

NEW PROTOCOL FOR LOW VALUE ROAD TRAFFIC CLAIMS

- On 30 April 2010 the Ministry of Justice introduced a new protocol for low value personal injury claims in Road Traffic Accidents (RTA's) with a value of between £1,000 and £10,000. The objective is to streamline the process for low value RTA's with a view to disposing of claims quickly and as cheaply as possible, where liability is admitted by the insurer who is prepared to make proposals to settle the claim. The new Protocol only applies to claims arising from RTA's occurring on or after 30 April 2010.
- Previously, RTA claims were commenced in the same way as any other claim, in line with the personal injury pre action protocol, where a letter of claim is sent to the Defendant and / or their insurers. The Defendant or their insurers then have a period of 21 days in which to acknowledge the letter and a further 3 months to investigate and respond on the issue of liability. Under the new streamline process, there is a 3 stage process as follows:-
- **Stage 1:** The Claimant or their Solicitor completes a new Claim Notification Form (CNF) and sends it electronically to the Defendants insurers through an online claims settlement portal. There is no time limit in which the Claimant has to submit details of any new claim. However, the insurers must acknowledge the claim within 1 business day of notification and respond with a decision on liability within 15 business days. Conversely, if the Defendant is uninsured then the matter is dealt with under the Uninsured Drivers Agreement 1999 in which case the Motor Insurers Bureau will deal with the matter and will have 30 days in which to respond. If the Defendant or their insurers admit liability then unlike the previous process, where fixed recoverable costs (FRC) were recoverable at the conclusion of the claim, the sum of £400 will be payable by the insurer to the Claimant's Solicitors at this stage. However, no success fee to which the Claimant is entitled under a 'no win no fee' Conditional Fee Agreement is payable at this stage.
- The Claimant or there representative must not only send the CNF (RTA1) electronically to the Defendant's insurers but also must send a further Defendant only CNF (RTA 2) to the Defendant by first class post. The Defendant only CNF must be sent at the same time or as soon as is practicable after the CNF is sent electronically. The Statement of Truth in the CNF must be signed by the Claimant or the Claimant's representative.
- The Defendant must also before the end of stage 1, apply to the Compensation Recovery Unit (CRU) for a certificate of recoverable benefits which the Claimant may need to repay from any loss of earnings claim etc.

The claim will exit the new process in one of the following situations:-

1. The Defendant makes an admission of liability but alleges contributory negligence (other than in relation to the Claimants admitted failure to wear a seatbelt).
 2. The Defendant does not complete and send the CNF response/insurers response.
 3. The Defendant or their insurers does not admit liability.
 4. The Defendant's insurers notify the Claimant that the Defendant considers that a) there is inadequate mandatory information in the CNF or b) if proceedings were issued, a small claims track would be the normal track for that claim.
- The claim will also exit the new process if it later transpires that the claim is in fact worth in excess of £10,000, in which case it will no longer be considered as low value.

Stage 2: The claim will only proceed to stage 2 of the new process, where the Defendant's insurers admit liability for the accident. This stage involves the obtaining and supplying of medical evidence and schedule of loss and expenses, making offers to settle the claim and negotiations. There is no time limit in which to obtain a medical report. However, the Claimant must check the factual accuracy of any report before it is sent to the Defendant, as there will be no further opportunity for them to challenge the factual accuracy of a report after it has been sent.

- Usually only one medical report is obtained but if the initial medical report recommends that a further report be obtained or if one expert cannot deal with all elements of the injury, then the Claimant may obtain a report from a second medical expert in a different discipline. Those two medical experts may each separately recommend that the Claimant obtain a further initial medical report from an expert in a different discipline. Therefore, the Claimant may obtain a maximum of one initial medical report from four different disciplines, two of which are only on the recommendation of one or both of the first two medical experts.
- A subsequent medical report may also be obtained from the same medical expert if it is absolutely necessary, ie where the first medical report recommends further time is required before a prognosis of the Claimant's injuries can be determined or if the Claimant is receiving continuing treatment. Where subsequent medical reports are required, the parties should agree to stay the process of this protocol for a suitable period. The Claimant may then request an interim payment in accordance with paragraphs 7.8 – 7.11 of the Protocol.

- Once the medical report is obtained and approved, the Claimant's Solicitor must prepare a settlement pack within 15 business days of the medical report being confirmed as factually accurate. This pack must contain all medical evidence upon which the Claimant seeks to rely, details of any out of pocket losses and expenses that the Claimant wishes to claim including supporting evidence (otherwise known as Special Damages). This is then sent to the insurer together with an offer to settle the entire claim. The Defendant's insurers then have a period of 15 business days in which to either accept or reject the offer and make any proposed counter offer. If the Defendant alleges Contributory Negligence because of the Claimant's failure to wear a seat belt, the stage 2 settlement pack form must also suggest a percentage reduction, which may also be 0% of the amount of damages.
- There is a total period of 35 days for consideration of these stage 2 settlement packs by the Defendant (otherwise known as the total consideration period). This consists of the 15 business days for the Defendant's insurers to consider the stage 2 settlement pack (the initial consideration period) and make an offer. The remainder of the total consideration period (negotiation period) is for any further negotiation between the parties.
NB: the total consideration period can be extended by the parties agreeing to extend either the initial consideration period or the negotiation period or both. Where a party makes an offer 5 days or less before the end of the total consideration period (including any extension to this period under paragraph 7.29) there will be a further period of 5 days after the end of the total consideration period for the relevant party to consider that offer. During this period (a further consideration period) no further offers can be made by either party.
- The Defendant can make a counter offer after the stage 2 settlement pack form has been sent using the facility on the form. The claim will no longer continue under the new process if the Defendant gives written notice to the Claimant within the initial consideration period (or any extension agreed under paragraph 7.29 of the new Protocol) that the Defendant 1) considers that if proceedings are started the small claims track would be the normal track for the claim or 2) withdraws the admission on Causation i.e. the cause of the accident.
- If the Defendant's insurers do not respond within the initial consideration period or any extension agreed, the claim will no longer continue under the new protocol and the Claimant may start issuing proceedings under part 7 of the CPR.
- If the claim is not settled, fixed recoverable costs of £800 are payable by the insurer to the Claimant's Solicitors at this stage. Any offer to settle made at any stage by either party will automatically include and cannot exclude 1) the stage 2 fixed costs in rule 45.29 of the CPR and 2) any agreement in principle to pay disbursements and 3) a success fee in accordance with rule 45.31 (1).

- If the claim is in fact settled at the end of stage 2, then the total base costs recoverable by the Claimant are £1,200.00 (£400.00 plus £800.00 stage 1 and stage 2 FRC) plus a 12.5% success fee, plus VAT and disbursements.
Stage 3: This stage only applies where Quantum (damages) cannot be agreed between the parties and they require the Court to determine the amount of damages. This involves a further exchange and submission of various documents to the Court. Usually, there will be a paper only determination unless the Judge considers or directs it necessary or either party request an oral hearing. Fixed recoverable costs of £250.00 are payable for a paper determination or £500.00 is payable for an oral hearing. The extent to which the Claimant may instruct Counsel for advice generally or at the oral hearing is not clear. The Claimant must complete and send to the Defendant a Court proceedings pack, which must contain various information. The Claimant should also comply with practice direction 8B of The Pre-Action Protocol.
- The total fixed recoverable costs for the new process will therefore be somewhere between £1,200 and £1,700, plus the success fee of 12.5% or 100% where the Claimant succeeds at stage 3 once proceedings are issued. It is understood that the 100% success fee triggered by stage 3 will only apply to the stage 3 fixed recoverable costs and does not retrospectively apply to the first 2 stages.
- It remains to be seen whether the new process does in fact streamline the handling of low value RTA claims. It would seem that there have been several issues raised with the online portal for submitting the electronic notification form which users have had difficulties in using. All claims with a value of between £1,000 and £10,000 must be started under the new process and if for any reason it leaves the process, the claim will revert to the standard Pre- Action Protocol i.e. where a letter of claim should be sent and the time limits apply etc. Therefore, it is debatable whether the new process will be any more quick or cost effective than the previous process.