

PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS FROM 31 JULY 2013

Title	Number
I INTRODUCTION	
Definitions	Para 1.1
Preamble	Para 2.1
Aims	Para 3.1
Scope	Para 4.1
II – GENERAL PROVISIONS	
Communication between the parties	Para 5.1
Time periods	Para 5.3
Limitation period	Para 5.7
Claimant's reasonable belief of the value of the claim	Para 5.9
Claimants without a legal representative	Para 5.10
Discontinuing the Protocol process	Para 5.11
III – THE STAGES OF THE PROCESS	
Stage 1	
Completion of the Claim Notification Form	Para 6.1
Rehabilitation	Para 6.7
Failure to complete the Claim Notification Form	Para 6.8
Response from insurer	Para 6.10
Application for a certificate of recoverable benefits	Para 6.12
Motor Insurers' Bureau	Para 6.13
Contributory negligence, liability not admitted or failure to respond	Para 6.15
Stage 1 fixed costs	Para 6.18
Defendant's account of the accident in soft tissue injury claims	Para 6.19A
Stage 2	
Medical reports – all claims	Para 7.1
All claims other than soft tissue injury claims – subsequent medical reports	Para 7.8
Soft tissue injury claims – medical reports	Para 7.8A
Non-medical expert reports	Para 7.9
Specialist legal advice	Para 7.10

Witness statements	Para 7.11
Stay of process	Para 7.12
Request for an interim payment	Para 7.13
Interim payment of £1,000	Para 7.18
Interim payment of more than £1,000	Para 7.19
Vehicle related damages - interim payments	Para 7.23
Application for a certificate of recoverable benefits	Para 7.24
Request for an interim payment where the claimant is a child	Para 7.26
Interim payment – supplementary provisions	Para 7.28
Costs of expert medical and non-medical reports and specialist legal advice obtained	Para 7.31
Submitting the Stage 2 Settlement Pack to defendant	Para 7.32
Consideration of claim	Para 7.35
Defendant accepts offer or makes counter-offer	Para 7.38
Withdrawal of offer after the consideration period	Para 7.46
Settlement	Para 7.47
Application for certificate of recoverable benefits	Para 7.49
Vehicle related damages - additional damages	Para 7.51
Original damages and additional damages are agreed	Para 7.55
Original damages are not agreed, additional damages are agreed	Para 7.57
Original damages are agreed, additional damages are not agreed	Para 7.59
Original damages and additional damages are not agreed	Para 7.61
Settlement after claim for additional damages	Para 7.62
Application for certificate of recoverable benefits	Para 7.63
Failure to reach agreement - general	Para 7.64
Non-settlement payment by the defendant at the end of Stage 2	Para 7.70
General provisions	Para 7.76
Stage 3	
Stage 3 Procedure	Para 8.1

SECTION I - INTRODUCTION

Definitions

1.1 In this Protocol—

(A1) 'accredited medical expert' means a medical expert who—

(a) prepares a fixed cost medical report pursuant to paragraph 7.8A(1) before 1 January 2016 and, on the date that they are instructed, the expert is registered with MedCo as a provider of reports for soft tissue injury claims; or

(b) prepares a fixed cost medical report pursuant to paragraph 7.8A(1) on or after 1 January 2016 and, on the date that they are instructed, the expert is accredited by MedCo to provide reports for soft tissue injury claims;

(1) 'admission of liability' means the defendant admits that—

(a) the accident occurred;

(b) the accident was caused by the defendant's breach of duty;

(c) the defendant caused some loss to the claimant, the nature and extent of which is not admitted; and

(d) the defendant has no accrued defence to the claim under the Limitation Act 1980;

(1A) 'associate' means, in respect of a medical expert, a colleague, partner, director, employer or employee in the same practice and 'associated with' has the equivalent meaning;

(2) 'bank holiday' means a bank holiday under the Banking and Financial Dealings Act 1971;

(3) 'business day' means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;

(4) 'certificate of recoverable benefits' has the same meaning as in rule 36.22(1)(e)(i) of the Civil Procedure Rules 1998.

(5) 'child' means a person under 18;

(6) 'claim' means a claim, prior to the start of proceedings, for payment of damages under the process set out in this Protocol;

(7) 'claimant' means a person starting a claim under this Protocol unless the context indicates that it means the claimant's legal representative;

(8) 'CNF' means a Claim Notification Form;

(9) 'deductible amount' has the same meaning as in rule 36.22(1)(d) of the Civil Procedure Rules 1998;

(10) 'defendant' means the insurer of the person who is subject to the claim under this Protocol, unless the context indicates that it means—

(a) the person who is subject to the claim;

(b) the defendant's legal representative;

(c) the Motor Insurers' Bureau ('MIB'); or

(d) a person falling within the exceptions in section 144 of the Road Traffic Act 1988 (a "self-insurer");

(10A) 'fixed cost medical report' means a report in a soft tissue injury claim which is from a medical expert who, save in exceptional circumstances —

(a) has not provided treatment to the claimant;

(b) is not associated with any person who has provided treatment; and

(c) does not propose or recommend treatment that they or an associate then provide;

(11) 'legal representative' has the same meaning as in rule 2.3(1) of the Civil Procedure Rules 1998;

(12) 'medical expert' means a person who is—

(a) registered with the General Medical Council;

(b) registered with the General Dental Council; or

(c) a Psychologist or Physiotherapist registered with the Health Care Professions Council;

(12A) 'MedCo' means MedCo Registration Solutions;

(13) 'motor vehicle' means a mechanically propelled vehicle intended for use on roads;

(14) 'pecuniary losses' means past and future expenses and losses;

(15) 'road' means any highway and any other road to which the public has access and includes bridges over which a road passes;

(16) 'road traffic accident' means an accident resulting in bodily injury to any person caused by, or arising out of, the use of a motor vehicle on a road or other public place in England and Wales unless

the injury was caused wholly or in part by a breach by the defendant of one or more of the relevant statutory provisions¹ as defined by section 53 of the Health and Safety at Work etc Act 1974;

(16A) 'soft tissue injury claim' means a claim brought by an occupant of a motor vehicle where the significant physical injury caused is a soft tissue injury and includes claims where there is a minor psychological injury secondary in significance to the physical injury;

(17) 'Type C fixed costs' has the same meaning as in rule 45.18(2) of the Civil Procedure Rules 1998; and

(18) 'vehicle related damages' means damages for—

(a) the pre-accident value of the vehicle;

(b) vehicle repair;

(c) vehicle insurance excess; and

(d) vehicle hire.

1.2

(1) The 'Protocol upper limit' is—

(a) £25,000 where the accident occurred on or after 31 July 2013; or

(b) £10,000 where the accident occurred on or after 30 April 2010 and before 31 July 2013,

on a full liability basis including pecuniary losses but excluding interest.

(2) Any reference in this Protocol to a claim which is, or damages which are, valued at no more than the Protocol upper limit, or between £1,000 and the Protocol upper limit, is to be read in accordance with subparagraph (1).

1.3 A reference to a rule or practice direction, unless otherwise defined, is a reference to a rule in the Civil Procedure Rules 1998 ('CPR') or a practice direction supplementing them.

1.4 Subject to paragraph 1.5 the standard forms used in the process set out in this Protocol are available from Her Majesty's Courts and Tribunals Service ('HMCTS') website at www.justice.gov.uk/forms/hmcts —

(1) Claim Notification Form ('Form RTA 1' – referred to in this Protocol as 'the CNF');

- (2) Defendant Only Claim Notification Form ('Form RTA 2');
- (3) Medical Report Form ('Form RTA 3');
- (4) Interim Settlement Pack Form ('Form RTA 4');
- (5) Stage 2 Settlement Pack Form ('Form RTA 5');
- (6) Court Proceedings Pack (Part A) Form ('Form RTA 6'); and
- (7) Court Proceedings Pack (Part B) Form ('Form RTA 7').

1.5 The information required in Form RTA 3 may be provided in a different format to that set out in that Form.

Preamble

2.1 This Protocol describes the behaviour the court expects of the parties prior to the start of proceedings where a claimant claims damages valued at no more than the Protocol upper limit as a result of a personal injury sustained by that person in a road traffic accident. The Civil Procedure Rules 1998 enable the court to impose costs sanctions where it is not followed.

Aims

3.1 The aim of this Protocol is to ensure that—

- (1) the defendant pays damages and costs using the process set out in the Protocol without the need for the claimant to start proceedings;
- (2) damages are paid within a reasonable time; and
- (3) the claimant's legal representative receives the fixed costs at each appropriate stage.

3.2 In soft tissue injury claims, the additional aim of this Protocol is to ensure that -

- (1) the use and cost of medical reports is controlled;
- (2) in most cases only one medical report is obtained;
- (3) the medical expert is normally independent of any medical treatment; and
- (4) offers are made only after a fixed cost medical report has been obtained and disclosed.

Scope

4.1 This Protocol applies where—

(1) a claim for damages arises from a road traffic accident where the CNF is submitted on or after 31st July 2013;

(2) the claim includes damages in respect of personal injury;

(3) the claimant values the claim at no more than the Protocol upper limit; and

(4) if proceedings were started the small claims track would not be the normal track for that claim.

(Paragraphs 1.1(18) and 4.4 state the damages that are excluded for the purposes of valuing the claim under paragraph 4.1.)

(Rule 26.6 provides that the small claims track is not the normal track where the value of any claim for damages for personal injuries (defined as compensation for pain, suffering and loss of amenity) is more than £1,000.)

4.2 The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents which commenced on 30th April 2010 will continue to apply (as it stood immediately before 31 July 2013) to all claims where the CNF was submitted before 31 July 2013.

4.3 This Protocol ceases to apply to a claim where, at any stage, the claimant notifies the defendant that the claim has now been revalued at more than the Protocol upper limit.

4.4 A claim may include vehicle related damages but these are excluded for the purposes of valuing the claim under paragraph 4.1.

4.5 This Protocol does not apply to a claim—

(1) in respect of a breach of duty owed to a road user by a person who is not a road user;

(2) made to the MIB pursuant to the Untraced Drivers' Agreement 2003 or any subsequent or supplementary Untraced Drivers' Agreements;

(3) where the claimant or defendant acts as personal representative of a deceased person;

(4) where the claimant or defendant is a protected party as defined in rule 21.1(2);

(5) where the claimant is bankrupt; or

(6) where the defendant's vehicle is registered outside the United Kingdom.

4.6 The fixed costs in rule 45.18 apply in relation to a claimant only where a claimant has a legal representative.

4.7

(1) Subject to subparagraph (2), provisions for soft tissue injury claims, and in particular the requirement that the first report from a medical expert must be a fixed cost medical report, apply to any such claim for damages which arises from a road traffic accident where the CNF is submitted on or after 1 October 2014.

(2) The provisions, in respect of soft tissue injury claims, for accredited medical experts and the MedCo Portal, and the provisions, in respect of all claims, for searches of ask.CUEPI.com, identified in the first column (and specified in the corresponding second column) below, apply to claims for damages which arise from a road traffic accident where the CNF is submitted on or after the corresponding date specified in the third column—

Column 1	Column 2	Column 3
Accredited medical experts	Paragraph 1.1(A1)	6 April 2015
In a soft tissue injury claim, the requirement that the first medical report must be a fixed cost medical report from an accredited medical expert selected via the MedCo Portal	Paragraphs 1.1(12A), 7.8A(1), 7.8B(3) and 7.32A	6 April 2015
Searches of askCUEPI.com	Paragraphs 5.10(3), 5.10A, 6.3A 6.8(2) and 6.9	1 June 2015

(3) In a soft tissue injury claim, where a medical expert is instructed to provide the first fixed cost medical report before 6 April 2015, but the CNF is submitted on or after that date, that report shall be treated as a fixed cost medical report obtained from an accredited medical expert selected via the MedCo Portal.

SECTION II – GENERAL PROVISIONS

Communication between the parties

5.1 Subject to paragraph 6.1(2), where the Protocol requires information to be sent to a party it must be sent via www.claimsportal.org.uk (or any other Portal address that may be prescribed from time to

time). The claimant will give an e-mail address for contact in the Claim Notification Form ('CNF'). All written communications not required by the Protocol must be sent by e-mail.

5.2 Where the claimant has sent the CNF to the wrong defendant, the claimant may, in this circumstance only, send the CNF to the correct defendant. The period in paragraph 6.11 or 6.13 starts from the date the CNF was sent to the correct defendant.

Time periods

5.3 A reference to a fixed number of days is a reference to business days as defined in paragraph 1.1(3).

5.4 Where a party should respond within a fixed number of days, the period for response starts the first business day after the information was sent to that party.

5.5 All time periods, except those stated in—

(1) paragraph 6.11 (the insurer's response);

(2) paragraph 6.13 (MIB's response); and

(3) paragraph 7.37 (the further consideration period),

may be varied by agreement between the parties.

5.6 Where this Protocol requires the defendant to pay an amount within a fixed number of days the claimant must receive the cheque or the transfer of the amount from the defendant before the end of the period specified in the relevant provision.

Limitation period

5.7 Where compliance with this Protocol is not possible before the expiry of the limitation period the claimant may start proceedings and apply to the court for an order to stay (i.e. suspend) the proceedings while the parties take steps to follow this Protocol. Where proceedings are started in a case to which this paragraph applies the claimant should use the procedure set out under Part 8 in accordance with Practice Direction 8B ("the Stage 3 Procedure").

5.8 Where the parties are then unable to reach a settlement at the end of Stage 2 of this Protocol the claimant must, in order to proceed to Stage 3, apply to lift the stay and request directions in the existing proceedings.

Claimant's reasonable belief of the value of the claim

5.9 Where the claimant reasonably believes that the claim is valued at between £1,000 and the Protocol upper limit, but it subsequently becomes apparent that the value of the claim is less than £1,000, the claimant is entitled to the Stage 1 and (where relevant) the Stage 2 fixed costs.

Claimants without a legal representative

5.10 Where the claimant does not have a legal representative, on receipt of the CNF the defendant must—

- (1) explain the period within which a response is required;
- (2) explain that the claimant may obtain independent legal advice; and
- (3) undertake a search of askCUEPI (website at: www.askCUEPI.com) or an equivalent search system for defendants.

5.10A Where the claimant does not have a legal representative, paragraph 6.3A does not apply.

Discontinuing the Protocol process

5.11 Claims which no longer continue under this Protocol cannot subsequently re-enter the process.

SECTION III – THE STAGES OF THE PROCESS

Stage 1

Completion of the Claim Notification Form

6.1 The claimant must complete and send—

- (1) the CNF to the defendant's insurer; and
- (2) the 'Defendant Only CNF' to the defendant by first class post, except where the defendant is a self-insurer in which case the CNF must be sent to the defendant as insurer and no 'Defendant Only CNF' is required.

6.2 The 'Defendant Only CNF' must be sent at the same time or as soon as practicable after the CNF is sent.

6.3 All boxes in the CNF that are marked as mandatory must be completed before it is sent. The claimant must make a reasonable attempt to complete those boxes that are not marked as mandatory.

6.3A

(1) Before the CNF is sent to the defendant pursuant to paragraph 6.1, the claimant's legal representative must undertake a search of askCUEPI (website at: www.askCUEPI.com) and must enter in the additional information box in the CNF the unique reference number generated by that search.

(2) Where the claimant has sent the CNF without the unique reference number required by subparagraph (1), the defendant may require the claimant to resend the CNF with the reference number inserted. The period in paragraph 6.11 or 6.13 starts from the date the CNF was sent with the unique reference number.

(3) Where the claimant has sent the CNF without the unique reference number required by subparagraph (1) and the defendant does not require the claimant to resend the CNF pursuant to subparagraph (2), the defendant must respond in accordance with paragraph 6.11 or 6.13.

6.4 A claim for vehicle related damages will ordinarily be dealt with outside the provisions of this Protocol under industry agreements between relevant organisations and insurers. Where there is a claim for vehicle related damages the claimant must—

(1) state in the CNF that the claim is being dealt with by a third party; or

(2)

(a) explain in the CNF that the legal representative is dealing with the recovery of these additional amounts; and

(b) attach any relevant invoices and receipts to the CNF or explain when they are likely to be sent to the defendant.

6.5 Where the claimant is a child, this must be noted in the relevant section of the CNF.

6.6 The statement of truth in the CNF must be signed either by the claimant or by the claimant's legal representative where the claimant has authorised the legal representative to do so and the legal representative can produce written evidence of that authorisation. Where the claimant is a child the statement of truth may be signed by the parent or guardian. On the electronically completed CNF the person may enter their name in the signature box to satisfy this requirement.

Rehabilitation

6.7 The claimant must set out details of rehabilitation in the CNF. The parties should at all stages consider the Rehabilitation Code which may be found at: <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/pre-action-protocols>

Failure to complete the Claim Notification Form

6.8

(1) Subject to subparagraph (2) and paragraph 6.3A(2), where the defendant considers that inadequate mandatory information has been provided in the CNF, that shall be a valid reason for the defendant to decide that the claim should no longer continue under this Protocol.

(2) Where the claimant has sent the CNF to the defendant without the unique reference number required by paragraph 6.3A(1), but the defendant does not require the claimant to resend the CNF with the reference number inserted pursuant to paragraph 6.3A(2), the fact that the claimant has not provided this information shall not be a valid reason for the defendant to decide that the claim should no longer continue under this Protocol.

6.9 Rule 45.24(2) and (2A) sets out the sanctions available to the court where it considers that the claimant provided inadequate information in the CNF.

Response from insurer

6.10 The defendant must send to the claimant an electronic acknowledgment the next day after receipt of the CNF.

6.11 The defendant must complete the 'Insurer Response' section of the CNF ("the CNF response") and send it to the claimant within 15 days.

Application for a certificate of recoverable benefits

6.12 The defendant must, before the end of Stage 1, apply to the Compensation Recovery Unit (CRU) for a certificate of recoverable benefits.

Motor Insurers' Bureau

6.13 Where no insurer is identified and the claim falls to be dealt with by the MIB or its agents the CNF response must be completed and sent to the claimant within 30 days.

6.14 Where the MIB passes the claim to an insurer to act on its behalf, that insurer must notify the claimant of that fact. There is no extension to the time period in paragraph 6.13.

Contributory negligence, liability not admitted or failure to respond

6.15 The claim will no longer continue under this Protocol where the defendant, within the period in paragraph 6.11 or 6.13—

(1) makes an admission of liability but alleges contributory negligence (other than in relation to the claimant's admitted failure to wear a seat belt);

(2) does not complete and send the CNF response;

(3) does not admit liability; or

(4) notifies the claimant that the defendant considers that—

(a) there is inadequate mandatory information in the CNF; or

(b) if proceedings were issued, the small claims track would be the normal track for that claim.

6.16 Where the defendant does not admit liability under paragraph 6.15(3), the defendant must give brief reasons in the CNF response.

6.17 Where paragraph 6.15 applies the claim will proceed under the Pre-Action Protocol for Personal Injury Claims starting at paragraph 3.7 of that Protocol (which allows a maximum of three months for the defendant to investigate the claim) except that where paragraph 6.15(4)(a) applies the claim will proceed under paragraph 3.1 of that Protocol.

(For admissions made in the course of the process under this Protocol, see rule 14.1B.)

(Paragraph 2.10A of the Pre-Action Protocol on Personal Injury provides that the CNF can be used as the letter of claim except where the claim no longer continues under this Protocol because the CNF contained inadequate information.)

Stage 1 fixed costs

6.18 Except where the claimant is a child, the defendant must pay the Stage 1 fixed costs in rule 45.18 and, in a soft tissue injury claim, the cost of obtaining the fixed cost medical report and any cost for obtaining medical records in rule 45.19(2A) (collectively the "Stage 1 fixed recoverable costs") where—

(1) liability is admitted; or

(2) liability is admitted and contributory negligence is alleged only in relation to the claimant's admitted failure to wear a seat belt, within 10 days after receiving the Stage 2 Settlement Pack, provided that invoices for the cost of obtaining the medical report and any medical records in a soft tissue injury claim have been included in the Stage 2 Settlement Pack.

6.19 Where the defendant fails to pay the Stage 1 fixed recoverable costs within the period specified in paragraph 6.18 the claimant may give written notice that the claim will no longer continue under this Protocol. Unless the claimant's notice is sent to the defendant within 10 days after the expiry of the period in paragraph 6.18 the claim will continue under this Protocol.

Defendant's account of the accident in soft tissue injury claims

6.19A Where liability is admitted in a soft tissue injury claim, it is expected that in most cases the defendant's account will not be relevant to the procedure in Stage 2. In the limited cases where it is considered appropriate, the defendant may send their account to the claimant electronically at the same time as the CNF response. The defendant's insurer must have the defendant's written authority to provide this account and, in sending it, is certifying that it has that authority. For the purposes of this paragraph, the defendant's written authority may be provided electronically.

6.19B The procedure in paragraph 6.19A applies to the MIB, save that the MIB is certifying that the defendant user of the vehicle has provided such authority.

Stage 2

Medical Reports – all claims

7.1 The claimant should obtain a medical report, if one has not already been obtained.

7.2 It is expected that most claimants will obtain a medical report from one expert, but additional medical reports may be obtained from other experts where the injuries require reports from more than one medical discipline.

7.3 The claimant must check the factual accuracy of any medical report before it is sent to the defendant. There will be no further opportunity for the claimant to challenge the factual accuracy of a medical report after it has been sent to the defendant.

7.4

(1) The medical expert should identify within the report—

(a) the medical records that have been reviewed; and

(b) the medical records considered relevant to the claim.

(2) The claimant must disclose with any medical report sent to the defendant any medical records which the expert considers relevant.

7.5 In most claims with a value of no more than £10,000, it is expected that the medical expert will not need to see any medical records.

7.6 Any relevant photograph(s) of the claimant's injuries upon which the claimant intends to rely should also be disclosed with the medical report.

7.7 Where the claimant was not wearing a seat belt the medical report must contain sufficient information to enable the defendant to calculate the appropriate reduction of damages in accordance with principles set out in existing case law.

All claims other than soft tissue injury claims – subsequent medical reports

7.8 A subsequent medical report from an expert who has already reported must be justified. A report may be justified where—

(1) the first medical report recommends that further time is required before a prognosis of the claimant's injuries can be determined; or

(2) the claimant is receiving continuing treatment; or

(3) the claimant has not recovered as expected in the original prognosis.

Soft tissue injury claims – medical reports

7.8A In addition to paragraphs 7.1 to 7.7, and subject to paragraph 7.8B, in a soft tissue injury claim—

(1) the first report must be a fixed cost medical report from an accredited medical expert selected for the claim via the MedCo Portal (website at: www.medco.org.uk); and

(2) where the defendant provides a different account under paragraph 6.19A, the claimant must provide this as part of the instructions to the medical expert for the sole purpose of asking the expert to comment on the impact, if any, on diagnosis and prognosis if—

(a) the claimant's account is found to be true; or

(b) the defendant's account is found to be true.

7.8B In a soft tissue injury claim—

(1) it is expected that only one medical report will be required;

(2) a further medical report, whether from the first expert instructed or from an expert in another discipline, will only be justified where—

(a) it is recommended in the first expert's report; and

(b) that report has first been disclosed to the defendant; and

(3) where the claimant obtains more than one medical report, the first report must be a fixed cost medical report from an accredited medical expert selected via the MedCo Portal and any further report from an expert in any of the following disciplines must also be a fixed cost medical report—

(a) Consultant Orthopaedic Surgeon;

(b) Consultant in Accident and Emergency Medicine;

(c) General Practitioner registered with the General Medical Council;

(d) Physiotherapist registered with the Health and Care Professions Council.

Non-medical expert reports

7.9

(1) In most cases, a report from a non-medical expert will not be required, but a report may be obtained where it is reasonably required to value the claim.

(2) Paragraph 7.3 applies to non-medical expert reports as it applies to expert medical reports.

Specialist legal advice

7.10 In most cases under this Protocol, it is expected that the claimant's legal representative will be able to value the claim. In some cases with a value of more than £10,000 (excluding vehicle related damages), an additional advice from a specialist solicitor or from counsel may be justified where it is reasonably required to value the claim.

Witness statements

7.11 In most cases, witness statements, whether from the claimant or otherwise, will not be, required. One or more statements may, however, be provided where reasonably required to value the claim.

Stay of process

7.12 Where the claimant needs to obtain a subsequent expert medical report or a non-medical report, the parties should agree to stay the process in this Protocol for a suitable period. The claimant may then request an interim payment in accordance with paragraphs 7.13 to 7.16.

Request for an interim payment

7.13 Where the claimant requests an interim payment of £1,000, the defendant should make an interim payment to the claimant in accordance with paragraph 7.18.

7.14 The claimant must send to the defendant the Interim Settlement Pack and initial medical report(s) (including any recommendation that a subsequent medical report is justified) in order to request the interim payment.

7.15 The claimant must also send evidence of pecuniary losses and disbursements. This will assist the defendant in considering whether to make an offer to settle the claim.

7.16 Where an interim payment of more than £1,000 is requested the claimant must specify in the Interim Settlement Pack the amount requested, the heads of damage which are the subject of the request and the reasons for the request.

7.17 Unless the parties agree otherwise—

(a) the interim payment of £1,000 is only in relation to general damages; and

(b) where more than £1,000 is requested by the claimant, the amount in excess of £1,000 is only in relation to pecuniary losses.

Interim payment of £1,000

7.18 Where paragraph 7.13 applies the defendant must pay £1,000 within 10 days of receiving the Interim Settlement Pack.

Interim payment of more than £1,000

7.19 Subject to paragraphs 7.24 and 7.25, where the claimant has requested an interim payment of more than £1,000 the defendant must pay—

(1) the full amount requested less any deductible amount which is payable to the CRU;

(2) the amount of £1,000; or

(3) some other amount of more than £1,000 but less than the amount requested by the claimant, within 15 days of receiving the Interim Settlement Pack.

7.20 Where a payment is made under paragraphs 7.19(2) or (3) the defendant must briefly explain in the Interim Settlement Pack why the full amount requested by the claimant is not agreed.

7.21 Where the claim is valued at more than £10,000 the claimant may use the procedure at paragraphs 7.13 to 7.20 to request more than one interim payment.

7.22 Nothing in this Protocol is intended to affect the provisions contained in the Rehabilitation Code.

Vehicle related damages – interim payments

7.23 Claims for vehicle related damages will ordinarily be dealt with outside the provisions of this Protocol under industry agreements between relevant organisations and insurers. However, where the claimant has paid for the vehicle related damages, the sum may be included in a request for an interim payment under paragraph 7.16.

Application for a certificate of recoverable benefits

7.24 Paragraph 7.25 applies where the defendant agrees to make a payment in accordance with paragraph 7.19(1) or (3) but does not yet have a certificate of recoverable benefits or does not have one that will remain in force for at least 10 days from the date of receiving the Interim Settlement Pack.

7.25 The defendant should apply for a certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must make the interim payment under paragraph 7.19(1) or (3) no more than 30 days from the date of receiving the Interim Settlement Pack.

Request for an interim payment where the claimant is a child

7.26 The interim payment provisions in this Protocol do not apply where the claimant is a child. Where the claimant is a child and an interim payment is reasonably required proceedings must be

started under Part 7 of the CPR and an application for an interim payment can be made within those proceedings.

(Rule 21.10 provides that no payment, which relates to a claim by a child, is valid without the approval of the court.)

7.27 Paragraph 7.26 does not prevent a defendant from making a payment direct to a treatment provider.

Interim payment – supplementary provisions

7.28 Where the defendant does not comply with paragraphs 7.18 or 7.19 the claimant may start proceedings under Part 7 of the CPR and apply to the court for an interim payment in those proceedings.

7.29 Where the defendant does comply with paragraph 7.19(2) or (3) but the claimant is not content with the amount paid, the claimant may still start proceedings. However, the court will order the defendant to pay no more than the Stage 2 fixed costs where the court awards an interim payment of no more than the amount offered by the defendant or the court makes no award.

7.30 Where paragraph 7.28 or 7.29 applies the claimant must give notice to the defendant that the claim will no longer continue under this Protocol. Unless the claimant's notice is sent to the defendant within 10 days after the expiry of the period in paragraphs 7.18, 7.19 or 7.25 as appropriate, the claim will continue under this Protocol.

Costs of expert medical and non-medical reports and specialist legal advice obtained

7.31

(1) Where the claimant obtains more than one expert report or an advice from a specialist solicitor or counsel—

(a) the defendant at the end of Stage 2 may refuse to pay; or

(b) the court at Stage 3 may refuse to allow,

the costs of any report or advice not reasonably required.

(2) Therefore, where the claimant obtains more than one expert report or obtains an advice from a specialist solicitor or counsel—

(a) the claimant should explain in the Stage 2 Settlement Pack why they obtained a further report or such advice; and

(b) if relevant, the defendant should in the Stage 2 Settlement Pack identify the report or reports or advice for which they will not pay and explain why they will not pay for that report or reports or advice.

Submitting the Stage 2 Settlement Pack to the defendant

7.32 The Stage 2 Settlement Pack must comprise—

(1) the Stage 2 Settlement Pack Form;

(2) a medical report or reports;

(3) evidence of pecuniary losses;

(4) evidence of disbursements (for example the cost of any medical report);

(4A) in a soft tissue injury claim, the invoice for the cost of obtaining the fixed cost medical report and any invoice for the cost of obtaining medical records;

(5) any non-medical expert report;

(6) any medical records/photographs served with medical reports; and

(7) any witness statements.

7.32A In a soft tissue injury claim, the Stage 2 Settlement Pack is of no effect unless the medical report is a fixed cost medical report. Where the claimant includes more than one medical report, the first report obtained must be a fixed cost medical report from an accredited medical expert selected via the MedCo Portal and any further report from an expert in any of the disciplines listed in paragraph 7.8B(3)(a) to (d) must also be a fixed cost medical report.

7.33 The claimant should send the Stage 2 Settlement Pack to the defendant within 15 days of the claimant approving —

(1) the final medical report and agreeing to rely on the prognosis in that report; or

(2) any non-medical expert report,

whichever is later.

7.34 Where 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 be 0 per cent) in the amount of damages.

Consideration of claim

7.35 There is a 35 day period for consideration of the Stage 2 Settlement Pack by the defendant ("the total consideration period"). This comprises a period of up to 15 days for the defendant to consider the Stage 2 Settlement Pack ("the initial consideration period") and make an offer. The remainder of the total consideration period ("the negotiation period") is for any further negotiation between the parties.

7.36 The total consideration period can be extended by the parties agreeing to extend either the initial consideration period or the negotiation period or both.

7.37 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 7.36), 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 ("the further consideration period") no further offers can be made by either party.

Defendant accepts offer or makes counter-offer

7.38 Within the initial consideration period (or any extension agreed under paragraph 7.36) the defendant must either accept the offer made by the claimant on the Stage 2 Settlement Pack Form or make a counter-offer using that form.

7.39 The claim will no longer continue under this Protocol where the defendant gives notice to the claimant within the initial consideration period (or any extension agreed under paragraph 7.36) that the defendant—

(a) considers that, if proceedings were started, the small claims track would be the normal track for that claim; or

(b) withdraws the admission of causation as defined in paragraph

1.1(1)(c).

7.40 Where the defendant does not respond within the initial consideration period (or any extension agreed under paragraph 7.36), the claim will no longer continue under this Protocol and the claimant may start proceedings under Part 7 of the CPR.

7.41 When making a counter-offer the defendant must propose an amount for each head of damage and may, in addition, make an offer that is higher than the total of the amounts proposed for all heads of damage. The defendant must also explain in the counter-offer why a particular head of damage has been reduced. The explanation will assist the claimant when negotiating a settlement and will allow both parties to focus on those areas of the claim that remain in dispute.

7.42 Where the defendant has obtained a certificate of recoverable benefits from the CRU the counter-offer must state the name and amount of any deductible amount.

7.43 On receipt of a counter-offer from the defendant the claimant has until the end of the total consideration period or the further consideration period to accept or decline the counter offer.

7.44 Any offer to settle made at any stage by either party will automatically include, and cannot exclude—

(1) the Stage 1 and Stage 2 fixed costs in rule 45.18;

(2) an agreement in principle to pay a sum equal to the Type C fixed costs of an additional advice on quantum of damages where such advice is justified under paragraph 7.10;

(3) an agreement in principle to pay relevant disbursements allowed in accordance with rule 45.19;

(3A) in a soft tissue injury claim, the cost of obtaining a medical report in rule 45.19(2A)(a); or

(4) where applicable, any success fee in accordance with rule 45.31(1) (as it was in force immediately before 1 April 2013).

7.44A In a soft tissue injury claim, an offer to settle made by either party before a fixed cost medical report has been obtained and disclosed will have no adverse costs consequences until after the report has been disclosed.

7.45 Where there is a dispute about whether an additional advice on quantum of damages is justified or about the amount or validity of any disbursement, the parties may use the procedure set out in rule 45.29.

(Rule 45.29 provides that where the parties to a dispute have a written agreement on all issues but have failed to agree the amount of the costs, they may start proceedings under that rule so that the court can determine the amount of those costs.)

Withdrawal of offer after the consideration period

7.46 Where a party withdraws an offer made in the Stage 2 Settlement Pack Form after the total consideration period or further consideration period, the claim will no longer continue under this Protocol and the claimant may start proceedings under Part 7 of the CPR.

Settlement

7.47 Except where the claimant is a child or paragraphs 7.49 and 7.50 apply, the defendant must pay—

(1) the agreed damages less any—

(a) deductible amount which is payable to the CRU; and

(b) previous interim payment;

(2) any unpaid Stage 1 fixed costs in rule 45.18;

(3) the Stage 2 fixed costs in rule 45.18;

(4) where an additional advice on quantum of damages is justified under paragraph 7.10, a sum equal to the Type C fixed costs to cover the cost of that advice;

(5) the relevant disbursements allowed in accordance with rule 45.19 including any disbursements fixed under rule 45.19(2A); and

(6) where applicable, any success fee in accordance with rule 45.31(1) (as it was in force immediately before 1 April 2013),

within 10 days of the parties agreeing a settlement.

(Rule 21.10 provides that the approval of the court is required where, before proceedings are started, a claim is made by a child and a settlement is reached. The provisions in paragraph 6.1 of Practice Direction 8B set out what must be filed with the court when an application is made to approve a settlement.)

7.48 Except where paragraph 7.51 applies, where the parties agree a settlement for a greater sum than the defendant had offered during the total consideration period or further consideration period and after the Court Proceedings Pack has been sent to the defendant but before proceedings are issued under Stage 3—

(1) paragraph 7.47 applies; and

(2) the defendant must also pay the fixed late settlement costs in rule 45.23A.

[Back to top](#)

Application for certificate of recoverable benefits

7.49 Paragraph 7.50 applies where, at the date of the acceptance of an offer in the Stage 2 Settlement Pack, the defendant does not have a certificate of recoverable benefits that will remain in force for at least 10 days.

7.50 The defendant should apply for a fresh certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.47 within 30 days of the end of the relevant period in paragraphs 7.35 to 7.37.

Vehicle related damages - additional damages

7.51 Paragraph 7.52 applies where at the end of the relevant period in paragraphs 7.35 to 7.37 the claim (“the original damages”) has not settled and there remain vehicle related damages (“the additional damages”) being dealt with by a third party separate from the claim. The original damages include all elements of the claim in the existing Stage 2 Settlement Pack.

7.52 Where paragraph 7.51 applies the claimant must, in relation to the additional damages—

(1) notify the defendant that this separate claim is being considered;

(2) obtain all relevant information from the third party; and

(3) make a separate offer by amending the Stage 2 Settlement Pack Form.

7.53 Within 15 days of the claimant sending the offer under paragraph 7.52(3), the defendant must either agree the offer made by the claimant or make a counter-offer.

7.54 The counter offer must explain why a particular head of damage has been reduced to assist the claimant when negotiating a settlement and to allow both parties to focus on those areas of the claim that remain in dispute.

Original damages and additional damages are agreed

7.55 Where the original damages and additional damages are agreed within the period in paragraph 7.53 the defendant must pay the claimant in accordance with paragraph 7.62.

7.56 Where the parties agree a settlement for a greater sum than the Defendant had offered during the period in paragraph 7.53 but after the Court Proceedings Pack has been sent to the Defendant and before proceedings are issued under Stage 3,

(1) paragraph 7.55 applies; and

(2) the defendant must also pay the fixed late settlement costs in rule 45.23A.

Original damages are not agreed, additional damages are agreed

7.57 Paragraph 7.58 applies where—

(1) the original damages are not agreed; but

(2) the additional damages are agreed.

7.58 Where paragraph 7.57 applies—

(1) the defendant must pay the agreed amount of the additional damages within 10 days of agreeing those damages, and

(2) the claimant must continue with the provisions in paragraphs 7.64 to 7.75 of this Protocol.

Original damages are agreed, additional damages are not agreed

7.59 Paragraph 7.60 applies where—

(1) the original damages are agreed; but

(2) the additional damages are not agreed.

7.60 Where paragraph 7.59 applies—

(1) the defendant must, in relation to the original damages, pay the claimant in accordance with paragraph 7.62; and

(2) the claimant may start proceedings under Part 7 of the CPR in relation to the additional damages.

Original damages and additional damages are not agreed

7.61 Paragraphs 7.70 to 7.75 apply where the original and additional damages are not agreed.

Settlement after claim for additional damages

7.62 Except where the claimant is a child or paragraph 7.64 applies, the defendant must pay—

(1) the agreed damages less any—

(a) deductible amount which is payable to the CRU; and

(b) previous interim payment;

(2) any unpaid Stage 1 fixed costs in rule 45.18;

(3) the Stage 2 fixed costs in rule 45.18;

(4) where an additional advice on quantum of damages is justified under paragraph 7.10, a sum equal to the Type C fixed costs to cover the costs of that advice;

(5) the relevant disbursements allowed in accordance with rule 45.19 including any disbursements fixed under rule 45.19(2A); and

(6) where applicable, any success fee in accordance with rule 45.31 (as it was in force immediately before 1 April 2013) for Stage 1 and Stage 2 fixed costs, within 10 days of agreeing to pay the damages.

(Rule 21.10 provides that the approval of the court is required where, before proceedings are started, a claim is made by a child and a settlement is reached. The provisions in paragraph 6.1 of Practice Direction 8B set out what must be filed with the court when an application is made to approve a settlement.)

Application for certificate of recoverable benefits

7.63 Where at the date on which damages are agreed the defendant does not have a certificate of recoverable benefits that remains in force for at least 10 days the defendant should apply for a fresh certificate as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.62 within 30 days of the date on which damages are agreed.

Failure to reach agreement - general

7.64 Where the parties do not reach an agreement on

(1) the original damages within the periods specified in paragraphs 7.35 to 7.37; or

(2) the original damages and, where relevant, the additional damages under paragraph 7.51,

the claimant must send to the defendant the Court Proceedings Pack (Part A and Part B) Form which must contain—

(a) in Part A, the final schedule of the claimant's losses and the defendant's responses comprising only the figures specified in subparagraphs (1) and (2) above, together with supporting comments and evidence from both parties on any disputed heads of damage; and

(b) in Part B, the final offer and counter offer from the Stage 2 Settlement Pack Form and, where relevant, the offer and any final counter offer made under paragraph 7.53.

7.65 The deductible amount should only be deducted from the personal injury damages.

7.66 Comments in the Court Proceedings Pack (Part A) Form must not raise anything that has not been raised in the Stage 2 Settlement Pack Form.

7.67 The defendant should then check that the Court Proceedings Pack (Part A and Part B) Form complies with paragraphs 7.64 to 7.66. If the defendant considers that the Court Proceedings Pack (Part A and Part B) Form does not comply it must be returned to the claimant within 5 days with an explanation as to why it does not comply.

7.68 Where the defendant intends to nominate a legal representative to accept service the name and address of the legal representative should be provided in the Court Proceedings Pack (Part A) Form.

7.69 Where the defendant fails to return the Court Proceedings Pack (Part A and Part B) Form within the period in paragraph 7.67, the claimant should assume that the defendant has no further comment to make.

Non-settlement payment by the defendant at the end of Stage 2

7.70 Except where the claimant is a child the defendant must pay to the claimant—

(1) the final offer of damages made by the defendant in the Court Proceedings Pack (Part A and Part B) Form less any—

(a) deductible amount which is payable to the CRU; and

(b) previous interim payment;

(2) any unpaid Stage 1 fixed costs in rule 45.18;

(3) the Stage 2 fixed costs in rule 45.18; and

(4) the disbursements in rule 45.19(2) that have been agreed including any disbursements fixed under rule 45.19(2A).

7.71 Where the amount of a disbursement is not agreed the defendant must pay such amount for the disbursement as the defendant considers reasonable.

7.72 Subject to paragraphs 7.73 and 7.74 the defendant must pay the amounts in paragraph 7.70 and 7.71 within 15 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.

7.73 Paragraph 7.74 applies where the defendant is required to make the payments in paragraph 7.70 but does not have a certificate of recoverable benefits that remains in force for at least 10 days.

7.74 The defendant should apply for a fresh certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.70 within 30 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.

7.75 Where the defendant does not comply with paragraphs 7.72 or 7.74 the claimant may give written notice that the claim will no longer continue under this Protocol and start proceedings under Part 7 of the CPR.

General provisions

7.76 Where the claimant gives notice to the defendant that the claim is unsuitable for this Protocol (for example, because there are complex issues of fact or law) then the claim will no longer continue under this Protocol. However, where the court considers that the claimant acted unreasonably in giving such notice it will award no more than the fixed costs in rule 45.18.

Stage 3

Stage 3 Procedure

8.1 The Stage 3 Procedure is set out in Practice Direction 8B.

Footnotes

1. See –

Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677)

Lifting Operations and Lifting Equipment Regulations 1998 (S.I. 1998/2307)

Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242)

Manual Handling Operations Regulations 1992 (S.I. 1992/2793)

Personal Protective Equipment at Work Regulations 1992 (S.I. 1992/2966)

Provision and Use of Work Equipment Regulations 1998 (S.I. 1998/2306)

Work at Height Regulations 2005 (S.I. 2005/735)

Workplace (Health, Safety and Welfare) Regulations 1992 (S.I. 1992/3004)

The Construction (Design and Management) Regulations 2007 (S.I. 2007/320)