluded. The minute shall then be circulated amongst the other experts for approval. It should then be agreed and signed by the experts, incorporating the Joint Statement Declaration found at Annex B of Appendix 3, within 7 days of the date of the experts' meeting.

48. The minute must not in any circumstances be circulated to anyone other than the experts participating in the meeting prior to it being agreed and signed by all of the experts present at the meeting.

49. The minute of the meeting should not be the subject of any input from any of the parties' legal advisors.

Addendum reports

50. Where experts change their opinion, whether following an experts' meeting or as a result of new evidence or for any other reason, they must inform those who instruct them by way of an addendum to their report explaining the reasons.

51. Those who are instructing those experts should inform other parties as soon as possible of any change of opinion and forward the addendum to those who have received the report.

Attendance of experts at court

52. Those instructing experts should ascertain the availability of experts before trial dates are fixed. In the event that trial dates are allocated by the court, and an expert is not available to attend, the parties should notify the court office within 7 days from the allocation of the trial date to seek (preferably by agreement) an alternative trial date. In that event the parties should attempt to agree an alternative trial date in advance and seek approval of same from the court.

53. The parties shall keep experts updated with timetables and relevant court directions (including the dates and times experts are to attend), the location of the court and directions of the court; and inform experts immediately if trial dates are vacated or adjourned.

54. A party instructing an expert may apply to the court, on notice to all other parties, for leave to present expert evidence by video link.

55. Experts have an obligation to appear and give evidence at court and should ensure that those instructing them are aware of any dates to avoid, and experts shall take all reasonable steps to be available to so attend.

56. Experts should normally attend court without the need for a witness summons, but on occasion such a summons may be served to require their attendance. The use of witness summonses does not affect the contractual or other obligations of the parties to pay experts' fees.

57. Cross-examination of experts on the contents of their instructions will not be allowed unless the court permits it (or unless the party who gave the instructions consents). Before it gives permission the court must be satisfied that there are reasonable grounds to consider that the statement in the report of the substance of the instructions is inaccurate or incomplete. If the court is so satisfied, it will allow the cross-examination where it appears to be in the interests of justice.

Concurrent evidence

58. The court may direct that experts of like disciplines give their evidence at trial concurrently. The experts will then be questioned together, firstly by the Judge based upon disagreements recorded in the minute of experts' meeting and then by the

parties' advocates. Concurrent evidence can save time and costs, and can assist the Judge in assessing the difference of views between experts. Experts need to be aware that the court may order evidence to be given concurrently.

Sanctions

59. The parties and experts should be aware that sanctions might be applied because of a failure to comply with the Rules of Court, this Practice Direction or the directions of the court.

60. Whether or not court proceedings have been commenced a professional instructing an expert, or an expert, may be subject to sanction for misconduct by their professional body or regulator.

61. If proceedings have been issued the court may:

a. impose cost penalties against those instructing the expert.

b. direct that an expert's report or evidence be inadmissible.

c. order that the expert be responsible for wasted costs.

d. order that some or all of the expert's fees and expenses be disallowed.

62. Experts should also be aware of other possible sanctions:

a. In more extreme cases, if the court has been misled it may invoke general powers for contempt of court. The court would then have the power to fine or imprison the wrongdoer.

b. If an expert commits perjury, criminal sanctions may follow.

c. If an expert has been negligent there may be a claim on their professional indemnity insurance.

APPENDIX 1

THE IKARIAN REEFER RULES

Mr Justice Cresswell set out the following rules for experts in National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer) [1993] 2 Lloyd's Rep. 68 at 81-82:

1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to the form or content by the exigencies of litigation (Whitehouse v Jordan [1981] 1 W.L.R. 246, HL, at 256, per Lord Wilberforce).

2. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within their expertise (see Pollivitte Ltd v Commercial Union Assurance Company Plc [1987] 1 Lloyd's Rep. 379 at 386, per Garland J., and Re J (1990) F.C.R. 193 , per Cazalet J. An expert witness in the High Court should never assume the role of an advocate.

3. An expert witness should state the facts or assumption on which their opinion is based. They should not omit to consider material facts which could detract from their concluded opinion (Re J, above).

4. An expert witness should make it clear when a particular question or issue falls outside their expertise.

5. If an expert's opinion is not properly researched because they consider that insufficient data are available then this must be stated with an indication that the opinion is no more than a provisional one (Re J, above). In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification that qualification should be stated in the report (Derby & Co Ltd v Weldon (No.9), The Times, November 9, 1990, CA, per Staughton L.J.

6. If, after exchange of reports, an expert witness changes their view on the material having read the other side's expert report or for any other reason, such change of view should be communicated (through legal representative) to the other side without delay and when appropriate to the court.

7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.

APPENDIX 2

code-of-practice.pdf (ignition-learn.co.uk)

APPENDIX 3

Reports prepared on or after 1st October 2021

(1) This Appendix sets out the wording of the Expert's Declaration and the Joint Statement Declaration (to be added to the minute of a meeting of experts) to be used in any expert's report or minute of meeting of experts prepared on or after 1st October 2021.

(2) The report of an expert witness shall contain the Expert's Declaration set out in Annex A.

(3) A minute of the meeting prepared after discussions between expert witnesses shall contain the Joint Statement Declaration set out in Annex B.

(4) Declarations should be inserted between the end of the report or minute of meeting and the expert's signature.

(5) The Expert's Declarations contained in Practice Direction 7/2014 shall not apply to expert's reports prepared in clinical negligence actions on or after 1st October 2021.

ANNEX A

EXPERT'S DECLARATION

I [*Insert Full Name*]

DECLARE

THAT:

1. I understand that my duty in providing written reports and giving evidence is to help the court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.

2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.

3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.

4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.

5. I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.

6. I have shown the sources of all information I have used.

7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.

8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.

9. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.

10. I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.

11. I understand that -

a. My report will form the evidence to be given under oath or affirmation.

b. I must co-operate fully and actively engage with the party by whom I am instructed, and will take all reasonable steps to promptly respond to queries raised and requests made by them.

c. I am required to make myself available for court-directed experts' meetings, and to actively participate and positively engage with those experts retained on behalf of the other parties. I will not be obstructive or otherwise impede the progress of that meeting and at all times my conduct will be courteous, objective, and professional

d. Following the court-directed experts' meeting, a minute shall be circulated between the respective experts for approval within 7 days of the Experts' meeting. I am required to engage in that process, prepare the minute if appointed and approve the minute when agreed and will not circulate that minute to any party prior to it being agreed by all the experts present at the meeting.

e. I will make myself available to appear at the hearing of this action if my attendance is required and will take all reasonable steps to be available for the trial of the action.

f. At the trial of this action the court may order concurrent evidence of experts of like disciplines.

g. I am likely to be the subject of public adverse criticism by the Judge if the court concludes that I have not taken reasonable care in trying to meet the standards set out above.

h. If I fail to comply with the Rules of the Court, this Practice Direction, or the directions of the court, sanctions may be imposed by the court and / or my professional body, which can include:

   i. a wasted costs Order being imposed against me.

   ii. being found in contempt of court.

   iii. criminal sanctions if I am found to have committed perjury.

   iv. a claim on my professional indemnity insurance if I have been negligent.

STATEMENT OF TRUTH

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone

who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signature

……...

Date ……

ANNEX B

JOINT STATEMENT DECLARATION

MEETINGS BETWEEN EXPERTS

1. We, the undersigned experts, individually here restate the Expert's Declaration that we understand our overriding duties to the court, have complied with them and will continue so to do.

2. We further confirm that we have neither jointly nor individually been instructed to, nor has it been suggested that we should, avoid or otherwise defer from reaching agreement on any matter within our competence.

Experts' signatures ……

IN THE HIGH COURT OF JUSTICE
NORTHERN IRELAND
PROTOCOL FOR CLINICAL NEGLIGENCE LITIGATION

IN THE HIGH COURT OF JUSTICE NORTHERN IRELAND

PROTOCOL FOR CLINICAL NEGLIGENCE LITIGATION

Introduction and Scope

1. This Protocol revokes both the Protocol for Clinical Negligence Litigation dated 6 September 2012 and its initial draft, the Pre-Action Protocol for Clinical Negligence Litigation dated 27 February 2009. Pre-action procedures of the Protocol are set out at Sections 7 – 26.

If a party to a claim is acting without legal representation, they should still, in so far as is reasonably possible, comply with the terms of this Protocol. If a party to a claim becomes aware that another party is a litigant in person, they should send a copy of this Protocol to the litigant in person at the earliest opportunity.

2. Practitioners are reminded of the need to bear in mind the overriding objective set out at Order 1 rule 1(a) of the Rules of the Court of Judicature (Northern Ireland) 1980. In order to enable the court to deal justly with litigation that objective requires the court, so far as practicable, to:

(a) Ensure the parties are on equal footing.

(b) Save expenses.

(c) Deal with the litigation in ways which are proportionate to –

(i) the amount of money involved;
(ii) the importance of the case;
(iii) the complexity of the issues; and
(iv) the financial position of each party.

(d) Ensure that the litigation is dealt with expeditiously and fairly.

(e) Allocate to the litigation an appropriate share of the court's resources, while taking into account the need to allocate resources to other cases.

It should be the aim of all parties and their representatives in clinical negligence cases to ensure that, save in exceptional circumstances, the matter is fully resolved within 48 months of the date of issue of the writ.

3. The objectives of this protocol include:

(i) Early communication between patients and healthcare providers of any perceived concerns about medical care or treatment.

(ii) The development by healthcare providers of early reporting and investigation systems.

(iii) Disclosure of sufficient information so as to enable patients and healthcare providers to understand the issues and encourage early resolution.

(iv) The timely provision of relevant medical records by healthcare providers to patients or their legal representatives.

(v) Placing the parties in a position where they may be able to resolve cases fairly and early without litigation together with the consideration of mediation and/or other forms of Alternative Dispute Resolution, where appropriate.

(vi) The promotion of an overall "cards on the table" approach to litigation in the interests of keeping the amount invested by the participants in terms of money, time and stress to a minimum, consistent with the requirement that the issues be resolved in accordance with the accepted standards of fairness and justice for both parties.

4. Where litigation is appropriate the requirement is that it should be conducted economically, efficiently and in accordance with a realistic and flexible timetable set by the court. Clinical negligence litigation frequently involves complex and technical issues that require time consuming and detailed investigation with the assistance of specialised expert opinion. It also has the potential to be particularly stressful and emotionally demanding upon the parties.

5. All practitioners are reminded that the Protocol is intended as a statement of best practice and should normally be adhered to in all cases. It is acknowledged that there will be exceptional cases where compliance with the provisions of the Protocol may be neither necessary nor desirable. It is not intended that this Protocol will be "a one size fits all" guide which must be applied rigorously and without deviation to all intended litigation.

6. In practice, insofar as the pre-action procedures of the Protocol (Para's 7 – 26) are concerned, it is envisaged that the initial steps, required of an intended plaintiff, will follow a two stage process. Firstly, there will be a record request from the healthcare provider(s)/record-holder(s). Records may be requested directly from the record-holder(s) without the need for a Letter of Claim. Practitioners should make clear in such initial correspondence that the letter is a record request only and may be dealt with by the record holder(s) without recourse to legal advice. Secondly, when records have been obtained and independent expert evidence has been secured, the intended plaintiff should serve a Letter of Claim in accordance with the Protocol.

Medical Notes and Records

7. In respect of living patients the Data Protection Act 2018 provides a right of access to health records by a patient or certain other parties on behalf of a patient through a 'subject access request' and such requests should be as specific as possible about the records that are required. Article 5(1)(e) of the Access to Health Records (Northern Ireland) Order 1993 continues to apply in respect of deceased persons. An

initiating letter on behalf of someone who is considering pursuing an action arising out of medical treatment, briefly outlining the facts and anticipated allegations of negligence, should be sent to the relevant healthcare provider requesting the disclosure of medical notes and records. The Law Society has prepared **a template letter initiating a claim and requesting the disclosure of medical notes and records** which may be accessed here **https://www.lawsoc-ni.org/clinical-negligence-protocol**

8. Copies of the relevant records sought should be supplied by the relevant healthcare provider free of charge, within 1 month or other relevant requisite period specified in the 2018 Act or the 1993 Order. For living patients, the healthcare provider can seek an extension under the Data Protection Act of up to 3 months in total where the notes are complex or numerous. In such circumstances, the healthcare provider must notify the requesting party within 1 month of making the request explaining why the extension is necessary. The healthcare provider can make facilities available to inspect the original records and often will provide copies of the notes on encrypted disc.

9. Healthcare providers should make arrangements to ensure that they are able to react positively and expeditiously to inquiries and requests in accordance with the statutory procedures of the 2018 Act and 1993 Order. As a last resort, in the event that the relevant healthcare provider fails to provide disclosure of the relevant hospital notes and records, the patient and/or his representatives should apply for disclosure in accordance with the provisions of Section 31 of the Administration of Justice Act 1970 and Order 24 rule 8(1) of the Rules of Court of Judicature (Northern Ireland) 1980.

10. If either the patient or the healthcare provider considers that additional health records are required from a third party in the first instance these should be requested in writing by or through the patient or his or her representatives. The relevant third-party health provider should provide the notes within 1 month. An extension can be sought if the notes are complex or numerous, however, where such a difficulty is encountered, the third party must notify the requesting party within 1 month.

11. It shall be the duty of the party affording initial disclosure to make available clear and complete copies properly paginated and indexed or, to assist with progress toward paper-light litigation, an encrypted disc containing the records.

12. While a complete set of records may be required in some cases, a file may also contain records as to unrelated conditions. Legal representatives should use their discretion in making requests for disclosure, bearing in mind the defendant's duty to make full relevant disclosure and the cost and delay caused by copying bulky files.

Health Service Complaints Procedure

13. Attention is drawn to the complaints procedures that exist with the healthcare providers. These procedures are designed to provide patients with an explanation of what happened and an apology, if appropriate. They are not designed to provide compensation for cases of negligence. However, patients might choose to use these procedures if their only, or main, goal is to obtain an explanation, or to obtain more information to help them decide what other action might be appropriate.

Alternative Dispute Resolution

14. The parties might inform their clients of the options available to resolve disputes by alternative dispute resolution and in particular that it is voluntary, confidential and impartial. A form of alternative dispute resolution might be more suitable than litigation, and if so the parties may consider which form to adopt and pursue in a timely manner.

15. During the course of proceedings, both the plaintiff and defendant may be required by the court to produce evidence that alternative means of resolving their dispute had been considered, for example by production of the standard mediation correspondence, a copy of which may be obtained from the **Commercial Court web site or can be accessed here**, together with the parties' replies thereto. The parties need to be mindful that the courts take the view that litigation should be a last resort and that claims should not be issued prematurely when a settlement is still being actively explored. If pursuing a means of alternative dispute resolution would assist in achieving a settlement, then this should be fully explored if the parties agree. Whilst it is recognised that no party should be forced to take part, representatives are reminded to advise their clients of this option for dispute resolution.

Expert Reports

16. In clinical negligence cases reports from expert witnesses may be required in relation to –

- The allegations relating to the existence and scope of the duty of care, breach of that duty, the nature and extent of any damage and causation.
- The plaintiff's prior, post incident short, medium and long-term condition and prognosis.
- Identification and quantification of the financial loss elements of the claim including care, aids and equipment, to the construction, purchase and adaptation of premises, travel and transportation costs, therapy cost, loss of earnings, profits, prospect of employment etc.

17. Practitioners should have regard to the **Clinical Negligence Expert Practice Direction** relating to expert evidence for general guidance (available at https://www.judiciaryni.uk/. Copies of this documentation should be provided to each of the experts retained on behalf of the parties to the litigation. In particular, the attention of practitioners is drawn to paragraph 10 of this Practice Direction and they are reminded of the need to give careful consideration to the question of whether evidence from a particular expert is both necessary and appropriate bearing in mind that expert evidence is likely to represent a very substantial proportion of the costs incurred in the cost of clinical negligence litigation.

18. Practitioners are also specifically reminded of the fundamental importance of maintaining the independence of expert witnesses which is reflected, in particular, at paragraphs 14 and 15 of the **Clinical Negligence Expert Practice Direction**.

19. The Law Society has prepared a template **Letter of Instruction to Expert** which is available here: (attached as TEMPLATE Letter of Instruction to Expert, annex 3).

20. The Parties are reminded that it is expected that they will be in receipt of expert evidence, addressing the nature and extent of the duty of care, breach of duty, causation and damage, prior to issue of proceedings in a clinical negligence claim. The Parties are advised that, in the event that expert evidence is incomplete, or has not been obtained, by the time the claim appears for First Review before the Master, the Master will seek to determine the status of the expert evidence, in accordance with the Overriding Objective, and will enquire as to the engagement of experts to date and those experts proposed to be engaged in the course of the action.

Standstill Agreements

21. In the context of litigation, a standstill agreement is an agreement between the intended parties, or their representatives, which has the practical effect of suspending or extending a statutory or a contractual limitation period. For example, a standstill agreement, duly executed between the intended parties to litigation, has the potential to avoid the issue of protective proceedings where a matter remains under investigation, thereby facilitating the completion of the said investigation, avoiding potentially unnecessary expenditure on all parts and the stress on the parties associated with proceedings. Practitioners are encouraged, where limitation is likely to arise, to consider whether the execution of a standstill agreement is appropriate in the particular circumstances of the case and to communicate accordingly with all other parties. It is recognised that no party can be compelled to execute a standstill agreement, but it is an option that may be considered by practitioners in the event limitation presents. A standstill agreement can be executed between intended parties to litigation at any point in the pre-action process, prior to the issue of proceedings.

Commencement of Proceedings

22. Once a decision has been taken by the patient and/or his or her advisors that there are grounds for a claim, after consideration of the notes and records and normally after the obtaining of a report from an appropriate medical expert/experts, as soon as practicable a letter of claim should be sent to the proposed healthcare defendant/representatives. Such letters should set out in full both the nature and extent of the duty, breach, causation and damage alleged, the identity of all the defendants and an assessment of quantum, broken down into the various heads of damage or give reasons why this is impracticable. The Law Society has prepared a template letter of claim which is available here: **https://www.lawsoc-ni.org/clinical-negligence-protocol** (attached as Annex 1)

23. While the letter of claim is not intended to have the formal status of a pleading it should, in the majority of cases, be prepared based on expert evidence and generally be drafted for the purpose of providing sufficient information as is currently held by the plaintiff to enable the relevant healthcare provider to commence the investigations. The letter of claim should seek to include functional effects of injury and any information in relation to potential special damages to assist the Defendant in valuation. Practitioners

are directed to the template letter of claim and attention is drawn to the headings contained therein. Practitioners are expected to address each heading in correspondence and where unable to do so, the party must clearly state why that is so. If practitioners are unable to provide information in compliance with Protocol and the template then consideration should be given to seeking an agreed extension of time for compliance.

24. Unless there is a limitation problem or some other reason as to why the proposed plaintiff's position needs to be protected by early issue, proceedings should not generally be issued until after 4 months from the date of receipt of the letter of claim by the proposed healthcare defendant/representatives. In the event a plaintiff issues proceedings before the time period for provision of the letter of response expires then the plaintiff will be deemed to have waived their right to same. The parties may agree to an extension of the time for provision of the letter of response. In such circumstances, the proposed healthcare defendant/representatives must notify, where practicable, the proposed plaintiff's representatives within 14 days, explaining why the extension is necessary/desired.

25. The relevant proposed healthcare defendant/representatives should acknowledge the letter of claim within 14 days of receipt and should identify the solicitor who will be dealing with the claim. No later than 4 months, subject to agreement to variation by the parties, from the date of receipt of the letter of claim, the relevant proposed healthcare defendant/representatives should write to the proposed plaintiff's solicitors, in the recommended template response, stating whether liability(existence or breach of duty or causation) is denied or admitted and provide relevant discoverable documents if the existence of a duty of care is denied or breach of duty or causation is repudiated. Thereafter, it will be appropriate for the proposed plaintiff to issue proceedings. This provision does not apply to cases where time is of the essence. The Law Society has prepared a template letter of response (which is available here: https://www.lawsoc-ni.org/clinical-negligence-protocol [attached as Template Letter of Response annex 2]. As with the Letter of Claim, Practitioners' attention is drawn to the headings contained within the template letter of response. Practitioners are expected to address each heading in correspondence and where unable to do so, the party must clearly state why that is so. Alternatively, if practitioners are unable to provide a response in compliance with Protocol and the template then consideration should be given to seeking an agreed extension of time for compliance. Where a request by the defendant for an extension of time to provide a letter of response is refused by the intended plaintiff, the Defendant can submit a letter of response setting out under each heading the reasons they cannot provide responses in some areas and what information is not available.

26. The Court may consider costs penalties and/or procedural penalties for non-compliance such as a stay in proceedings if there is no letter of claim or a costs sanction if there is no letter of acknowledgement and/or substantive response from the proposed Healthcare Defendant(s).

Pleadings

27. Parties are directed to the full provisions of Order 18 of the Rules of the Court of

Judicature (Northern Ireland) 1980, as amended, in relation to the pleading of the Action.

28. Plaintiff practitioners are reminded that pleaded allegations of negligence, breach of statutory duty, breach of contract, misrepresentation, or fraud ("the particulars") should be based on expert evidence, prepared in accordance with the **Clinical Negligence Expert Practice Direction** and specifically paragraphs 33 and 34. Practitioners are also reminded that in pleading particulars against a clinical or other professional practitioner, which are likely to impugn clinical or other professional practice or conduct, there should be evidence to support such allegations. When preparing particulars for the purpose of pleadings, practitioners are reminded of the need to identify allegations in respect of the nature and extent of any duty of care, breach of duty and causation. Where there are multiple defendants it is important that the particulars are pleaded separately against each defendant. In preparing the said particulars practitioners are reminded that they should be concise, illuminating and accurate and that they should avoid repetition.

29. Full details of the plaintiff's particulars of personal injury and special loss should be pleaded as early as possible. Pleading should be based on condition/prognosis and quantum medical and special loss reports.

30. Defence practitioners are reminded of the requirement to positively plead the Defence with sufficient clarity to ensure that the opposite party is made aware of the true nature of the defendant's case. If appropriate, the defendant will put forward its version of relevant facts or events, if materially different from what has been pleaded by the plaintiff. The Defence must state which of the allegations are denied, which are admitted and if the defendant is unable to either admit or deny a particular, which the plaintiff will be required to prove.

31. Practitioners should, in any pleading subsequent to the Statement of Claim, specifically plead any matter which makes any claim or defence not maintainable, which might take the opposite party by surprise or which raises issues of fact not arising out of the preceding pleading.

Reviews before the Master and the Judge

32. Practitioners are reminded that in the event they attend for review before the Master or the Judge, at any time after the issue of proceedings, they are expected to have full knowledge of the action. It is expected that in the ordinary course of events the Solicitor with carriage of the action or counsel, fully and properly instructed with a full brief of relevant materials, will appear at such review. Parties will be expected to be able to address the Master or the Judge on all matters relevant to the action including, but not limited to, the following; the circumstances of the index event/events, the identity of the parties, medical records, pre-action protocol compliance, pleadings, expert evidence, disclosure, interlocutory applications, directions, expert exchange and meetings, negotiations and trial. Practitioners are advised that, in the event that a representative of any Party appears before the Court not in a position to address the Master or the Judge on these issues which are germane

to the expeditious prosecution of the action, the matter will be adjourned to the first available date and the solicitor with carriage of the action or counsel, fully and properly instructed, will be directed to appear. Parties are reminded that the costs associated with any such direction, or other procedural penalties, may fall to be considered, against the party in default, in accordance with the provisions of the Rules of the Court of Judicature. Parties are referred to **Practice Note 1/2011** (https://www.judiciaryni.uk/sites/judiciary/files/decisions/Consolidated%20Practice%20Notes%201-) as amended 13 November 2018, in respect of the listing and hearing of summonses before the Masters in the Queen's Bench Division.

33. Parties are reminded that, in advance of the first review before the Master, the **First Review Questionnaire (**attached as FIRST REVIEW QUESTONNAIRE annex 8) will be completed and submitted to the Court.

Directions of the Master and the Judge

34. The Law Society has prepared a **Template Directions of the Master** and a **Template Directions of the Court**: **(attached as QB Master's Preliminary Directions Template annex 4; QB Masters Directions Template annex 5; QB Directions Template annex 6).** Parties are reminded that they may agree draft directions, subject to the agreement of the Court, in advance of the review before the Master or the Judge.

35. All clinical negligence actions will be listed for first review before the Master 13 months after the date of issue of the Writ of Summons. All parties are reminded of what is expected of the practitioner, as above, who appears at such review. The purpose of the review is to ascertain the readiness of the action for setting down and trial.

Expert evidence (exchange)

36. Expert evidence will be exchanged in accordance with the directions issued by the Court and/or in accordance with the provisions of the Rules of the Court of Judicature (Northern Ireland) 1980. Order 25 of the Rules of the Court of Judicature (Northern Ireland) 1980, as amended, Rules 12 to 14 provide for the exchange of medical evidence on the issues of liability and damages.

37. Where more than one party to an action proposes to adduce expert evidence at trial on the issue of liability, the parties are expected to notify to each other, 35 days prior to the proposed exchange, the number and type of reports it is proposed will be exchanged.

38. Parties are reminded that exchange of liability evidence (including causation) is on a like-for-like basis, as per paragraph 36 of the **Clinical Negligence Expert Practice Direction.** Parties are reminded that there is no obligation on a party to disclose evidence obtained from any medical expert on liability except where the party or parties to whom exchange is to be made is also relying on such evidence and simultaneous exchange is to take place.

39. In respect of expert evidence on the issue of quantum, parties are reminded that disclosure of evidence is on a sequential basis as per paragraph 37 of the Clinical

Negligence Expert Practice Direction.

Expert meetings

40. Following the exchange of expert evidence (existence, nature and extent of duty, breach of duty/causation and then quantum), the parties shall promptly (within 28 days) seek to arrange meetings of the respective experts. Parties are referred to paragraphs 39 to 43 of the **Clinical Negligence Expert Practice Direction.**

41. A draft agenda of issues to be discussed between the respective experts shall be prepared by the plaintiff's solicitor and sent to the defendant's solicitor no later than 35 days prior to the meeting of experts. The defendant's solicitor shall respond within 14 days. The agenda should be agreed between the parties and sent to the experts no later than 7 days prior to the expert's meeting.

42. The meetings will be conducted as between experts of the same discipline (only), unless it is agreed between the parties or directed by the Court, that experts of more than one discipline should attend. An expert meeting shall not be attended by legal representatives.

43. A template preamble to an agenda is available (attached as Preamble to Agenda annex 7).

44. The Parties should seek to ensure that the agenda questions are neutral and non-adversarial. Whilst closed questions can have an important role, experts should be encouraged, through appropriate questioning in the agenda, to express themselves and provide an explanation for their view.

45. Leading questions should not, where at all possible, be included in the agenda. The Parties should focus on limiting, as far as possible, the number of questions that the experts are required to address; repetition of the same question asked in different ways is to be avoided.

46. Should the parties not be able to reach agreement on the issues to be addressed by the experts and included in the agenda, they should seek guidance from the Court either in writing or by requesting a review before the Judge. The parties are reminded that the Court may order the costs of any such review to be awarded against a party should they be found by the Court to have unreasonably withheld their agreement to a proposed agenda item or sought to include an item that should not reasonably have been included. Parties are advised that in considering issues arising in relation to the content of agenda for expert meetings, the Court will deal with same administratively in the first instance and thereafter by means of a Court review only if required and necessary.

47. No later than 21 days before the experts meeting, the parties shall agree (i) a properly collated, paginated and indexed core bundle of documents, including any literature on which the experts seek to rely, for use at the experts meetings and (ii) which expert shall take the minute of the meeting.

48. As soon as possible after agendas have been agreed, and no later than 28 days thereafter, the parties shall convene meetings of the experts by telephonic means (or whichever method is most timely and convenient and in accordance with the Overriding Objective).

49. At the meetings, the experts shall prepare an agreed Scott schedule, detailing those issues on which they agree or disagree (with the reasons for any disagreement clearly expressed) within 7 days of the meeting.

50. The parties must make it clear to the experts that the minute is not to be circulated to any party prior to be it being agreed and signed by those present at the meeting.

Medical Notes, Records and Literature

51. The court will direct that the parties to clinical negligence litigation must discuss, if necessary, and exchange agreed bundles of medical notes and records to be relied on prior to the hearing. It shall be the duty of the plaintiff's solicitors to lodge with the court no later than 7 days prior to the hearing, a bundle of medical notes and records to be relied on, paginated and with index attached and certified by all parties as agreed. It is the responsibility of solicitors and barristers in the case to sift the documents available and produce a manageable core bundle relevant to the issues to be determined. Excessive and unnecessary documentation must be avoided. It shall be the joint responsibility of all the parties to ensure the presence of the originals of all such documents in court during the hearing.

52. The parties to clinical negligence actions must ensure that any medical literature to be relied on by the medical experts shall be exchanged and lodged with the court no later than 7 days prior to the trial, appropriately paginated and indexed. In addition, a copy of the agreed minute from the meeting of medical experts and any agreed Scott schedules with regard to special losses must be exchanged and lodged with the court at least 7 days prior to trial.

Trial

53. The Trial date for the hearing of a clinical negligence action will be fixed, after the close of pleadings, either by agreement between the parties or, in the absence of such agreement by the Master or the Judge at the time of review. The trial date will be fixed to permit sufficient time to the parties to comply with all directions of the Court, so as to ensure that when the matter comes on for trial the case is ready to proceed.

54. After fixing the trial date, a date for negotiations/review, before the Court, will be fixed three months in advance of the commencement date of trial to ensure that, inter alia; directions have been complied with by the parties in anticipation of trial, counsel has been retained and appropriately instructed and to encourage, where appropriate, the resolution of the claim by negotiations between the parties thereby avoiding the cost and stress of trial. At best, this will lead to resolution of the claim between the parties.

At worst, it will serve to clearly define the nature and extent of the dispute between the parties and to highlight any issues which require to be addressed in advance of the commencement date, thereby ensuring that should trial be necessary, it will proceed in an efficient, proportionate and timely manner in accordance with the provisions of the Overriding Objective.

55. The plaintiff's solicitors shall prepare and file with the Central Office no later than 7 days before trial a properly collated, paginated and indexed trial bundle. The bundle shall be agreed with the other parties. The parties should have due regard to the model directions of the Master and the Court in the preparation of the bundle. Parties are referred to **Practice Direction 6/2011 (As amended 22 January 2021): Skeleton Arguments and Attachments, Authorities Bundles, Appeal Hearing Bundles and Core Bundles** (https://www.judiciaryni.uk/sites/judiciary/files/decisions/Practice%20Direction%20No%206%20of%202011.pdf) The parties will ensure that, in so far as it is possible, a single core bundle is agreed to promote an efficient trial and thereby save Court time. In determining the content of the bundle, the parties should, at all times, have regard to the necessity to exchange, agree, submit and include medical notes, records, reports and literature to be relied upon by the experts. Parties are reminded that in clinical negligence actions, where the records are of primary importance, it is a pre-requisite to an efficient trial that there exists a single core bundle, properly paginated, of such records upon which the Court, all parties and all witnesses can rely.

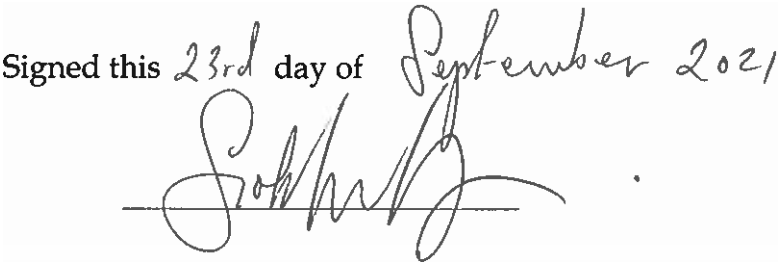
56. 7 days prior to the date of trial, the parties shall, in appropriate cases or where directed by the Court, exchange and file with the court, a skeleton argument, in accordance with the model directions of the Master and the Court, together with any authorities on any legal matter likely to arise during the hearing (including breach of statutory duty). It is noted that such skeleton arguments are not necessary in all cases but in some matters may be appropriate.

57. Whilst it is rightly acknowledged that there needs to be flexibility to account for unforeseen circumstances, the attention of the parties is drawn to the objective that, when a trial date is fixed for the disposal of a clinical negligence action, the parties take all such action as is necessary to ensure their readiness for the trial, including full and timely compliance with all directions of the Master and the Court, thereby avoiding the late vacation of the trial date. The parties acknowledge that the late vacation of a fixed trial date can frustrate the Overriding Objective, can lead to delay and expense and can cause anxiety and stress to the parties to the litigation. Parties are reminded that costs penalties may follow for any party found to have caused such an adjournment, such penalties to be imposed in accordance with the provisions of the Rules of the Court of Judicature.

58. In the event that it becomes necessary for an adjournment application to be made, the application should be moved at the earliest opportunity. Such application may be made in writing copying in the other parties to the proceedings including where the application is by consent, or by appearance before the Court. Parties are reminded that any application must be supported by substantive grounds for adjournment, together with draft directions for the re-listing of the action for trial.

This Protocol takes effect, as revised, from 1st October 2021.

Signed this 23rd day of September 2021



The Honourable Dame Siobhan Roisin Keegan
Lady Chief Justice

Annex 1

TEMPLATE LETTER OF CLAIM

Practitioners are expected to address each heading in correspondence and where unable to do so, the party must clearly state why that is so. If practitioners are unable to provide information in compliance with Protocol and the template then consideration should be given to seeking an agreed extension of time for compliance.

Your Ref:

Our Ref:

Dear Sirs,

[Plaintiff's full name, address, date of birth and National Insurance Number]

We are instructed by the above named to claim damages in connection with [*medical/dental/other] [please specify*] treatment provided at [*insert address of Hospital(s)/GP Surgery/Dental Surgery/other]* on [*insert date or dates*] under Hospital Number [*insert details, if appropriate and if known*].

The facts

[Provide details, as accurately as possible from the client's instructions/medical notes obtained to date, of the factual scenario relating to the claim, including, in more complex claims, details of all relevant healthcare providers involved in the patient's care. A Chronology of Events would be helpful and is likely to assist in narrowing the issues between the parties.]

Breach of duty

[Provide an outline, in a numbered/bullet-point fashion (where necessary), of the likely allegations of breach of duty of care that each of the defendant(s) are likely to have to meet, providing the identity of <u>each</u> HSC Trust/GP/Dentist/other whom it is alleged provided the inadequate care or treatment. Reference can also be made in this section, it if it is considered appropriate, to any corroborative witnesses (for example, the patient's husband/wife/partner), the outcome of any complaint made against the healthcare provider and whether supportive expert evidence has been obtained.]

Causation

[Provide an outline of the alleged causal link between the detailed breach(es) of duty of care and the injury complained of by the patient. For example, consider whether, or not, factual causation

needs to be dealt with, that is, does the patient say that had an earlier referral been made, the patient would have undergone a less invasive or different course of treatment and, if so, how would that have affected the outcome.]

Alleged injuries/current condition and prognosis

[Provide details of the patient's injuries sustained as a result of the alleged negligence of each of the proposed defendants.

Provide details as to the patient's current condition (post-alleged negligence) and his/her prognosis (with reference to the medical notes, when possible).]

Request for clinical notes (if not previously provided)

[Provide details of any further medical notes that you anticipate will need to be obtained/disclosed and what steps, if any, have been taken to obtain such notes. Where possible, medical notes, as referred to in the Chronology of Events (if prepared), and medical notes that are not already in the possession of the proposed defendant (for example, GP notes, if the claim is against a HSC Trust or vice versa) should also be disclosed with the Letter of Claim.]

At this stage of our enquiries, we would expect you to disclose any further documentation that you/your client [*delete as appropriate*] holds relevant and material to this action.

Quantum

[Provide an outline of the main heads of damage, for example, past and future care, accommodation costs, loss of earnings (providing details of his/her annual net income), loss of services etc, identifying (if possible and if it is considered appropriate) the loss claimed under each head.]

Proposed Co-defendants

We have also sent a Letter of Claim to [*insert name and address*] and a copy of that letter is attached. We understand they are represented by [*insert name, address and file reference, if known].*

Meetings/discussions

[If it is considered appropriate, an offer of a meeting between the parties' legal representatives to narrow the issues or settle the claim should be made. Consideration should be given as to whether this is a claim that is suitable for mediation/ADR and, if so, offered.]

Action required

Under the Pre Action Protocol for Clinical Negligence Litigation ('the Protocol'), you/your client [*delete as appropriate*] are obliged to acknowledge receipt of this correspondence within **14 days** and to provide a detailed Letter of Response to each of the allegations/headings detailed within **4 months**. You will note that we have enclosed two copies of this correspondence. We suggest that you forward a copy of it immediately to your legal representatives/medical defence organisation/professional indemnity insurer [*delete as appropriate*].

We look forward to receiving both your/your client's [*delete as appropriate*] acknowledgment and Letter of Response in accordance with the Protocol, failing which we will have no alternative but to issue proceedings without further reference to yourselves.

We consider that this correspondence provides sufficient information to enable you/your client [*delete as appropriate*] to commence investigations and to put an initial valuation upon the claim.

Finally, you will be aware that the Protocol makes clear that this correspondence is not intended to have the formal status of a pleading and, therefore, we reserve the right to provide further information under each of the headings above in due course.

Yours faithfully

NB If the patient's claim is likely to be statute barred (either currently or very shortly in the future), protective proceedings should be issued in the usual way unless a standstill agreement has been agreed (in writing) between the parties' legal representatives.

Annex 2

CLINICAL NEGLIGENCE LITIGATION

TEMPLATE RESPONSE LETTER

(As with the Letter of Claim, Practitioners' attention is drawn to the headings contained within the template letter of response. Practitioners are expected to address each heading in correspondence and where unable to do so, the party must clearly state why that is so. Alternatively, if practitioners are unable to provide a response in compliance with Protocol and the template then consideration should be given to seeking an agreed extension of time for compliance. Where a request by the defendant for an extension of time to provide a letter of response is refused by the intended plaintiff, the defendant can submit a letter of response setting out under each heading the reasons they cannot provide responses in some areas and what information is not available).

Dear Sirs

Your Client –
Our Client –

Your letter of claim dated (insert date) refers. As you are aware we are instructed by (insert name of healthcare provider).

The facts

(If the chronology of events or facts, as described in the letter of claim, are disputed, the basis of the dispute should be provided. Details should be provided, as accurately as possible from the proposed plaintiff's medical notes / instructions from the treating clinician(s). If the proposed plaintiff has provided a chronology, the healthcare provider may supply an annotated version of same. If the healthcare provider has further information or documentation on which it proposes to rely, then these should be provided. In the event the chronology of treatment is disputed, then this should be indicated. If the proposed defendant disputes the interpretation of any medical record, then this should be made clear at this time.)

Breach of Duty

(In the event breach of duty is accepted, this should be advised. In the event breach of duty is disputed, provide an outline, in a numbered/bullet-point fashion, where necessary, of the basis upon which such repudiation is grounded. A bare denial is not sufficient. If the healthcare provider has other explanations for what happened, details (which, if considered appropriate, include reference to other information/documentation held by the healthcare provider/other third party/any corroborative witnesses) should be provided, at least, in outline. Reference can also be made, if it is considered appropriate, to any supportive expert evidence obtained by the healthcare provider.)

Causation

(In the event causation is accepted, this should be advised. In the event causation is disputed, provide an outline, in a numbered/bullet-point fashion, where necessary, of the basis upon which such repudiation is grounded. A bare denial is not sufficient. If the healthcare provider has other explanations for what happened these should be given in sufficient detail to permit the proposed plaintiff to consider the basis of the repudiation.)

Alleged Injuries – Condition and Prognosis

(If the proposed defendant has any observation to make concerning the injuries sustained by the proposed plaintiff then this should be provided.)

Provision of Records (Not previously provided)

(If records previously provided to the proposed plaintiff are incomplete, full copies should be now provided and the proposed plaintiff's advisers should be afforded the opportunity to inspect the originals, if required. The healthcare provider may also wish, if considered appropriate, to refer to/disclose any other information/documentation held by it/any third party/any corroborative witness.)

Quantum

(If the proposed defendant has any observation to make concerning quantum then this should be provided. If liability is admitted then quantum evidence should be requested at this time.)

Third Party / Co-defendants

(In the event the proposed defendant repudiates liability for the allegedly negligent act on the basis that a third party was responsible for same, then this should be clearly indicated in this letter or response. If in a position to do so, the name and address of the third party should be provided.)

Meetings/discussions

(If it is considered appropriate, an offer of a meeting between the parties' legal representatives to narrow the issues or settle the claim should be made. Consideration should be given as to whether this is a claim that is suitable for mediation/ADR and, if so, offered.)

C**onclusion**

(In the event liability is not accepted then confirmation of the arrangements for service should be provided. If an agreement was made concerning the extension of the limitation period in favour of the proposed plaintiff, pending provision of the letter of response to the claim, then the proposed defendant should advise of the date when

such agreement will terminate. Reasonable notice, to permit the proposed plaintiff to take such action as may be required, should be given. Such notice should be not less than 1 month.)
Finally, you will be aware that the Protocol makes clear that this correspondence is not intended to have the formal status of a pleading and, therefore, we reserve the right to provide further information under each of the above headings in due course.

Yours faithfully

Annex 3

CLINICAL NEGLIGENCE LITIGATION

TEMPLATE LETTER OF INSTRUCTION TO EXPERT

Your Ref:
Our Ref:
Date:

Private and Confidential

Dear

Re: Name of Client, Date of Birth, Address
Date of Accident
Title of Proceedings

We act on behalf of (insert name of Client).

The circumstance of the claim

(Insert full details of the case to include full facts and a detailed chronology of the care provided. Identify the nature of the injury sustained by the patient, and the patient's present circumstances).

Documentation

(List all documents enclosed with instructions including, but not limited to, the Protocol, Practice Direction on Expert Evidence in Clinical Negligence Cases, medical notes and records, witness statements (if any), complaint documentation, serious adverse incident investigation documentation, pre-action protocol correspondence, pleadings, documents which form part of disclosure, expert reports relevant to the report, etc).

Your instructions

(Specify the purpose of the report, a description of the matter(s) to be investigated, the issues to be addressed, and the identity of all parties. Confirm in the instructions the nature of the expertise required, and specify whether the report is expected to address the existence of a duty of care, breach of the duty of care, causation, or damage including condition and prognosis).

Form of the expert report

Please note that in preparing your report it should be noted that the report:

1. Must set out details of the expert's qualifications.

2. Give details of any literature or other material which has been relied on in making the report.

3. Provide a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report and upon which those opinions are based.

4. Make clear which of the facts stated in the report are within the expert's own knowledge.

5. Where there is a range of opinion on the matters dealt with in the report:

    i. Summarise the range of opinions.
    ii. Give reasons for the expert's own opinion.
    iii. Contain summary of the conclusions reached.
    iv. If the expert is unable to give an opinion without qualification, state the qualification.

6. Must contain a statement that the expert understands their duty to the Court and has complied with that duty, and must be verified by signing and dating the Expert Declaration (Appendix 3, Practice Direction on Expert Evidence in Clinical Negligence Cases)

7. Timetable for the provision of your advice.

(Please indicate when it is expected that the report will be made available. Advise the expert of any dates of any Directions issued by the Master or the Judge, negotiations, mediation, Court hearing, limitation dates as appropriate, any requirements for the attendance of experts at or the production of information by experts for any meetings, hearings or reviews, dates fixed by the Court or agreed between the parties for the exchange of expert reports, and any other relevant deadlines to be adhered to).

Acceptance of instructions by expert

(Ask the expert to confirm, without delay, whether they have any knowledge of the parties involved in the matter and, if so, the extent of that knowledge, whether have identified any conflict of interest having had sight of the records, whether they accept their instructions and when they will expect to furnish their report in the matter. If they are unable to complete their instruction, then the expert should make that clear immediately).

Costs

(Ask the expert for an estimate of their fees to undertake their report and advise the expert not to commence work in the case until it is confirmed to them that authority has been granted to incur same.

If a fee estimate has already been agreed advise the expert of this authority, and that they must revert immediately if it becomes apparent that their fee estimate is likely to increase, such that consent can be secured from the relevant funder to incur same, before any further work is undertaken).

Yours sincerely

Annex 4

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

«Court_Division»

«Title_of_Case»

DIRECTIONS given by «Judiciary»,

on «Court_Date»

WHEREAS the Writ of Summons has been served and the Defendant/Defendants has/have served a Memorandum of Appearance/Memoranda of Appearance,

THE COURT DIRECTS that:-

1. In the event a Pre-Action Protocol for Clinical Negligence Litigation Letter of Claim has not been served, the Plaintiff shall ensure that such a letter is served within 21 days of the date of this Order.

2. In the event a Pre-Action Protocol for Clinical Negligence Litigation Letter of Response has not been served, the Defendant shall ensure such a letter is served within 21 days of the date of this Order / 4 months of service of the Letter of Claim.

3. The parties will ensure that requests for any additional disclosure of medical notes and records are complied with within 6 weeks of the date of this Order.

4. The Plaintiff shall serve a Statement of Claim within 6 weeks of the date of this Order.

5. The Defendant shall serve a Defence within 6 weeks from the date of service of the Statement of Claim.

6. In the event the Defendant intends to rely upon a Notice for Further and Better Particulars, the Defendant shall serve the Notice for Further and Better

Particulars within 6 weeks of the date of service of the Statement of Claim.

7. The Plaintiff will serve Replies to the Defendant's Notice for Further and Better Particulars within 6 weeks of the date of service of the Notice for Further and Better Particulars.

8. In the event the Plaintiff intends to rely on a Notice for Further and Better Particulars, the Plaintiff shall serve the Notice for Further and Better Particulars within 6 weeks of the date of service of the Defence.

9. The Defendant shall serve Replies to the Plaintiff's Notice for Further and Better Particulars within 6 weeks of the date of service of the Notice for Further and Better Particulars.

10. Any extension of time for compliance with these Directions must be sought, in writing, from the Court before the expiry of the prescribed time limit contained therein. Any failure to comply with these Directions may have cost consequences for the party/parties in default and could lead to an Unless Order.

«Court_Clerk»
Proper Officer

«Time_Occupied»

Annex 5

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

«Court_Division»

«Title_of_Case»

Directions given by «Judiciary»

On «Court_Date_Full_Text»

WHEREAS this action is listed today for review before the Master,

NOW UPON HEARING the respective parties,

THE COURT DIRECTS that:

Pleadings

1. The Plaintiff shall serve a Statement of Claim within …….. weeks of the date hereof/date of service of this Order/on or before……..

2. Time for the ….. Defendant to serve a defence is extended for a period of …… weeks from date hereof/of service of the statement of claim. In the event that the …. Defendant does not serve a defence within the time specified, the Plaintiff shall enter default judgment within 7 days.

3. The Plaintiff/….Defendant is granted leave under Order 20 Rule 5 of the Rules of the Court of Judicature to amend his Statement of Claim/Defence
…… …….
Such amendment is to be served within 28 days of the date hereof.

4. The …….. shall serve replies to the ……..….. Notice for Further and Better Particulars dated …… within …….. days/weeks of the date ……. hereof/date of service of this Order/on or before.

Disclosure

5. The ……. shall serve a list of documents/verified by affidavit/ under Order 24 Rule 3 of the Rules of the Court of Judicature within ….. days/weeks of the date hereof/date of service of this Order/on or before……

6. The ……shall, within …… days/weeks of the date hereof/date of service of this order/on or before……, swear an affidavit stating whether any document specified or described in ……. is or has at any time been in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

7. The Plaintiff shall within ….. days/weeks of the date hereof disclose to the ….. Defendant the Plaintiff's relevant General Practitioner's Notes and Records/…… Hospital Notes and Records, including……..

8. The Plaintiff shall within ….. days/weeks of the date hereof sign a form of consent allowing the …… access to his …….. General Practitioner's Notes and Records/…… Hospital Notes and Records, including……...

9. The ……..shall within ……..days/weeks of the date hereof, of the date of service of this order, provide answers on oath to the ……. interrogatories by notice dated ……..

10. The ……. shall lodge any intended application for interrogatories within ……. days/weeks from the date hereof.

11. The parties shall complete any outstanding issue of disclosure on or before ……. In the event of same not being completed on or before ……, it shall be the responsibility of a party alleging default to bring the matter before the court forthwith

Inspection

12. The Plaintiff shall within ……..days/weeks of the date hereof/date of service of

this order, on or before …….. write to the …..Defendant requesting facilities for inspection by an engineer of ……., and the …. Defendant shall respond to such a request within 14 days indicating whether or not inspection facilities will be allowed.

13. In the event that a Defendant does not consent to inspection by an engineer following a request from the Plaintiff, the Plaintiff shall within 14 days from the date of refusal of consent, or if the Defendant does not respond to its request, within 14 days of the date of the request, issue a summons for inspection facilities.

Evidence

14. The Plaintiff/ …. Defendant shall within …. days/weeks of the date hereof/date of service of this order/ on or before ……, commission a report by a ……..

And shall notify the Plaintiff/Defendant in writing of the date on which the said report was commissioned.

15. The parties shall ensure that there has been strict compliance with the provisions of Order 25 of the Rules of the Court of Judicature (NI) on or before ……. And shall confirm by that date that medical evidence is up-to-date and complete.

16. The parties shall give consideration to agreement of the medical evidence without the need for the experts to attend on or before ……... Attention is drawn to Order 62 Rule 10A.

17. On or before …… the parties shall have give consideration to agreeing the reports of any other relevant experts without the need for the witnesses to attend at the hearing. Attention is drawn to Order 62 Rule 10A.
:

Legal Aid

18. The …… shall file an application for Legal Aid within …….. days/weeks from the date hereof.

19. The Plaintiff/Defendant shall supply to the court on or before ……. a chronology of all steps that have been taken to obtain legal aid in

this case. All correspondence and telephonic memoranda should be appended to the chronology together with any explanation of delay

20. The Plaintiff/Defendant shall serve Notice of Legal Aid on all other parties within 14 days of date on which the Legal Aid certificate is issued.

General Interlocutory

21. The Defendant shall lodge any intended application for remittal within …….. days/weeks from the date hereof/date of service of this order/on or before……..

22. All outstanding interlocutory applications in this matter shall be completed in strict compliance with the time limits prescribed in the Rules of the Court of Judicature (NI) and shall be completed not later than …… For the removal of doubt, reference to "interlocutory proceedings" in this direction shall include references to amendment to the pleadings, preliminary issues, meanings applications, interrogatories, amendments , disclosure, notice for particulars, pleadings in general etc.

23. The Plaintiff's action shall be struck out, with judgment to the …. Defendant against the Plaintiff, with costs to be taxed in default of agreement unless, within …….. days/weeks of the date hereof/date of service of this Order/on or before ……..., the Plaintiff ……...../in compliance with the order of the court dated……

24. The …. Defendant's defence shall be struck out, with judgment to the Plaintiff against the ….. Defendant, with costs to be taxed in default of agreement, and damages to be assessed by the master pursuant to Order 37, unless, within …….. days/weeks of the date hereof/date of service of this Order/on or before ……..., the …. Defendant ……../in compliance with the Order of the court dated ……..

(All unless orders shall be in accordance with the template provided with Masters' Practice Note 1/2012 Unless Orders.)

25. Time for the Plaintiff/….Defendant to ……,in compliance with the order of the court dated ……, is extended for a period of …..day/weeks from date hereof/date of service of this Order/until…….

Medical Negligence

26. The Plaintiff shall within ….. days/weeks of the date hereof/date of service of this order, provide the ….. Defendant(s) with a letter of claim which complies with the requirements of the Clinical Negligence Protocol. Where the Plaintiff fails to do so within the time specified the defendant(s) shall notify the Master forthwith.

27. On the issue of liability, parties shall simultaneously exchange medical evidence on or before ……..

28. The liability experts shall discuss the case either by meeting directly or by telephone link on or before …… The parties/experts shall agree an agenda at least 2 weeks before the meeting and the experts shall prepare an agreed minute within 14 days of the meeting.

29. On the issue of value, parties shall commence the process of sequential exchange, in accordance with the rules, of all relevant medical evidence and other expert reports on or before ……:

The Plaintiff shall supply such reports on or before …… and the Defendant shall supply such reports on or before ……

30. In the event that Senior Counsel is to be retained, his/her directions must be in place no less than 16 weeks before the trial date. Unless already instructed senior counsel must be instructed within …… weeks of the date hereof and shall provide directions within … weeks of the date of instruction. .

31. Unless already listed for review by a judge, the action shall be listed for negotiations and review before the Queen's Bench Judge approximately 12 weeks before the date fixed for trial.

32. The action is listed for a ……day/week trial commencing …….

General

33. The action shall be further reviewed by the Master on …….. / at the request of any party.

34. The Plaintiff shall set the action down for trial within …… weeks/months from the date hereof/ on or before……..

35. Any extension of time for compliance with these directions must be sought from the court before the expiry of the prescribed time limit contained therein.

36. The Master Certifies for Counsel.

«Court_Clerk»
Proper Officer

«Time_Occupied»

Annex 6

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

«Court_Division»

« Title_of_Case»

DIRECTIONS given by «Judiciary»,

on «Court_Date»

WHEREAS this action is in the list this day for review before the Judge,

NOW UPON HEARING Counsel on behalf of the respective parties,

THE COURT DIRECTS that:-

TIME LIMITS

1. Any extension of time for compliance with these Directions must be sought, in writing, from the Court before the time for compliance has expired. Failure to do so and/or any failure to comply with these Directions may have cost consequences for the party/parties in default and could lead to an Unless Order being made.

FURTHER REVIEW

2. This action shall be listed for further consideration before a judge of this court on the …… of …….. at 9.30 am.

DISCLOSURE

3. The parties shall complete any outstanding issue of disclosure on or before noon on the ……. of ……. In the event of disclosure not being completed by this date, it shall be the responsibility of the party alleging default to bring the matter before the court.

AMENDMENTS/INTERLOCUTORY PROCEEDINGS

4. The parties shall complete any proposed amendment to the pleadings, including the statement of claim and defence, on or before noon on the …….. of ……. .

5. All outstanding interlocutory proceedings in this matter shall be served not later than noon on …….. For the removal of doubt, reference to "interlocutory

proceedings" in this direction shall include references to amendment to the pleadings, preliminary issues, meanings applications, interrogatories, amendments, disclosure, notice for particulars, pleadings in general etc.

EXPERT EVIDENCE

6. On or before noon on the ……. of …….. the parties shall give consideration to the mutual exchange of any expert report upon which they intend to rely.

7. The …… solicitor shall serve on the ……. solicitor, any ……report to be relied on at this trial on or before the ……. of …….

8. The parties shall ensure compliance with the provisions of Order 25 of the Rules of the Court of Judicature on or before noon on the ……. of ……

9. The parties shall arrange a meeting, by telephone or otherwise, of the medical experts and of any other expert in this case on or before noon on …… of …… At such a meeting, a Scott schedule shall be drawn up and agreed between the experts setting out all areas agreed/in dispute.

10. The plaintiff's solicitor shall prepare an agenda and forward it to the defendant's solicitor 35 days prior to the date for each meeting of experts. The defendant's solicitor shall respond 14 days prior to the meeting, with an agreed agenda being circulated to the experts 7 days prior to the meeting.

11. Following exchange of expert evidence, and 28 days prior to the experts' meetings, the parties shall meet and agree a properly collated, paginated and indexed core bundle for use at the experts meetings. It is anticipated that this core bundle, plus any additional documents, including the Scott schedule(s), shall serve as the trial bundle.

LEGAL AID

12. The plaintiff/defendant shall supply to the court on or before noon on the …….. of ……. a chronology of all steps that have been taken to obtain legal aid in this case. All correspondence and telephone attendance notes should be appended to the chronology together with any explanation of delay.

13. The plaintiff/defendant shall serve a Notice of Legal Aid on all other parties within 14 days of date of which the Legal Aid certificate is issued.

PRE-TRIAL

14. The parties shall arrange a meeting of the legal representatives with a view to negotiations in this case on or before week commencing …..

15. Both parties shall confirm to each other on or before noon on the …….. of ……. that all medical evidence is up-to-date and complete. In the event of the evidence not being complete, the party in default shall set out and forward to the court and the other parties the precise date when it will be completed together with an explanation as to the delay.

16. On or before noon on the …… of …….. each party shall prepare for the court a timetable in relation to:

(a) The expected date of receipt of all outstanding expert reports.
(b) Proposed timetables for the exchange of such reports.
(c) A proposed date for hearing of this trial with confirmation of the availability of witnesses.

17. On or before noon on the ……. of …….. , the parties shall seek to agree the medical evidence to remove the need for the experts to attend. Attention is drawn to Order 62 Rule 10A.

18. On or before noon on the ……of…….the parties shall seek to agree the reports of any other relevant experts without the need for witnesses to attend at the hearing. Attention is drawn to Order 62 Rule 10A:

19. Unless the parties otherwise agree in writing as to the number of witnesses that may be called, any application to increase the number of expert witnesses permitted under Order 38 must be made no later than 7 days before trial.

20. The parties shall seek to agree the use of a live video link facility for the giving of evidence by the expert(s) in this case on or before noon on the …… of ……. In the event that it is agreed, the court office shall be informed not less than three weeks prior to the date fixed for trial.

21. This action shall be listed for hearing in a courtroom that has a live video link facility.

SKELETON ARGUMENTS/AUTHORITIES

22. 7 days prior to the date of trial, the parties shall exchange and file with the court, a skeleton argument together with any authorities on any legal matter likely to arise during the hearing (including breach of statutory duty). The bundle of authorities should be agreed and should not contain more than 10 authorities unless the case warrants more extensive citation. The relevant authorities should be, wherever possible, copied from the official law reports. Passages on the authorities which are relevant and on which counsel will seek to rely must be marked.

TRIAL DATE

23. This action be listed for hearing before a judge of this court commencing on the …….. of …….. at …… for …… days.

24. The parties shall write to the court and each other, providing the availability of all witnesses for this date within seven days of this order. In the event of any material witness not being available, the parties shall within 14 days of the date of this order have agreed an alternative date and have informed the Central Office. The parties shall ensure that all witnesses who are to give oral evidence at the trial of this action shall be present in Court and in a position to enter the witness box at 10:15am on the date set for the trial of this action.

TRIAL BUNDLE

25. The plaintiff's solicitors shall prepare and file with the Central Office no later than 7 days before Trial a properly collated, paginated and indexed trial bundle. The bundle shall be agreed with the other parties. Where documents are copied unnecessarily or bundled incompetently the costs may be disallowed. Any document not included in the bundle which is adduced in evidence at the trial should be hole-punched for ease of insertion into the bundle at the appropriate place.

(i) Preparation of bundles by solicitors

- Should be done in consultation with counsel
- Must be done in consultation with solicitors for all other parties
- Must be done in good time before trial

(ii) It is the responsibility of the plaintiff's solicitor having the conduct of the case to check the bundles before they leave the office. This responsibility should not lie with junior office staff.

(iii) All documents must be legible and not abbreviated.

(iv) Documents should be in a logical (usually chronological) order, the oldest at the bottom.

(v) All bundles must be properly indexed with a description of each document and the page number at which it begins and ends.

(vi) Pagination should be consecutive and continuous throughout each bundle. It should continue through sections so that each new section does not begin a fresh pagination. Copy bundles should only be made after a master bundle has been paginated.

(vii) Any medical records reproduced must be legible, in the correct order and the right way up. Solicitors' correspondence (if any) should be in chronological order and typed copies of manuscript letters provided.

(viii) Unnecessary material and duplication should be avoided.

(ix) There must be a spare trial bundle of documents for use by witnesses. It is the duty of the advocate having conduct of the proceedings to ensure that the witness's bundle is kept up-to-date and that it mirrors precisely the bundle being used by the court.

(x) Bundles should be able to lie flat when opened. Staples, clips etc. should be removed.

(xi) Documents which arrive late and are agreed should be paginated, photocopied, hole punched and inserted in the relevant bundle and the index amended.

(xii) There should not be more than one lever arch file making up the entire bundle without leave of the court.

CLINICAL NEGLIGENCE CLAIMS ONLY

26. In respect of breach of duty and causation (liability), parties shall simultaneously exchange medical evidence on or before noon on the …… of ……

27. On the issue of value, parties shall commence the process of sequential exchange, in accordance with the rules, of all relevant medical evidence and other experts reports on or before the…... of……

The plaintiff shall serve such reports on or before noon on the …… of …….. and the defendant shall serve such reports on or before noon on the …… of ……..

28. The plaintiff's solicitors shall prepare and file with the Central Office a properly collated, paginated and indexed booklet of all **relevant** copy medical notes and records and any medical literature to be relied on by the experts in the case 7 days prior to the date for trial. The core bundle shall be agreed with the other parties and shall serve as a common booklet for use throughout the trial. All parties shall undertake to bring the originals to Court. It is the responsibility of solicitors /barristers in this case to sift the documents available and produce a manageable *core* bundle relevant to the issues to be determined. Excessive and unnecessary documentation must be avoided.

29. In the event that Senior Counsel is to be retained, his/her directions must be in place no less than 16 weeks before the trial date.

30. The action shall be listed for negotiations and review before the Queen's Bench Judge approximately 12 weeks before the date fixed for trial.

«Court_Clerk»
Proper Officer

«Time_Occupied»

Annex 7

In the High Court of Justice in Northern Ireland

QUEEN'S BENCH DIVISION

No:

Between:

PLAINTIFF

AND

DEFENDANT

Guidelines on Experts Meetings in the Context of Clinical Negligence Litigation

1. Experts are referred to the Protocol for Clinical Negligence Litigation and the Clinical Negligence Expert Practice Direction No xx / 2021

2. Unless otherwise agreed by the parties, a detailed agenda should be settled between the parties in advance of the expert meeting. Unless the parties agree otherwise, the agenda should be prepared by the Plaintiff's lawyers (with or without expert assistance) and supplemented by the Defendant's lawyers, if so advised, and mutually agreed. The agenda should consist of, as far as possible, closed questions; that is, questions which can be answered with "yes" or "no". Questions should be clearly stated and relate directly to the legal and factual issues in the case. Where there is a dispute or lack of agreement between the parties as to the agenda, then each party should set out those matters which it would wish discussed for responses from their respective expert.

2. The experts should be provided, in a timely manner in advance of the meeting, with the medical records and such expert opinion as has been exchanged. If any publications, materials research etc have been relied upon or are potentially going to be relied upon, or considered relevant then those materials should be provided in a timely manner in advance of the discussions unless already attached to the expert reports provided.

3. The experts should confirm their understanding that their primary duty is to the court which takes priority over any duties owed to the party by whom they

have been engaged. The experts recognise and accept the obligation to include and take account of any matter which might adversely affect the interest of the party on whose behalf they have been retained.

4. Where there is agreement between the experts on the issues raised and discussed, their joint conclusion/approach on those issues should be stated.

5. Where there is a dispute or lack of agreement between the experts, then each expert should set out his individual opinion and the grounds or basis for it. If any materials, publication, research etc have been relied upon that should be stated clearly and the materials identified.

6. A formal document setting out the areas of agreement and disagreements shall be produced at the conclusion of the discussion and each expert shall confirm it as being a true and accurate account of the discussion. This document shall be made available to the parties as soon as possible thereafter. The minute should be agreed and signed by all the parties to the discussion at the conclusion of the meeting, and when this is not possible, the minute should be prepared as soon as possible after the meeting has concluded and within 7 days of the date of the experts' meeting. The minute must not be circulated to any party, including the parties' legal representatives, prior to it being agreed and signed by all of the experts present at the meeting.

7. In the event that any of the experts either separately or jointly identifies an issue which he considers relevant and which is not referred to in the agenda, then that issue should be dealt with in a similar manner to the issues set out in the agenda and should be contained in the formal document referred to above.

8. In the event of disagreement the experts should specify what action, if any, which may be taken to resolve the outstanding points of disagreement.

AGENDA for Expert Discussion Between

1.

Annex 8

File No:

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION

Solicitors Firm:	
Solicitor's Name:	
Plaintiff(s)/Defendant(s)	

REVIEW QUESTIONNAIRE

Date of Review Hearing

Please read the attached Notes before completing this Questionnaire.

This Questionnaire must be completed and handed into court at the commencement of the first review hearing.

1(a) Has each party replied in full to any Notice for Further and Better Particulars served upon them?

(b) If the answer to (a) is No, please indicate: (i) what replies are outstanding;, (ii) if it is proposed to reply to a Notice, the time required to complete replies; and (iii) if there is objection to serving a reply to all or part of a notice, the nature of such objection.

2 Has each party served its List of Documents?

3(a) Are there any outstanding issues of disclosure, including discovery of particular documents (Order 24, Rule 7), interrogatories (Order 26) or non-party disclosure (Order 24, rule 8)?

(b) If the answer to (a) is Yes, please indicate: (i) what matters are outstanding: (ii) the estimated time required to attend to them: and (iii) if there is a dispute, the nature of such dispute.

4(a) Are facilities required for inspection or taking of samples by non-medical experts

such as engineers engaged by any party?

(b) If yes, please provide a concise description of the premises, location, process, plant equipment or other property concerned

(c) Is there objection to the facilities sought?

(d) If the answer to (c) is Yes, state the nature of such objection.

5(a) Is the medical evidence complete?

(b) If not, please indicate briefly what further evidence is required.

(c) Is the evidence in relation to financial loss, including accountancy and cost of care reports, complete?

(d) If no, please indicate briefly what further evidence is required.

(e) Is amendment of the Particulars of Personal Injuries in the Statement of Claim required?

6 Is there an application for remittal pending or anticipated?

7(a) Has any party an application with respect to amendment of pleadings, joinder of additional parties or leave to issue Third Party Proceedings?

(b) If the answer to (a) is Yes, please state briefly the nature and grounds for the application, and provide a draft of the proposed amended pleading.

8(a) Are there any other outstanding matters of an interlocutory nature which have not been referred to above?

(b) If the answer to (a) is Yes, please state the nature of the matters outstanding.

9(a) Have the parties considered mediation?

(b) If the answer to (a) is yes, please state briefly what happened at mediation or why it was decided not to proceed with it.

10(a) Has legal aid been applied for?

(b) If the answer to (a) is Yes, please state the current position of the application and/or any limitations on the certificate.

Dated

Signed