



Exemplar Litigation Portfolio – Civil Proceedings

Applicants compiling a portfolio of 3 or 5 cases in which they have been involved which demonstrate their experience of litigation in respect of Civil, Criminal or Family Proceedings, may use this template for each case.

This exemplar has been produced to demonstrate the breadth and depth of information the External Advisers expect to see when they assess applicant's portfolios.

Litigation Portfolio Template

Provide a concise description of the case	Date instructed:	Click here to enter text.
<p>I represented the claimant who received an apparently serious back injury while working as a labourer on a large development project involving the conversion of a dilapidated Victorian mill into luxury flats.</p> <p>The first difficulty was to identify the correct defendant. The claimant was working for an employment agency who had placed him with an engineering subcontractor. However, at the relevant time that subcontractor had “loaned” him for two days to the main developer. The employment agency denied liability and relied on clauses in its terms of business purporting to make the claimant self-employed; and excluding liability for injury. The subcontractor denied liability contending it was not in control of the activity where the claimant was injured; this was denied by the main developer, which also raised allegations of fabrication, contributory negligence, and engaging in horseplay against the claimant. There were also serious difficulties with quantum issues as the claimant’s previous work history was erratic.</p> <p>After discussion with my supervising partner the decision was taken to sue all three potential defendants. Medical evidence was disputed and the defendants were allowed to obtain their own orthopaedic evidence. A firm denial of liability was maintained up to the first case management conference, which I conducted, when disputes about working practices, medical issues, and a continuing loss claim, were thoroughly explored and directions given. The case was allocated to the multi- track.</p> <p>The third defendant failed to give proper disclosure and after a review meeting with my supervising partner I made application for an “unless order” which was granted and with which the defendant complied. Further issues arose about medical evidence and there was a further CMC which I conducted, opposed by counsel for all three defendants.</p> <p>The third defendant then took over the conduct of the case and made successive Part 36 offers of 7,000, 9,000 and 12,000 pounds over a six-week period. After a lengthy conference with counsel and client I put forward an offer of 18,000 which led to a roundtable meeting four weeks before trial, where I represented my client. A settlement was agreed at 15,500 pounds plus costs, each defendant bearing their own costs.</p>		
Provide a description of law arising in the case and its application to the facts		
<p>The main issue was Health and Safety and a proper system of work. However, before we could get to that point it was vital to ensure we had the proper defendant(s) before the court. The employment agency contended that our client was self-employed. It was necessary to consider this, and the purported exemption clause referred to above. The claimant did not actually know who he was assigned to. The agency had told him to go to the site and “ask for Mr *****”. This person proved to be the site owner’s Project Manager and not employed by any of the defendants. He had just directed him on to the subcontractor who was a worker short. The claimant was paid (gross) by the agency, and it proved very difficult to establish who their end client was. Eventually as the evidence remained obscure, we decided to rely on a combination of Employer’s, and Occupier’s, liability arguments, and join</p>		

all potentially liable parties, a view facilitated by their failure to co-operate in the Protocol period.

The law relevant to the cause of action was also not clearcut. I considered the various relevant Manual Handling and Construction Site regulations but generally speaking these are merely evidence of common law negligence. It was necessary to refresh my mind of the scope of contributory negligence where outright disobedience to instructions, and horseplay are alleged, although most of the authorities are simply factual illustrations rather than precedents in the true sense.

Other legal issues concerned conduct and disclosure duties, see below.

There were also remoteness of damage arguments. The claimant had been a self-employed taxi-driver who was working for the agency while serving a driving ban. He sought indefinite future loss of earnings since he claimed his back injury precluded him from driving for more than an hour at a time. This was not supported by the medical evidence.

Describe the procedural and process issues, including the Court and, where relevant, the track to which the case was allocated

The claim was allocated to the Multi-Track by the County Court at Manchester. There were two CMC's, the second raising very contentious issues about disclosure, late permission for the defendants to rely on video surveillance evidence, medical evidence, and even accountancy evidence in relation to the claimant's pre-accident earnings.

There was also a successful heavily opposed application for an 'unless' order which counsel conducted on my instructions, obtaining the order I sought and costs.

We were relatively close to trial, for which I had prepared, when a roundtable meeting led to settlement.

Explain the evidential issues arising in the case and how they were dealt with

We had substantial problems on liability. Two workmates were the only witnesses, and our client told us that both would support him. In fact, one refused to be involved and the other wrote a brief letter confirming the claimant's account but proved difficult to tie down to a detailed version until close to the time of exchange of statements.

The evidence on continuing loss of earnings was even more difficult, the claimant's accounts needing to be re-worked by an accountant who told us that the claimant had obviously under-declared income for tax purposes. It was thus necessary to negotiate in the knowledge of the problems these issues would cause at trial, which is why we settled at such a relatively low figure (the claim having initially been valued above 100k.)

There were strong disagreements between the medical experts, the defendant's consultant contending that the claimant was malingering. Questions, and a joint meeting failed to resolve this, and an order was obtained permitting oral expert evidence at trial.

Provide an overview of any ethical or conduct issues that arose in the case and how they were dealt with

The first issue was that the managing director of the employment agency wrote to us to complain of a conflict of interest in that our firm had acted for him on his divorce 12 years before, and requesting we ceased to act for the claimant. After consulting a partner we responded that no issue arose, since the agency (a limited company) was the defendant, and no point concerning his conduct or finances would arise; that the partner who acted for him had retired; his file was archived; and he would anyway be represented by insurers.

The other issue arose with our own client who wished us to conduct the litigation inappropriately and dishonestly, particularly so far as compliance with court orders and disclosure were concerned. We had to give him strong advice and threaten to withdraw from the case on two occasions. Eventually he accepted our advice and authorised us to complete proper disclosure.

Provide details of any funding issues arising in the case and how they were dealt with

Our firm operates a system whereby we first act on a full-fees basis while we assess the case for a CFA.

Thereafter I completed a risk assessment and put the case to the small committee which considers these which agreed with my assessment that the difficulties with parties, supporting evidence, quantum issues, and a client who even by that early stage I had assessed as unreliable meant we should offer a CFA on a 100% uplift basis.

I clarified that the claimant had no relevant legal expenses insurance.

We obtained ATE insurance but had to report our misgivings at the stages mentioned above.

We were confident that the losing defendant would be called on to bear the winning defendants' costs as the defendants had blamed each other in accordance with the principle in the (admittedly pre-CPR case) of *Hodgson v Guardall* 1991.

Provide details of any research undertaken in the case, relating to law or procedure

I have already described the essential difficulties of establishing whether the claimant was "employed" at all and if so by whom. This occupied me in the library for two hours. My firm does a lot of personal injury work but no-one in our team could remember a case with this point. My research was in Employment Law books rather than Tort, although it was also necessary to consider who the occupier was, as well as the employer, since the physical condition of the premises had contributed to the accident.

I refreshed my mind on issues of disclosure and privilege in view of problems raised by my own client's conduct.

Provide an outline of the decision making in the case and any advice taken on strategic issues in the case

I took counsel's advice twice; on parties, and quantum of damages; and a partner's advice on the conduct issues.

After consultation with my supervising partner I made the key decisions to persevere with the claim when the evidence looked unpromising; to refuse 3 offers, despite the costs risk, (having of course taken instructions), and to strongly advise the client to reduce his expectations in view of the risk of losing outright if the court formed an adverse view of his credibility.

I conducted the successful settlement meeting having decided to accept any offer above 13,000 pounds.

Detail any advice given in the case and how it was recorded

This case was complex throughout and the issues on liability and quantum are all recorded above. The client had unrealistic expectations as to how easy it would be to succeed and for how large a quantum. It was necessary to give realistic advice at each stage. It was also important for obvious reasons to record the advice in comprehensive file notes; to confirm these with my supervising partner; and to write comprehensively to the client about actual and anticipated progress at each stage

Provide information on any training or development needs identified arising from the case

I specialise in Employer's liability claims for a Trade Union where no issues of "Employee or not" or self-employed earnings loss arise. I became aware that if I was to take on a more varied caseload, I should attend some CPD training on Employment Law, which would also assist in my wish to advise on pure employment issues and develop a second string to my bow.

I was originally a little in the dark about the approach to accountancy evidence, but fortunately my firm has begun a series of in-house talks on "understanding business accounts" which I attend and has proved excellent.

Please identify and provide the knowledge and understanding of the learning outcomes you have met through this portfolio

As I am very experienced in the areas of this case study, I learnt nothing new as such but it refreshed my memory and consolidated awareness of difficult issues in particular advising a client with unrealistic expectations; dealing with a client's past dishonesty in quantum; and assembling an awkward case on liability; together with negotiation techniques throughout.

I confirm that the information contained on this form is accurate to the best of my knowledge and belief.

Signed:

Date: