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Civil Procedure Pre-Issue

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Date 26 January 2016

Pre-Issue

- Pre-action Protocol
 - Aims and requirements
- Drafting letters of claim
- Initiating attempts to settle
- Commencing proceedings

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Pre-Action Protocol

KEEP
CALM
AND
FOLLOW
PROTOCOL

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Clinical Negligence Pre-Action Protocol

- Pre-Action Protocol for the Resolution of Clinical Disputes
 - www.justice.gov.uk
- Intended for all claims against hospitals, GPs, dentist and all healthcare providers (NHS or private)
- Aims:
 - To set the standards expected of parties before commencing proceedings
 - To avoid litigation
 - To encourage openness and sharing of information early on
 - To promote the early resolution of cases
 - To allow healthcare providers to comply with their duty of candour

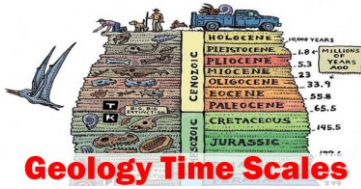
Obtaining medical records



Obtaining medical records

- Protocol letter for disclosure
 - Use the approved Law society and DOH form (annex B) & FOAs
 - Provide brief details of the nature of the claim to a defendant
 - Be specific about what you seek
- Remember:
 - Protocols
 - Guidelines
 - Policies
 - X-rays/scans
 - Continuous CTGs
 - SUI reports & statements

Obtaining records



Geology Time Scales

Obtaining records

- 40 days for provision of notes
 - Payment in advance
- If there is a delay, why?
- Applications for Pre-Action Disclosure CPR31.16
 - Costs sanctions for unreasonable delay

Letter of notification



Letter of Notification

- April 2015 amendment
- Before a full investigation has been undertaken
- Template Annex C1
 - Facts; allegations; evidence/not; outcome; damage; limitation; rehabilitation; funding; benefits
- Problem – NHSR will not investigate until they receive a formal letter of claim
- When and why?
 - Clear cut case
 - Analysis of records
 - SUJ/internal investigation

Letter of notification



Letter of Claim

- Annex C2
- When?
- NHS Trust and copy to the NHS Resolution
- Contents:
 - Facts of the claim
 - Injury suffered/outcome
 - Condition and prognosis
 - Financial loss
 - Heads of damage
 - Allegations of negligence
 - Causation

Letter of Claim

- Funding
 - Legal aid
 - N251 – CFA and insurance
- Not the same formal status as particulars of claim
- Consider draft particulars of claim in high value/complex cases
- Enclose medical reports and/or schedule of loss?
- Part 36 Offers to settle

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Reasoned response

- Acknowledgement within 14 days
- Reply within 4 months
- Extensions of time
 - Why?
 - To issue or not to issue
 - Pros and cons
- Following receipt keep defendant informed if delay of 6 months or more before issuing

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Initiating settlement



"This is not the kind of 'out of court settlement' I had in mind."

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Attempts to settle

- Options
 - Part 36 claimant offer to settle
 - Discount for risk of litigation?
 - Mediation
 - Obligation to notify NHS resolution
 - Early ADR/JSMs
 - Alternatives

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Part 36 Offer

- Comply with part 36
- Content
 - Part 36.5
 - In writing
 - pursuant to part 36
 - Part or whole of the claim
- Court form N242A

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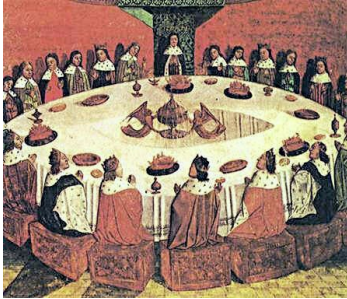
Mediation



Giraffe mediator breaks ice with lame joke.

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RTM/JSM ?



Pick up the phone



Issuing Proceedings

- Do you have authority to issue?
 - Client instructions
 - Funder
 - Costs adequate?

- Limitation date
 - Do not leave it to the last minute

- Identity of defendants
 - BEWARE
 - GPs; locums; private companies; nurse practitioners; private treatment

- Check whether company is solvent; jurisdiction

- Check whether the claimant is bankrupt

Issuing proceedings

- Confirm in writing that the defendants have instructions to accept service

- Preparing the claim form N1

- Ensure correct court name
 - County court (CPR PD 2c)
 - <£100,000
 - County Court Money Claims centre
 - PO Box 527, Salford M5 0BY
 - High Court
 - >£100,000
 - Relevant district registry; Queen's Bench division



Issuing proceedings

- Limitation impending

- CCMC – leave plenty of time to reach CCMC

- Date stamped when reaches CCMC and proceedings “brought” for limitation purposes on that date

- Out of time?
 - Submit to any county court to be stamped and pay fee and send to CCMC

- High court

Other supporting documents

- Particulars of claim
 - Statement of truth signed by client
- Schedule of loss
 - Statement of truth signed by client
- Medical reports
 - Correct wording of statement of truth
 - Signed
 - All injuries/fatal claim?
- Funding
 - Notice of issue of legal aid
 - N251
- Certificate of suitability of litigation friend N235
 - Minor/lacks capacity

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Thank you
