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Ms. Flora Poste
25 Castle Circle
Kingswell
Aberdeen
AB15 3VG

Dear Ms Poste

Accident at Premnay House Luxury Hotel and Spa (PHLH&S)

We refer to the above and to your meeting with our Louise Stewart of yesterday’s date and thank you for taking the time to give us full details of the accident you had at PHLH&S.

As advised yesterday; we will research your matter fully and write to you within the next 5 working days to advise possible remedies available to you and the next step in the process.

In the meantime, we are sending you the firm’s terms of business letter and advise as follows:-

1. Work to be carried out on your behalf: To advise you in your complaint against PHLH&S, stemming from your accident on 17th November 2016 where you fell down a flight of stairs, to determine whether you have a claim against the Hotel; to include investigating the matter, carrying out research and reporting back to you. Making contact with PHLH&S and other such further work as may be required.

2. Fee: Please note that we are a free service and as such there will be no charge for our investigation and advice to you. If further work is done and any third party requires to make a charge this would be met by you but no such charge would be incurred without your approval. We will advise, however, that if you are successful in a claim against PHLH&S and receive a monetary settlement, RGU Law Clinic will be obliged to retain 10 per cent of the gross award.
3. Person carrying out work on your behalf: Louise Stewart, Law Student – overseen by Laura Sharp who is a qualified solicitor.

4. Identity of the person who you should contact if you are concerned in any way with the manner in which the work is being carried out – Mallory Gentils. Mallory is in charge of Client Relations at the RGU Law Clinic.

Thank you for your instructions in this matter.

If you have any questions at all regarding the contents of this letter, or any other matter, please do give us a call.

Yours sincerely

Louise Stewart
For and on behalf of RGU Law Clinic
l.stewart@rgulc.co.uk
01224 555 000
Ms. Flora Poste  
25 Castle Circle  
Kingswell  
Aberdeen  
AB15 3VG

Dear Ms Poste

Accident at Premnay House Luxury Hotel and Spa (PHLH&S)

We refer to the above and following your meeting on 13\textsuperscript{th} February and our letter to you of the 14\textsuperscript{th} and advise that we have now researched matters and would advise as follows:-

The Facts

From the particulars taken at the initial meeting the incident occurred on the 17 November 2016 at the Premnay House Luxury Hotel and Spa at approximately 9.30pm, where you slipped down a flight of stairs. As a result of the fall you were taken to hospital where it was confirmed that you had suffered a fractured left arm and shoulder which required surgery.

You expressed that you wished us to conduct a case for you in which you wish to sue for damages for the personal injury sustained to your arm and shoulder and solatium (emotional distress) for the actions of the duty Manager, Mr Fawlty. You also wish to sue for recompense for the cost of travelling to work as you could not drive and the £1,895 that you will lose if you cancel your holiday. Having examined the information you have provided in this matter we feel that you may have grounds to do so.

Liability

Your accident falls under the Occupier’s Liability (Scotland) Act 1960, which places a statutory duty on occupiers of premises to take reasonable care to ensure that a person does not suffer injury or damage resulting from a danger contained in the premises.

The Hotel cannot evade the blame and pass this on to the carpet fitters, Fancy Footwork Flooring, as the Hotel has control over the premises and the Manager on duty should have ensured that the work was done to a reasonable standard. Reasonable precautions must be taken
to ensure that injuries cannot be sustained. Stairs are not in of themselves dangerous objects if the person traversing them is being careful. However, faulty carpeting can cause accidents and evidence shows you were navigating the steps carefully, you were not inebriated and you were wearing sensible shoes, this helps your case.

**Damages**

In order to claim damages you must be able to prove that the accident was reasonably foreseeable, the poorly laid carpet caused the fall and subsequent injury and the losses you have suffered are in direct connection with the accident. All of this seems to be the case here. It would be helpful if you could forward all receipts and invoices you have for costs to you since the accident to include taxi fares as this will help tabulate our claim.

**Time Limit**

Please be aware that certain time limits would apply in respect of any court action arising from the injury you have suffered. This would be three years from the date the injury occurred or when you first became aware of it.

Please contact us to discuss how you wish to proceed. We can then provide further advice on the options available to you to include alternative dispute resolution to resolve the matter without the need for raising court proceedings. We would advise that we have made contact with the Hotel to introduce ourselves with a view to starting negotiations and we will be in touch when we hear back from them.

Yours sincerely

Louise Stewart
For and on behalf of RGU Law Clinic
l.stewart@rgulc.co.uk
01224 555 000
Dear Sir/Madam

Ms. Flora Poste
Incident at Hotel on Thursday, 17th November 2016

We refer to the above and advise that we have been consulted by Ms Poste in relation to an accident that she had at your business premises on the evening of 17th November 2016 in which she slipped down a flight of stairs whilst in attendance at an Award Dinner held at your Hotel. It is our understanding you had previously informed Ms Poste that the cause likely arose from a poorly fitted carpet carried out by a company by the name of Fancy Footwork Flooring.

Ms Poste suffered injury to her shoulder and left arm which resulted in her needing surgery and leaving a metal plate and three pins in her shoulder. As a result of this, Ms Poste had to take time off work and undergo physiotherapy and was unable to drive for three months.

We have been asked to inform you that Ms Poste intends to raise court proceedings to claim compensation under the following headings:-

1. Damages for injury sustained through the Hotel’s failure to take reasonable care that the carpet was fitted correctly and the stairs were suitable for use
2. Taxi fares to and from work due to being unable to drive, amounting to no less than £1,035
3. £1,895 for cancelled sports holiday due to being unable to participate in sporting activities
4. Solatium for the emotional distress caused by the duty Manager, Mr Fawlty, for his insensitive and derogatory remarks to Ms Poste following her fall.
We would advise that Ms Poste was extremely hurt by Mr Fawlty’s comments that she was ‘drinking’ and wearing ‘killer heels’. This lacked professionalism; Ms Poste is a hard working HR Business Partner and has an excellent reputation that she is keen to uphold. Comments such as these, even if made in jest, can be damaging to a person’s reputation and we would suggest that a written apology from Mr Fawlty to Ms Poste would be in order.

We would be most grateful if you would direct all further contact on this matter to our office at the details noted below.

Perhaps you would like to contact us to discuss a way forward without the need for legal action.

We look forward to hearing from you.

Yours faithfully

Louise Stewart
For and on behalf of RGU Law Clinic
l.stewart@rgulc.co.uk
01224 555 000
Reflective Statement

There are many essential elements of an effective client advice letter. Some are more obvious than other but firstly, it is vital to explain to a client whether you can help them with a legal issue that they are having. There is no point in spending time in meetings with a client and writing to them and spending billable and unbillable hours working on their case if you do not have the legal knowledge or capability to help them and then be in a position where you should refer them to another firm of solicitors that can. Or, doing all the aforementioned work and weeks later informing them that they do not have a winnable case.

It is important to lay out in your advice letter what actions have been taken up to the date of your letter and what immediate actions you will be taking. Sometimes matters will be long drawn out processes and it will only increase a client’s anxiety levels and frustrate them if you do not keep them up to date. If they are confident matters are in hand, how the matter is being handled and by whom, it should help ease the pressure a bit.

Sometimes terms of business letters double up with advice letters, so if that is the case it would be important to include the contact details of the person dealing, a quotation of costs involved in the transaction and who would be the person to raise a complaint with if the client is not satisfied with the way his case is being handled.

Clients want to know what their options are. Sometimes they will come to you stating that they want to take someone to court; but they don’t really. It is important to let a client know what options are available to them, if any. For example, alternative dispute resolution rather than taking a matter to court. It is important to know what outcome the client is hoping for, whether it is a financial settlement or an apology if they feel they were wronged in some way or the vindication of winning in court. It is important that clients can make informed decisions about what services they will need.

Further the writer should have their client in mind. Who is reading the letter and what is their level of understanding of legalese? There is no point in using technical language when the client will not understand this. Some clients will require language that avoids complex language particularly if English is not their first language or they are particularly vulnerable or have special needs. Another point to note in this regard is that it may be wise not to overcomplicate the letter with a lot of information. The client may feel bombarded and may deter following up with you if they feel overwhelmed. But also, it is important not to be vague which will possibly result in follow up telephone calls where you may have to explain yourself over again and waste time. Also, avoid redundant language, explain what you mean succinctly, again, this is helpful when the reader is foreign or lack the intelligence to comprehend complex language.

It is important that you client can understand the information that you are providing them with. Highlight the important parts to them whether by using headings or underlining important points. Point out time limits for when certain actions need to be completed by, for example, if there claim has to be submitted to court by a certain date. Revise and proof-read. Don’t send out the first draft.
Question 2
As an alternative to litigation Flora Poste can use alternative dispute resolution to settle a claim without the perceived long drawn out process and high fees of a court battle. The main types of dispute resolution used in Scotland are Arbitration, Mediation, Negotiation, Conciliation and Early Neutral Valuation. Not all are appropriate to all disputes and each will be looked at in turn with a determination if any are suitable for Ms. Poste’s situation.

The Arbitration (Scotland) Act 2010 put into statute form the common law rules of arbitration. Parties can agree to allow their dispute to be handled by a private tribunal, chosen by them but sometimes contracts between parties can stipulate that disputes must be handled by arbitration.\(^1\) It is like a mini trial without the stress of an actual court case. It can also be faster and cost less than taking a matter to court. A main disadvantage with arbitration is that if one party has already agreed to arbitration and is unhappy with the result, or how the tribunal is handling the dispute, they may not be able to take the case to court and the court may enforce the agreement.\(^2\) Any award of the tribunal is final and is binding on the parties,\(^3\) unless it falls within one of the rights of challenges.\(^4\) So appeals are more than likely to be unsuccessful.

Mediation involves an independent third party who assists the parties to a dispute to resolve their conflict to negotiate a settlement. The Mediator is neutral and facilitates talks, they don’t offer advice and manage proceedings, which can have a negative quality about it as power imbalances between the parties are unlikely to be addressed. It is a popular tool used in the family law sphere but can be used quite regularly in commercial disputes and personal injury matters. Parties volunteer to use Mediation so it is not a case where one party can compel the other to enter Mediation. Also, any agreement reached is not legally binding (unless an Agreement has been signed prior to talks beginning stating it would be) so if a decision was made where one party is to pay damages to the other and they do not he may not be enforced to abide by this. Mediation is popular because it is cheap; the fees payable to the Mediator can work out less than that for a solicitor as the whole process can take a matter of hours or days, compared to the months that a solicitor may need to be paid for research and time spent in court. As the parties have agreed to Mediation, it usually means they are ready to talk and talks may be more open and honest with a view to settling matters reasonably and of mutual interest.\(^5\)

Negotiation is far more informal and tends to involve parties speaking to each other to resolve their issue. A third party could be involved but tend not to be. A representative for each party can get involved if the parties fail to reach an agreement. This form of dispute resolution may not be helpful for an issue like personal injury where one party is seeking compensation. It may be

\(^1\) W.M. Gloag and R. Candlish Henderson The Law of Scotland (13\(^{\text{th}}\) edn W. Green 2012) para 2.46
\(^2\) ibid
\(^3\) S11(1) Arbitration (Scotland) Act 2010
\(^4\) ibid s11(3)(a)
better in more trivial matters where the parties already know each other or at least have a civil relationship.

Conciliation is a form of dispute resolution that is often used in employment matters before they escalate to a Tribunal. Like Mediation it is voluntary and non-binding but in direct comparison the ‘conciliator’; who is neutral, gets involved and his approach is more pro-active compared to that of a mediator. This can be viewed as ‘meddling’. Another aspect is that the parties do not have to be in the same room and the conciliator can talk to each party one of one, separately. This means that each party may not get the full benefit of hearing each other’s side or the full facts.  

Finally, Early Neutral Valuation can be described as a mixture between Arbitration and Mediation. This type of resolution involves a third party, who is usually an expert in the area of law that the dispute concerns, evaluating the evidence and giving his expert opinion on the strength of the case and the likely outcome – if the case was to go to court - and the amount of award that the victim may receive. This expert has a great deal of power over the person deciding whether to go to court or not but his decision is not binding, it is dependent on to what extent either party wishes to take his expert advice. It is akin to a solicitor taking advice from Junior Counsel on behalf of a client on whether to initiate court proceedings in a matter.

The fact that Flora Poste has come to a Law Clinic would lead one to believe she does not have the money for a long drawn out court battle nor the inclination to pay extra where she does not need to. Early Neutral Valuation will be discounted at this point, plus Conciliation and Negotiation. Arbitration and Mediation would be the two that would be recommended to the client, with perhaps Arbitration being the one that would be recommended above the other due to the fact that the decision is more than likely binding so if Flora is successful in obtaining a monetary award for her injury, the Hotel will be unlikely to be able to shun their responsibility and have to pay it.

A final point; the purpose of court is that justice has to be seen to be done, if matters are being dealt with privately is justice being done or setting precedent? Flora may want public justice.

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6 Ibid
7 Ibid
Bibliography


Thomson J, *Delictual Liability* (5th edn, Bloomsbury 2014)