

Frequently asked questions

Low Value Personal Injury Claims in Road Traffic Accidents

Stage 1

General

Q1. When will the Rules be drafted and ready?

A1. The Civil Procedure Rule Committee approved the pre-action protocol, practice direction and Rules on the 12th February. The draft rules etc have been circulated to APIL, MASS, ABI, FOIL, MIB, and the Law Society to circulate to members. We expect to lay the Statutory Instrument at the beginning of March.

Q2. When will the new process be implemented?

A2. The new process will be implemented on the 30th April 2010.

Q3. Will judges have training for the new process?

A3. There will be no formal training for judges. However, the Association of District Judges conference, on the 26th March will cover the process in detail.

Q4. When will there be a review of the fixed costs set for this process?

A4. When the industry agreement was reached on the fixed costs, neither the claimant or defendant representative organisations were minded to set a timetable for review on the grounds that a period of certainty was necessary. It was agreed that once the process was implemented there should be separate discussions on how and when the costs should be reviewed.

Q5. What will the value of the claim be based on?

A5. The value of the claim will be based on the level of general damages which includes pain suffering and loss of amenities and special damages excluding vehicle related damages. However, the value of the claim will need to include a minimum of £1,000 pain suffering and loss of amenities to fall into this process. This is to preserve the small claims limit.

Q6. What types of claims will the new process apply to?

A6. The new process will apply where:

- a claim for damages arises from a road traffic accident occurring on or after 30th April 2010 in England and Wales;
- the claim includes damages in respect of personal injury i.e. general damages;
- the claimant values the claim at not more than £10,000 on a full liability basis including special damages but excluding interest and vehicle related damages; and
- there is a reasonable expectation that the claim is valued above £1,000 (pain suffering and loss of amenities).

Q7. What types of claims will be excluded under the new process?

A7. The new process will not apply to a claim:

- where damages are less than £1,000 (pain suffering and loss of amenities);
- Employer Liability and Public Liability claims;
- in respect of a breach of duty owed to a road user by a person who is not a road user;
- made to the Motor Insurers Bureau (MIB) pursuant to the Untraced Drivers' Agreement 2003 or any subsequent or supplementary Untraced Drivers' Agreements;
- where the claimant or defendant is deceased or a protected party;
- where the claimant is bankrupt; or
- where either the claimant's or the defendant's vehicle is not registered in the United Kingdom.

Q8. What happens if the value of the claim is initially assessed at over £1000 but later it becomes clear that the value is lower than £1000.

A8. Where the claimant reasonably believes that the claim is valued at a minimum of £1,000 (pain suffering and loss of amenities) it will enter the process. Where it later becomes apparent that it is valued at less than £1,000, the defendant will need to give notice that it will exit and Stage 1 costs and (where relevant) Stage 2 costs will be payable.

Q9. How do you identify the insurer?

A9. As now the insurer can be identified from the MID system which enables identification through the vehicle registration number. The MID system also has specific provision for fleet vehicles. Access to MID will also be available through the IT Portal.

Q10. Will the claim remain in the process if there are multi-defendants?

A10. If there is more than one defendant the claim cannot proceed under the new process because it would be too complex. The process allows only one defendant to admit liability.

Q11. Will there be a definition of RTA in the protocol?

A11. The Response paper '*Case track limits and the claims process for personal injury claims*' provided that the process will be limited to RTA personal injury claims valued between £1,000 to £10,000 and excludes Employers Liability and Public Liability claims. To enable this a new RTA definition is provided for in the Protocol which provides that 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 provisions as defined by section 53 of the Health and Safety at Work etc Act 1974.

Q12. Will the process apply to non-UK registered vehicles involved in an accident in the United Kingdom?

A12. No. Where the driver of a UK registered vehicle is involved in an accident in the UK which is caused by the driver of a foreign registered vehicle, a claim by the driver of the UK registered vehicle is governed by rules under the Green Card System – a United Nations system overseen by the Economic Commission for Europe and recognised in over 40 countries. These rules cannot be varied and contain longer periods than in the new process. These time periods are necessary as it can be, for example, extremely difficult for an overseas insurer to establish the policy holder and ensure correct information such as registration numbers of the foreign registered vehicle are correctly provided. As the intention of the new process has always been that it should be as simple and streamlined as possible to enable the claimant to receive compensation as quickly as possible and in order to avoid confusion to claimants, as a well established and familiar Green Card System already exists, these types of claims are excluded from the new process.

Q13. When does the 15 day period start?

A13. The 15 day period starts the first business day after the CNF was sent to the insurer.

Q14. Why is there not a time period for the submission of the CNF?

A14. Claimant solicitors will often have to obtain information to complete the CNF from different sources. It is therefore not considered reasonable to place a time period at this stage of the process.

Q15. What happens if the wrong insurer is identified either through MID or otherwise, and consequently the CNF is sent to the wrong insurer?

A15. The Protocol will provide for resubmission where the wrong insurer is identified and the 15 day period for admission of liability will begin from the date of resubmission. This is the only instance in which resubmission will be allowed. The CNF must be completed correctly by the claimant solicitor before submission.

Q16. What happens where only the name of the defendant is known and not the address?

A16. The CNF provides for both optional and mandatory fields. The defendants name is considered mandatory for the insurer to be able to admit liability however, the address field is optional. Of course, the claimant solicitor is required to make a reasonable attempt to fill in this box and will need to obtain this detail to send the defendant only form.

Q17. Does the defendant only form need to be submitted electronically?

A17. The defendant only form must be sent to the defendant by first class post and must be sent at the same time or as soon as practicable after the Claim Notification Form is sent.

Q18. Can the 15 days admission of liability period be extended?

A18. This time period is not extendable and the insurer will be required to respond otherwise the claim will exit the process.

Q19. What wording has been agreed for the admission of liability and how will claimant solicitors be made aware of this?

A19. The admission of liability wording states that an accident occurred; the accident was caused by the defendants breach of duty; and the defendant caused some loss to the claimant, the nature and extent of which is not admitted. This wording appears on the CNF Response form and will be ticked by the insurer where liability is to be admitted.

Q20. What happens if liability is denied?

A20. The claim will leave the process and fixed costs for Stage 1 will not be paid. The insurer will need to tick the relevant box on the CNF Response stating that liability is denied and will need to provide reasons for this.

Q21. Can the defendant change their mind on the admission of liability?

A21. Once an admission of liability is made it is considered binding. However, as now a person may by giving notice in writing withdraw a pre-action admission in two ways: before commencement of proceedings, if the person to whom the admission was made agrees; and after the commencement of proceedings if all parties to the proceedings consent or with the permission of the court.

Q22. What happens if causation is not admitted on the CNF?

A22. The CNF Response will not allow causation to be admitted separately as it forms part of the full admission of liability wording.

Q23. What happens if a claimant comes into the solicitor's office having accepted an insurers offer without legal advice?

A23. The process will require the defendant to advise a claimant in person of the advisability of seeking legal advice on the amount of an offer and the avenues to do so. Once an offer has been accepted, the advice given by a solicitor will depend, as now, on the circumstances.

Q24. Will the current Rehabilitation code apply to the new process continue?

A24. Yes. The Protocol will provide that parties should consider at all stages the Rehabilitation Code which is set out in Annex D of the current Pre-Action Protocol for Personal Injury Claims.

Q25. Will there be any sanctions if the claimant undertakes rehabilitation outside the process?

A25. No. The process does not replace existing working practices for rehabilitation. However any rehabilitation undertaken before the CNF is submitted to the insurer must be declared. There is therefore nothing to prevent the claimant and insurers discussing rehabilitation before or during the process. Indeed, where the claimant has rehabilitation needs arising out of the accident, the claimant solicitor must state these on the CNF as well.

Q26. What costs will be paid if the defendant makes a pre-medical offer?

A26. Stage 1 and 2 fixed costs will be paid where a settlement is agreed at any point before the end of Stage 2.

Q27. Are there any sanctions where costs are not paid by the defendant after the 10 day period for payment?

A27. The Protocol provides that the insurer must pay the Stage 1 fixed costs within ten days after the period for admission of liability ends (15 days or 30 days for the MIB). Where the insurer fails to pay the Stage 1 fixed costs within the time specified then the claimant must give written notice within 10 days of the end of the payment period that the claim will no longer continue under the process.

Q28. What happens if the claimant fails to give notice for the claim to leave the process for non-payment of costs within the time period?

A28. The claim will stay in the process. The costs remain payable and if necessary will be ordered to be paid by the court on a determination or if settlement occurs before Stage 3 then as agreed between the parties.

Q29. Does the process require payments by BACs?

A29. The process will not specify the method in which payment is made. However, insurers and claimant solicitors have indicated that over time most will be made through BACs.

Q30. Is there a specified period in which payment must be received?

A30. Where payment is required 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.

Q31. If there is a postal strike will the payment period be extended?

A31. All payments must be received, whether by cheque or electronic transfer within the time for payment. An extension may be agreed, but there is no requirement to do so.

Q32. If the claim leaves the process at the end of Stage 1 where does it fall in the current pre-action protocol?

A32. Where the claim exits at the end of Stage 1 due to allegation of contributory negligence (other than failure to wear a seatbelt; the defendant does not complete and send the CNF Response; does not admit liability, the claim will exit and proceed under the Pre-Action Protocol for Personal Injury Claims starting at paragraph 3.7, which allows a maximum of three months for the defendant to investigate the claim. In these instances the CNF can be used as the letter of claim.

Q33. If the claim exits at Stage 1, do you issue a new letter of claim?

A33. There are certain instances in which the CNF can be used as the letter of claim where the claim exits at Stage 1. These are where the claim exits due to: contributory negligence (other than failure to wear a seatbelt); the defendant/insurer does not admit liability; the defendant/insurer does not complete and send the CNF response. The CNF can however not be used where the defendant/insurer considers that inadequate information was provided on the CNF and therefore the claim exits.

Q34. What is the penalty for the insurer if the claim has exited due to inadequate information on the CNF but later found by the court to have unreasonably exited?

A34. The insurer on receipt of the CNF is able to allege that inadequate information has been supplied which is insufficient for an admission of liability. The claim will then exit the process. However, if the court later determines there was sufficient information on the CNF for an admission of liability then costs at large will apply.