

Frequently asked questions

Low Value Personal Injury Claims in Road Traffic Accidents

Stage 2

Medical Reports

Q35. Can insurers question the medical report?

A35. The defendant/insurer cannot question the quality/expertise of the medical expert selected by the claimant. Nor may they put questions to the claimant's expert.

Q36. When do the medical reports need to be disclosed?

A36. Medical reports need to be attached to the Stage 2 Settlement Pack or the Interim Settlement Pack (where an interim payment is requested) before they are sent to the insurer.

Q37. How many medical reports are required before treatment can commence?

A37. There is nothing in the process which prevents rehabilitation/treatment taking place as it does now. However, the medical reports allowed are those as specified in the process. Medical reports obtained outside this process rules will be payable at the discretion of the defendant at the end of stage 2 where settlement is reached or at the discretion of the court where the claim proceeds to Stage 3.

Q38. Can the insurer request GP medical records?

A38. It is not expected that every claim will require medical reports. However, where there is a need this will be for the medical expert to identify on the medical report. The medical records are then recoverable as a disbursement.

Q39. Is the claimant solicitor required to check the medical report?

A39. The claimant solicitor is under a duty to check the factual accuracy of the medical report. They are not held to account for any medical opinion within the report.

Q40. Can the claimant question the validity of the medical opinion?

A40. The claimant must check the medical report for factual errors. Where they do not accept the medical opinion a further medical report may be obtained. However, there is no provision in the Protocol for the disbursement costs of a second report in these circumstances to be paid by the defendant/insurer. This will be at the discretion of the insurer or the court.

Q41. What happens where the claimant is not content with the report obtained from the medical expert? Can they obtain another?

A41. There are a specific number of reports the process provides for, and any obtained outside this are payable at the discretion of the insurer if the claim settles pre-proceedings or at the discretion of the court if the claim proceeds to a Stage 3 hearing. Reasons for obtaining reports outside the process will need to be set out in the Stage 2 Settlement Pack Form.

Q42. What can the insurer do if they believe the medical evidence is inadequate for making an offer?

A42. Where inadequate information is available on the medical report to enable an offer to be made the insurer can refuse to respond within the time period causing the claim to exit the process. The claimant may then start proceedings under Part 7 of the Civil Procedure Rules. However, by doing this the insurer is at risk of paying higher costs at large or predictable costs.

Q43. Cases currently settle on a recommendation that the injury will have healed after 12 months. Should doctors now be asked to amend their report to recommend that if the claimant is not better after 12 months a further report be obtained?

A43. There is no intention to change the current practice in this regard.

Q44. Are parties required to nominate a medical expert as currently?

A44. No. During the development of the process the stakeholders were of the view that the majority of parties now use the Medical Reporting Organisations Agreement and this works effectively. It was therefore not considered necessary for parties to agree medical experts.

Q45. Will the medical report remain a privilege document until disclosure under the new process?

A45. As now the claimant solicitor will handle the medical report. The medical report will only need to be disclosed when the claimant solicitor sends the Stage 2 Settlement Pack to the defendant.

Interim payments

Q46. Will interim payments for child claims be permitted?

A46. The interim payments provisions in the process do not apply to child claim. Where an interim payment is reasonably required proceedings must be started under Part 7 of the Civil Procedure Rules and an application for an interim payment can be made within those proceedings. The intention has always been to create a streamlined and quick process and because Civil Procedure Rule 21.10 provides that no payment which relates to child is valid without court approval, it was considered too complicated for the claim to exit and re-enter the process. This may also have caused delay in the claimant receiving their compensation. However, this does not prevent the defendant from making a payment direct to a treatment provider.

Q47. Where will there be a record that an interim payment has been made?

A47. This will be recorded on the Interim Settlement Pack.

Q48. Can you opt out of receiving the end of Stage 2 interim payment?

A48. No. The insurer will at their own risk automatically pay the end of Stage 2 interim payment of their final offer.

Denial of causation or fraud raised

Q49. Does the process provide for the defendant to only deny causation during a specified time period in Stage 2?

A49. Yes. Once the medical report has been received and the claimant solicitor has prepared the Stage 2 Settlement Pack and sent to the defendant. The insurer then has 15 days in which to accept the offer or make a counter-offer and raise causation. This will make the claim exit and no fixed costs for Stage 2 will be payable.

Q50. When can fraud be raised?

A50. The current provision in the Civil Procedure Rules will apply to fraud and it can be alleged at any point in the process.

Q51. If fraud can be alleged at any time, this means that the issue of liability can be re-opened and that the initial investigatory work that the process was supposed to have removed, still needs to be completed, otherwise the claimant solicitor will be at risk of being found negligent by the SRA. For example, if witness statements are not taken to prove the accident, it may later not be possible to do so.

A51. The Ministry are of the view that you cannot prevent a defendant raising the issue of fraud at any time. We have discussed the process generally with the Solicitors Regulatory Authority who have not raised any concerns about the lack of provision for initial investigations.

Q52. Where an admission is withdrawn, must the defendant/insurer provide reasons and background to the decision?

A52. Insurers will not specifically be required to disclose any additional information where an admission is later withdrawn. This is line with the process that currently exists.

Vehicle Related damages

Q53. How are vehicle related damages defined in the new process?

A53. The term 'Vehicle related damages' includes:

- The pre-accident value of the vehicle;
- Vehicle repair;
- Vehicle insurance; and
- Vehicle hire.

Q54. Does the new process apply if personal injury and vehicle related damages are over 10K?

A54. The claim can fall into the new process but the personal injury (defined as compensation for pain, suffering and loss of amenity) element must be valued above £1,000 and below £10,000.

Q55. Can vehicle related damages fall within the process?

A55. Although vehicle related damages are excluded for the purposes of valuing the claim, they can be recovered as an element of special damages within the process. Vehicle related damages can form part of the claim from the beginning where the claimant solicitor has filled in the relevant sections of the Claim Notification Form.

However, where the claimant solicitor has not included the vehicle related damages at the start of the claim and settlement cannot be reached at the end of Stage 2 and there is a continuing claim for vehicle related damages, the claimant must arrange to bring these elements together into one set of court proceedings.

The claimant solicitor must notify the defendant that this separate claim is being considered and obtain all the relevant information from the third party and make a separate offer by amending the Stage 2 Settlement Pack. The defendant/insurer then has 15 days from the time the claimant sent the offer to agree the offer or make a counter offer.

Q56. How will the process accommodate a claim with very high special damages (potentially multi-track)?

A56. If the claimant solicitor chooses to bring the claim for vehicle related damages into the process, the fixed costs associated with the process will apply. However, where the personal injury damages are not settled by the end of the consideration and negotiation period, the vehicle related damages must be brought together with the personal injury claim for the purpose of Stage 3, unless the whole claim is too complex to be dealt with under the Stage 3 Procedure. A decision not to proceed through the Stage 3 Procedure is at the claimant's risk as to costs if the court decides that the Stage 3 Procedure was appropriate.

Q57. Does a vehicle related damage claim come out of the process where all personal injury elements of the claim have been agreed?

A57. Where the personal injury damages are agreed within the 35 day time period (or any extended period) but the vehicle related damages are not agreed, the defendant must pay the amounts in relation to the personal injury within 10 days of the end of the period in which they were agreed. The claimant may then start proceedings under Part 7 of the Civil Procedure Rules in relation to the vehicle related damages.

Q58. What happens where the personal injury damages are not agreed at the end of the consideration and negotiation period but agreed once the vehicle related damages are brought into the claim?

A58. Where the parties cannot reach agreement on the personal injury damages at the end of the 35 day period (or any extension agreed) and once the vehicle related damages are brought in as one claim for the purposes of court proceedings, agreement is reached on the personal injury damages. The defendant will be required to pay the personal injury damages within 10 days of the agreement to pay the damages. The payment will also include the Stage 2 fixed costs and success fee for Stage 1 and 2, and the relevant disbursements. The claimant may then start proceedings under Part 7 of the Civil Procedure Rules in relation to the vehicle related damages.

Q59. What happens where the personal injury damages are not agreed but the vehicle related damages are agreed?

A59. Where the parties cannot reach agreement on the personal injury damages at the end of the 35 day period (or any extension agreed) and once the vehicle related damages are brought in as one claim for the purposes of court proceedings agreement is reached on the vehicle related damages. The defendant/insurer is required to pay the vehicle related damages within 10 days of agreeing those damages and the claimant solicitor will need to proceed to prepare for the Stage 3 procedure by following the steps for preparing the Court Proceedings Pack.

Q60. What happens where the personal injury and vehicle related damages are agreed?

A60. Where the parties cannot reach agreement on the personal injury damages at the end of the 35 day period (or any extension agreed) and once the vehicle related damages are brought in as one claim for the purposes of court proceedings agreement is reached on the personal injury and vehicle related damages. The defendant is required to pay the damages, Stage 2 fixed costs and success fee for Stage 1 and 2 and the relevant disbursements.

Q61. What happens where personal injury damages and vehicle related damages are not agreed?

A61. Where the parties cannot reach agreement on the personal injury damages at the end of the 35 day period (or any extension agreed) and once the vehicle related damages are brought in as one claim for the purposes of court proceedings agreement is not reached on the personal injury and vehicle related damages. The claimant solicitor will need to proceed to prepare for the Stage 3 Procedure by following the steps for preparing the Court Proceedings Pack.

Q62. Are separate fixed costs payable for vehicle related damages on top of the agreed fixed costs for the process?

A62. If the claim enters the process as one claim (i.e. both the personal injury and vehicle related damages) there will be no further fixed costs payable.

Q63. Is an interim payment for vehicle related damages allowed?

A63. Generally, vehicle related damages are dealt with separately under industry agreement between relevant organisations and insurers. In those instances interim payments for vehicle related damage will be outside the process. However, where vehicle related damage is included at the start as part of the process a request for an interim payment can be made in two instances:

- in the Interim Settlement Pack – this will only be where there is an interim payment request for more than a £1,000. The £1,000 will need to relate to general damages any request above this amount will be for special damages.
- In the Court Proceedings Pack at the end of Stage 2.

Q64. At a local level will businesses need to house two teams one to deal with the personal injury element of the claim and the other to deal with vehicle related damages?

A64. The process does not alter how existing practices work in relation to vehicle related damages. If currently the business has two teams dealing with these two elements of the claim the process will not prevent that. This is a matter for local discretion.

Q65. What happens if the vehicle related damages part of the claim is complex?

A65. The claimant will need to give notice to the defendant that the claim is unsuitable for the process because there is a complex issue of fact or law in relation to vehicle related damages. The claim will then exit the process. However, if the court determines that the claimant acted unreasonably in forcing the claim out of the process then the costs awarded will be no more than under the new process.

General

Q66. When does the 20 days for consideration and negotiation start?

A66. The 20 days for negotiation starts from the end of the 15 day period for consideration or any extended period agreed between the parties.

Q67. If the claimant exits the process unreasonably, what is considered unreasonable?

A67. This will be at the discretion of the court to interpret 'reasonableness'. There will therefore be no guidance on what is considered 'reasonable.'

Q68. What happens if the insurer does not pay damages and costs at the end of Stage 2?

A68. Where there is dispute about the amount or validity of any disbursement the parties may use the procedure set out in Civil Procedure Rule 44.12A. This rule 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.

Q69. If the claimant has BTE insurance, can a success fee be claimed?

A69. There is no intention to change the law in this regard in respect of the new process. So the current arrangements regarding recoverability of success fee in these circumstances will continue to apply under the new process.

Q70. What happens if the insurer does not have a valid certificate of recoverable benefit?

A70. The defendant should apply for a certificate as soon as possible, notify the claimant that it has done so and must make the interim payment no more than 30 days from the date of receiving the Interim Settlement Pack or Court Proceedings Pack.

Q71. What happens if quantum cannot be agreed by the end of stage 2?

A71. Where quantum can not be agreed, an application will be made to the court to determine quantum using a new Stage 3 Procedure.