ANNEX 5: Portfolio Template for Advocacy (3 portfolios required)

Date you were instructed in the case: 23 July 2020

Example 1 of 3

Provide a concise description of the case, its progression and outcome.

This was a clinical negligence claim that arose from consent surrounding an endometrial procedure carried out in July 2017.

A Letter of Claim had been served on 13 July 2020. The Claimant issued court proceedings on 17 June 2021. Proceedings were served on 24 June 2021 and Counsel was instructed to draft a Defence that was served on 23 September 2021 denying liability in full. The matter was listed for a Costs and Case Management hearing on 31 January 2022. I conducted the hearing on behalf of my client. The claim proceeded through the litigation process and to account for litigation risk, my client made a calderbank offer to include damages and costs in the sum of £18,000 on 31 March 2022. The Claimant swiftly rejected the offer. The parties entered into without prejudice settlement negotiations and the Claimant accepted tmy client's Part 36 offer in the sum of £9,000 following service of the List of Documents.

Summarise the nature of the advocacy that you undertook, including any negotiation or arbitration.

I undertook advocacy on behalf of my client at the Costs and Case Management Conference via video link at Cardiff County Court on 31 January 2022. The parties complied with CPR 3.13 and had exchanged draft directions and budgets by way of form precedent H and draft budget discussion reports by way of form precedent R.

The submissions I made are summarised in my preparation note (exhibit LD4.1) and attendance note prepared by a paralegal at the hearing (exhibit LD4.6) which also sets out submissions to be made in respect of costs in the event that the court grants permission for the Claimant to rely upon amended Particulars of Claim and submissions in respect of the Claimant bearing the costs.

Firstly, the court considered the uncontested issue as to whether to grant the Claimant permission to rely upon amended Particulars of Claim. I made the submission that my client did not contest the application but that there was no provision in the directions in respect of service of the amended Particulars of Claim and my client's amended defence. I made a submission for 7 weeks from the date of the CCMC to serve my client's amended defence on the basis that we were experiencing a delay in obtaining witness comments. The Judge wished to consider whether the matter could be listed for a 2 day trial. Following the Claimant's submissions, I also made submissions in respect of the length of trial in that despite the issues being small, 3 days for trial would be appropriate.

The Judge then moved on the further contested issue of the parties budgets. I made submissions in respect of the Claimant's budget in respect of time and disbursements claimed to include the disclosure phase, witness statement phase, experts phase, PTR phase, trial preparation phase, trial phase, ADR phase. Submissions were made by both parties in negotiation for the phase and the sums ordered by the Judge are set out in bold in my preparation note. I also made submissions in respect of my client's budget to account for the orders made during the hearing. Specifically, an amendment to the PTR phase, trial preparation phase and trial phase.

ANNEX 5: Portfolio Template for Advocacy *continued*

State the court in which the advocacy took place and whether it was a contested matter.

The matter was allocated to the Multi-Track in the County Court.

As this hearing was listed during the Covid-19 pandemic, it was a hearing conducted by 'CVP' video calling software. The hearing was in front of a District Judge sat in Cardiff County Court with each party joining the call by video link.

This hearing considered both uncontested and contested issues. Specifically, in respect of the Claimant's oral application to rely upon amended Particulars of Claim. My client did not contest to this application on the basis that the Claimant bear the costs of and occasioned by the amendments. Also, the contested issues included the date of the direction for service and filing of my client's amended Defence and further directions relating to length of trial and the contested phases of the Claimant's budget.

Outline the preparation work you undertook before the hearing.

In accordance with CPR 3.13, I filed a precedent H with my client's Directions Questionnaire (exhibit LD4.2) and a precedent R budget discussion report in respect of the Claimant's budget at least 7 days before the hearing on behalf of my client (exhibit LD4.3). Following review of the Claimant's draft bundle, I also filed the list of witnesses and statement complying with CPR 35.4(2) on behalf of my client (exhibit LD4.4) in addition to my client's precedent R budget discuss report (exhibit LD4.5).

Prior to the hearing, I reviewed the case and familiarised myself with the negotiations that had been conducted to date between the parties. I prepared a note of my submissions to use as an aid during the hearing (exhibit LD4.1). This allowed me to follow my submissions as the hearing progressed and ensured that I utilised the hearing to make all appropriate submissions required on behalf of my client.

The note also set out alternative submissions during the hearing. I made preparations in respect of the possibility that the court may order to bring forward the direction for exchange of witness evidence and a submission relating to a gynaecology expert. Finally, I also prepared for the event that the court question why my client was yet to obtain expert evidence but has been able to serve a defence and submissions relating to the Claimant's budget.

ANNEX 5: Portfolio Template for Advocacy *continued*

Set out all the client's objectives and how you managed them.

My client did not wish to contest the Claimant's application to amend the Particulars of claim and therefore my client's main aim was for the Claimant to bear the costs of and occasioned by the application and to reduce the Claimant's future costs in order to save money for my client if they were to be found liable in this case. I made submissions as set out above in an attempt to persuade the Judge hearing the case to reach my client's objectives.

Ultimately, my client's objective at this hearing was to attempt to reduce its overall financial liability as much as possible in the event that my client would be found liable for this claim. The Claimant's budget was pleaded in the sum of £155,428.00 to include future costs of £105,778. Following successful submissions at the hearing, the Claimant's budget in respect of future costs was reduced to £64,138 leading to a saving of £41,640. My client's objectives in respect of reducing the costs of the Claimant's budget were therefore achieved.

Provide a summary of the legal, procedural, evidential and ethical issues that arose during the hearing or advocacy and how you dealt with them.

Procedural issues that arose in this case were that in order to prepare for the hearing, the parties were required to comply with CPR 3.13(1)(b). Specifically to file a precedent H on behalf of my client with the Directions Questionnaire and to file a precedent R no later than 7 days before the hearing in accordance with CPR 3.13(2). I filed each of the above court forms in accordance with the CPR.

A procedural issue considered at the start of the hearing was the Claimant's bundle. The court had received a paper copy of the bundle prior to the hearing and then further emails from the Claimant's solicitor asking to disregard the earlier bundle and to rely upon further documents. A further bundle was provided on the day of the hearing. I did not make submissions in respect of this as I was not invited to make a submission by the judge and this was discussed with the Claimant's counsel at the hearing. The Judge informed the Claimant's counsel that this was unsatisfactory. This was a procedural issue as the Judge stated if he were to struggle at the hearing, it would be adjourned and there would be an order for costs against the Claimant. This highlighted the importance of ensuring that documents are sent to the court within plenty of time prior to the hearing.

A further issue considered was service of the amended Particulars of Claim and my client's amended defence. This was an evidential issue in respect of witness evidence which impacted the further procedural issue of serving a fully pleaded amended defence in the matter. I made a submission for 7 weeks from the date of the CCMC to serve my client's amended defence on the basis that we were experiencing a delay in obtaining witness comments due to the impact of the Covid-19 pandemic.

ANNEX 5: Portfolio Template for Advocacy *continued*

Outline the effectiveness of your advocacy.

I believe that I made appropriate and sound submissions on behalf of my client at this hearing.

I made a submission for 7 weeks from the date of the CCMC to serve my client's amended defence on the basis that we were experiencing a delay in obtaining witness comments. This Judge was persuaded by my submissions in respect of the amended Defence and my advocacy was effective in reducing the Claimant's budget in respect of future costs by £41,640 (exhibit LD4.5). I therefore believe that my advocacy was effective at this hearing to reach my client's overall objective.

Summarise any training or development needs you identified while you dealt with this case.

I was required to refresh my knowledge of CPR 3.13 to ensure that I calculated the timescales for filing the required documents at court within plenty of time to ensure that I was not criticised by the court. I also identified that knowing the case well and having an understanding of the likely timescales in progressing the matter and communicating with third parties such as witnesses allowed me to make submissions to ensure that my client would be in a position to comply with future directions ordered.