

MOJ Matters

Frequently Asked Questions

Stage 1

Q

If the defendant receives a Claims Notification Form which is not fully completed, will it leave the process?

A

3.1.3 - If a mandatory field is not completed to enable the insurer to make a decision on liability within 15 days, then the claim will exit the process and fixed recoverable costs will not apply.

- If the form is completed sufficiently so as to enable the defendant to make a decision on liability then we would suggest that a decision on liability is made. If liability is admitted then the claim will remain in process and the defendant can take the benefit of staged fixed costs.
- If the form is not completed to enable the defendant to make a decision on liability then the claim will leave the process.

Q

Can the defendant claim back stage 1 fixed costs back if it later transpires that the claim for personal injury is less than £1000?

A

No, it has been decided by the rules committee that there cannot be a mechanism for stage 1 costs to be reclaimed. So stage 1 fixed costs will be payable on all claims which enter the process.

Q

How is the issue of contributory negligence dealt with?

A

In respect of seatbelts section B of the claims notification form specially asks "Was the claimant wearing a seatbelt" Contributory negligence in respect of seatbelts, will remain in process.

For contributory negligence claims not involving seatbelts, the defendant can admit liability within the 15 days subject to an element of contributory negligence. The claim will then leave the process and stage 1 fixed costs will be payable.

Stage 2

Q

What type of medical expert will be instructed?

A

3.2.1 – ... the report should be sought from a medical expert. A medical expert means a person registered with the general medical Council (GMC); registered with the General Dental Council; or a Clinical, Counselling, or Health Psychologist registered with the Health Professional Council.

The claims that are subject to the process are of relatively low value so ordinarily a report from a GP should suffice.

Q

Is there a time frame within which claimant solicitors need to obtain medical evidence and if so are there any sanctions if a report is not obtained within this time table?

A

There is no fixed timetable for obtaining a medical report.

Q

If after receipt of the medical report the defendant has concerns over causation, can questions be put to the expert?

A

3.2.7 –If, having seen the medical report, the defendant's insurer wishes to question or deny causation: the claim will leave the process.

So, questions can then be put to the expert but this will mean the claim will leave the process.

Q

If the claimant solicitor requests an interim payment greater than £1000, is the defendant able to put forward a counter proposal.

A

Yes- the defendant is able to make a counter proposal of more than £1000 but less than the claimant requested.

Stage 3

Q

Are there sanctions to protect the defendant against claimant solicitors' conduct in stage 2 with regard to proportionality when considering costs, for example, if the claimant values the claim at £9000 and the defendant £2000 but the judge awards £3000.

A

Under the new rules, the claimant solicitor will put forward the first offer and the defendant can either accept or put forward a counter offer. If an agreement cannot be reached then the matter will proceed to stage 3 for quantum to be determined. If the claimant beats the offer, no matter by how much, there are no sanctions to protect the defendant.

General

Q

How do timescales differ from the pre-action protocols and the CPR we are used to?

A

- The overall aim of the new process is to ensure that the process delivers fair compensation to the claimant as soon as possible.
- Under the current regime the defendant has 3 months within which to give a decision on liability. Under the new reforms the time frame within which to give a decision on liability is now 15 working days and 30 working days for MIB claims under the Uninsured Drivers Agreement.

Q

What sorts of claims are in the process and what sort of claims are left out?

A

The new regime only applies to road traffic accident personal injury claims where the value of the claim is between £1000 and £10,000.

The following claims are out of scope for the purposes of the new regime:-

- Claims which do not include at least £1000
- Claims involving employer's liability and or public liability
- Motor Insurer's Bureau Untraced Drivers Agreement cases
- Claims where the claimant or defendant is deceased
- Claims where the claimant is bankrupt: and
- Claims where the claimant or defendant is a protected party.

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