



Ministry of
JUSTICE

Low Value Personal Injury Claims in Road Traffic Accidents

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1. Background

- 1.1 The response to the consultation paper: *Case track limits and the claims process for personal injury claims*¹ confirmed that a new claims process would be established for road traffic accident personal injury claims valued between £1000 to £10,000.
- 1.2 In its response, the Ministry of Justice (MoJ) indicated that it would continue to work with stakeholders throughout implementation. Since then the MoJ has held workshops and meetings with representative bodies² to develop the detail of the new claims process. In addition, the Civil Justice Council mediated and reached agreement with representative bodies on the fixed recoverable costs for the process. Ministers have now agreed these.
- 1.3 This paper reflects the policy agreed by the Minister. The sub-committee of the Civil Procedure Rule Committee are now drafting rules, pre-action protocols and practice directions, as they see appropriate. The aim is to implement the process from April 2010.**

The Claims Process

- 1.4 The new claims process will apply to road traffic accident (RTA) personal injury claims where the value of the claim is between £1000 and £10,000³. The aim is to ensure that the process delivers fair compensation to the claimant as soon as possible. It provides for insurers to have early notification of the claim, with sufficient information to enable them to make a decision on liability, while recognising that there are steps that the claimant solicitor has to follow before notification can be given. The aim is for the process to be as clear and well defined as possible and to include fixed time periods and fixed recoverable costs.

¹ The consultation and response papers can be viewed at www.justice.gov.uk – in the consultation section.

² Association of Personal Injury Lawyers, Motor Accident Solicitors Society, the Law Society, the Trade Union Congress, Association of British Insurers, Forum of Insurance Lawyers, and Motor Insurers Bureau.

³ This is as indicated in the response to the consultation paper *Case track limits and the claims process for personal injury claims* which is available at www.justice.gov.uk.

2. Scope

2.1 The new process will apply to all RTA claims where:

- The value of the claim is between £1000 and £10,000 and contains an element of personal injury (see paras 2.3 and 2.4 below regarding valuation of the claim);
- The accident occurred in England and Wales; and
- The accident occurred after the implementation date (see para 2.9).

What is excluded

2.2 The following claims will not be within the scope of the process and the present pre-action protocol and costs regimes will therefore continue to apply to them:

- Claims which do not include at least £1000 for pain suffering and loss of amenity (“PSLA”) (the personal injury small claims limit); and
- Claims involving employers’ liability and/or public liability.

And for reasons of added complexity in the process:

- Motor Insurers Bureau (MIB) 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.

Value of the claim

2.3 The value of the claim for the purpose of deciding if it should fall into the new process will be based on the level of general damages (which includes PSLA and special damages (excluding damage to the vehicle and hire costs). However, the claim will need to include a minimum of £1000 PSLA (i.e. be above the small claims personal injury limit) to be included in the process. Although vehicular damage and or hire costs are excluded for the purpose of valuing the claim, they can be recovered as an element of special damages within the process.

The value of the claim does not include disbursements incurred as part of the claims process (for example the costs of obtaining a medical report) and

relates to the value for each claimant. The value of the claim will also include any deduction for seatbelt contributory negligence.

2.4 There will be cases where the value of the claim is assessed at the outset as having reasonable prospects of exceeding £1000 PSLA. In these cases:

- The fixed recoverable costs for Stage 1 will be paid on all claims;
- Stage 2 fixed recoverable costs will be paid and reasonable disbursements will be met where there was a reasonable prospect of exceeding £1000 PSLA;
- Where it later becomes clear in Stage 2 that the value of the claim was less than £1000 PSLA. In these cases: the claim will exit the process; and the defendant shall notify the claimant that the claim is valued at less than £1000.

2.5 There will be cases where the value of the claim was initially considered to fall within the process but it later becomes clear that it will exceed £10,000 PSLA. In these cases:

- The claim will exit the process; and
- The claimant shall notify the defendant that the claim is valued at more than £10,000.
- Where the claim is found by the court to have unreasonably exited the process the court may limit any costs awarded to the claimant up to the maximum of the fixed recoverable costs applicable to the new process.

Rights to act for a claimant under the new process

2.6 The new process requires the claimant to make an initial offer. Our intention is that those advising and acting for the claimant are suitably qualified to make an assessment of an appropriate initial offer. Only those persons who are appropriately qualified will be eligible to receive fixed recoverable costs allowed within the process. For consistency with the fixed recoverable costs regime at Section II of Part 45 Civil Procedure Rule (CPR), fixed recoverable costs for the new process will apply only to solicitors.

General principles

2.7 Once a claim has left the process it may not re-enter.

Implementation

- 2.8 Claims that have a date of accident after the implementation date 6 April 2010 must follow this process. This does not prohibit a claimant, as now, electing to settle directly with an insurer/defendant without using the process. (Also, see section 8 for details for claimants in person.)
- 2.9 The process may be adopted, by agreement, for claims arising from an accident prior to the implementation date but the claimant solicitor will only be allowed the fixed recoverable costs applicable to the new process and not the costs for any work done under the current system. Once a claim is commenced under the new process, it must continue within the new process, unless it leaves the process in accordance with the process rules set out below. For example: liability not admitted at Stage 1; or allegation of fraud at any point in the process or denial of causation during Stage 2.
- 2.10 The process requires the forms and information to be sent through secure electronic exchange. This is in order to comply with the Data Protection Act 1998 on electronic transfer of personal information and data. To facilitate this, the Association of British Insurers will fund and manage the development of a system of secure electronic information exchange, which will be available for anyone using the new process. A Stakeholder Steering Group has been established with representatives from key claimant and insurer representative organisations which will make decisions about the development of the system. An independent chair has also been appointed. Further information is available from your relevant representative organisation⁴. However, it should be noted that the rules etc. setting out the new process will not mandate the use of any particular system of electronic information exchange.

Review of the process

- 2.11 The MoJ and representative organisations are working together to agree evaluation criteria to monitor the process.

⁴ Association of Personal Injury lawyers, Motor Accident Solicitors Society, the Law Society, the Trade Union Congress, Association of British Insurers, Forum of Insurance Lawyers and Motor Insurers Bureau

3. The Standard Process

Stage 1 - Providing early notification of claims to defendants and insurers

- 3.1.1 There will be a Claim Notification Form (CNF) for the new claims process (Appendix 1). Every box on the CNF will be mandatory, save one, although some boxes will need to be noted as not applicable. Claimant solicitors will be asked to complete an optional field to state the source (organisation/person) which directly referred the claim to them. This is intended to help identify fraudulent claims sent to the insurer. The CNF form should provide all the information that the defendant or his insurers will need to make a decision on liability.
- 3.1.2 As soon as the claimant solicitor has all the information required to complete the CNF, it will be sent electronically to the defendant's insurer⁵. This will be sent to the appropriate electronic address for the defendant's insurer. The claimant solicitor or the claimant will sign the statement of truth on the CNF. The CNF should not be sent until the claimant solicitor has obtained the claimant's signature or the solicitor has signed on behalf of their client. The defendant's insurer will send a receipt to acknowledge receiving the CNF. At the same time, a modified version of the form will be sent to the defendant by first class post (which will omit certain personal details about the claimant)⁶ (Appendix 2).
- 3.1.3 All the fields on the CNF must be completed with the exception of the referral source field. If a mandatory field on the CNF is not completed so as to enable the insurer to make a decision on liability within the 15 days, then the claim will exit the process and the fixed recoverable costs of the process will not apply. Where the court subsequently considers that the claimant solicitor could have obtained the omitted information and that the claim should have remained in the process, the claimants recoverable costs will be limited to the fixed recoverable costs associated with the new process.
- 3.1.4 When the CNF has been correctly completed, the defendant's insurer will have 15 business days in which to respond. The response will be set out in the response section of the CNF and be sent electronically to the claimant's solicitor. The 15-day period will start the business day after the claim notification was sent by the claimant solicitor. During this 15-day period, the claimant solicitor will carry out no further work. There will be no extensions on the time period for decisions on liability.

⁵ Where necessary it would be for the insurer to send the form on to the defendant solicitor handling the claim.

⁶ This is similar to the current Pre-Action Protocol for Personal Injury Claims (para 3.4) where this information is supplied direct to the insurer.

- 3.1.5 Where the defendant's insurer admits liability within 15 business days but this is subject to contributory negligence (other than failure to wear a seatbelt), the claim will leave the process⁷. The defendant's insurer will set out the reasons for alleging contributory negligence in the response section of the CNF and send this electronically to the claimant solicitor. Fixed recoverable costs for Stage 1 will be payable.⁸
- 3.1.6 Where there is no response or a denial of liability the case will leave the process.⁹ Fixed recoverable costs for Stage 1 will not be paid by the defendant's insurer to the claimant solicitor. Where the defendant's insurer denies liability, it should be made clear whether the whole claim is denied, or if just certain parts of the claim then which parts. The defendant's insurer will state the reasons for denial of liability on the response section of the CNF.
- 3.1.7 Where the claimant's rehabilitation needs have not already been met and where it is appropriate, the need for rehabilitation should be raised. Fields on the CNF allow for rehabilitation needs to be considered and addressed between the parties where the claimant's needs have not already been met. The parties should consider the Rehabilitation Code (*Code of Best Practice on Rehabilitation, Early Intervention, and Medical Treatment in Personal Injury Claims*). Rehabilitation should be available to the claimant whenever the need arises throughout the process. (Draft wording is included in the CNF. This is subject to finalisation by lawyers).
- 3.1.8 Where fraud is alleged in Stage 1 or at any later stage in the process the claim will leave the process and fixed recoverable costs will not be payable.

Admissions of liability definition

- 3.1.9 There will be options on the response section of the CNF relating to an admission or denial of liability. The final legal wording will be drafted by lawyers but the policy intention is that it reflects the following – 'Insurer admits that their policy holder was negligent and caused the accident. Some damage was caused, but the insurer does not admit the nature or extent of the damage.'

⁷ The claim would enter into the Pre –Action Protocol for Personal Injury Claims, para 3.7, the start of the 3 month investigation period.

⁸ The costs for work done from the end of Stage 1 will follow current costs regimes as set out in the CPR (e.g. fixed recoverable costs, fixed success fees).

⁹ The claim would enter into the Pre –Action Protocol for Personal Injury Claims, para 3.7, the start of the 3 month investigation period. Stage 1 fixed costs will not be paid. The costs for all work on the claim will fall under the current costs regime.

MIB claims

- 3.1.10 The MIB will have 30 business days to respond to the CNF. This is due to the extra steps that the MIB have to take, for example, identification and contact with the defendant and permission to be attained from defendant to act on their behalf.
- 3.1.11 The CNF will be emailed to the MIB. The MIB will have a dedicated email address for these claims.
- 3.1.12 The 30-day period for a response will start the business day after the claim notification was sent by the claimant solicitor.
- 3.1.13 The process will apply to uninsured cases only (where the defendant driver is identified). The CNF lists additional questions in relation to MIB cases. Claims under the Untraced Drivers Agreement will not follow the system. Where it is not possible for the claimant and solicitor to provide the defendant's address then the claim will not be eligible for the new process. Where the defendant's policy is declared void after the accident, the insurers will continue to handle the claim (in place of the MIB) within the new claims process.

End of Stage 1 payment of fixed recoverable costs

- 3.1.14 Fixed recoverable costs of £400 will be paid at the end of Stage 1 where liability is admitted, (whether or not contributory negligence is alleged). A 12.5% success fee¹⁰ will be applied to Stage 1 fixed recoverable costs. However, the success fee element for Stage 1 will only be payable at the end of Stage 2 where the case settles.
- 3.1.15 Payment of these costs will be made within 10 business days from the end of the 15-day period allowed for responding to the CNF (or 30 business days for MIB claims). Where payment of fixed recoverable costs is not made, the claim will leave the process.¹¹ If the claim is eventually settled before trial the maximum the court may award is the fixed costs under Part 45 of the Civil Procedure Rules (CPR). Where the claim proceeds to trial the normal CPR costs rules and claims process will apply.

¹⁰ Throughout the process the term 'success fee uplift' will only be applicable where a conditional fee agreement is in place

Stage 2 - Medical evidence, offers to settle and negotiation

Initial medical reports

- 3.2.1 Once the defendant's insurer has made an admission of liability, the claimant solicitor will obtain a medical report. The Medical Template is at Appendix 3. The report should be sought from a medical expert. A medical expert means a person who is 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. Where it is clear from the outset that an additional medical report is necessary from a medical expert in a different discipline a second report may be obtained from a medical expert in that discipline. A third/fourth medical report should only be obtained on the recommendation of either of the two medical experts of different disciplines already consulted. No further reports will be allowed at this stage. The acquirement of medical records will only be allowed as a disbursement where the medical expert has identified a need for them.
- 3.2.2 There will be no fixed timetable for obtaining the medical report.
- 3.2.3 On receipt of the medical report and before it is sent to the defendant's insurer, it will be checked by the claimant for factual errors. Where a factual error is identified, the claimant solicitor should return the report to the expert who supplied it. The claimant solicitor should also notify the defendant's insurer of the delay and the reasons why. There will be no further opportunity for the claimant to challenge the factual accuracy of the medical report once it has been sent to the defendant.
- 3.2.4 The process for obtaining subsequent medical reports is considered at Section 4.

Offers to settle and negotiation

- 3.2.5 Within 15 business days of the report being confirmed as factually accurate the claimant solicitor will complete the Stage 2 Settlement Pack Form (Appendix 4). This will be sent electronically to the insurer together with the medical report and any receipts/evidence of special damages claimed. Receipts for disbursements incurred as a result of the claims process (DVLC check, cost of medical report) should also be sent at the same time to allow the insurer to check and settle, as appropriate. The figures, which appear on the settlement pack, should be in GROSS, and include any amount due to the Compensation Recovery Unit (CRU).

¹¹ The claim would enter into the Pre –Action Protocol for Personal Injury Claims, para 3.7, the start of the 3 month investigation period. Stage 1 fixed costs will not be paid. The costs for all work on the claim will fall under the current costs regime

- 3.2.6 The insurer has 15 business days from receipt of the settlement pack to consider and either accept the claimant's offer or make a counter offer. The 15-day period will start the business day after the settlement pack was sent by the claimant solicitor. If the offer to settle is not accepted the insurer must make a counter offer using the Settlement Pack Form. This will be a 'living' document, which will pass between both parties. Where time limits for considering the first offer have not been adhered to, the claim will leave the process unless both parties have agreed to an extension¹². There will be no additional costs allowed for any further negotiation or any agreed extension period.
- 3.2.7 If, having seen the medical report, the defendant's insurer wishes to question or deny causation; the claim will leave the process¹³. The insurer must notify the claimant solicitor that the claim should leave the process due to denial of causation. Fixed recoverable costs will not apply¹⁴.
- 3.2.8 The defendant's insurer will set out the amount of the counter offer for all heads of damage and may additionally make a global offer that is higher than the total specified heads of damage. They should state why the amount proposed by the claimant under any particular head of damage is not agreed. A break down of heads of damage will help to satisfy the claimant's expectations and should encourage settlement by focussing on the disputed areas.
- 3.2.9 Where the defendant's insurer makes a counter offer there will be a further 20 business days for consideration and negotiation between the parties. This period will begin when the 15 day period in para 3.2.6 has closed. The 20-day period can be varied by agreement between the parties.
- 3.2.10 Where agreement on quantum has not been reached at the end of the 20-day consideration and negotiation period the claimant will prepare the Stage 3 version of the Settlement Pack Form (A) and (B) (Appendix 6). This will include the final Stage 2 offers and the claimant and defendant insurers comments so that the judge is made aware for each disputed head of damage, the amount in dispute and the reasons for the dispute. This will be the opportunity for the claimant solicitor to provide in the 'comments' columns any supporting statement which they wish the judge to take into account in understanding the reasons for a disputed head of damage, particularly in the event of a paper hearing. Where the claimant solicitor is claiming the disbursement cost of a medical report obtained outside the parameters of the process (as set out at paras 3.2.1 – 3.2.2), they will need to set out their supporting arguments. There will be no further opportunity in Stage 3 to provide new documents or evidence save where ordered by the Judge.

¹² The Pre –Action Protocol for Personal Injury Claims process steps have been completed. Claimant decides next action. From the point where fixed recoverable costs have been paid, costs will be under the current costs regime.

¹³ The Pre –Action Protocol for Personal Injury Claims process steps have been completed. Claimant decides next action. From the point where fixed recoverable costs have been paid, costs will be under the current costs regime.

¹⁴ Current costs regimes will apply from the date the allegation of fraud is alleged, where applicable.

3.2.11 The claimant solicitor will send the Stage 3 Settlement Pack to the defendant's insurer electronically. The defendant's insurer will have 5 business days from receipt to provide brief comments where necessary, check the accuracy of the Stage 3 Settlement Pack Form (A) ' and (B) and return it to the claimant solicitor electronically. Where the defendant fails to return the Stage 3 Settlement Pack within the time period, the claimant should assume that the defendant has nothing further to add. Stage 2 ends at the expiration of the insurer's time for responding to the Stage 3 Settlement Pack. There is no extension of this period, save by agreement.

Interim payment at the end of Stage 2

3.2.12 Where the parties have not reached agreement to settle the case by the end of the negotiation period; the next step will be a Stage 3 hearing to determine quantum.

3.2.13 The defendant's insurer will pay the full amount of the defendant's offer by way of an interim payment, subject to deductions of any amounts payable to the Compensation Recovery Unit (CRU). Stage 2 fixed recoverable costs will also be paid at this point. The defendant's insurer will make the payments within 10 business days starting from whichever is the earlier of: the end of the Stage 2; or where settlement is agreed during the 15-day counter offer period or 20-day negotiation period, the end of the respective period.

3.2.14 If, at the Stage 3 quantum hearing, the claimant is awarded less than the defendant's interim payment at the end of Stage 2, the insurer may take steps to recover the over-payment from the claimant.

Allegations of fraud

3.2.15 Where fraud is uncovered at any point during the process the claim will leave the process. The insurer will notify the claimant solicitor that the claim will not continue in the process due to an allegation of fraud. Where insurers have paid money, for example for an interim payment they will be able to take whatever steps they consider appropriate to recover money paid to the claimant. No fixed recoverable costs will be payable.

End of Stage 2 payment of fixed recoverable costs

3.2.16 Fixed recoverable costs of £800 will apply to all claims taken forward under this process from the beginning to the end of Stage 2. This will attract 12.5% success fee uplift, where the case settles.

3.2.17 Fixed recoverable costs should be paid within 10 business days of the Stage being completed. Where settlement is agreed during the 15-day

counter offer period or 20-day negotiation period then the 10 days for payment will run from when the 15 or 20-day period ends.

Stage 3 - Where quantum cannot be agreed

- 3.3.1 Where quantum cannot be agreed by the end of Stage 2 an application will be made to the court to determine quantum.
- 3.3.2 The application will usually be made by the claimant solicitor.
- 3.3.3 After 10 business days from the date the claimant sent the Stage 3 Settlement Pack to the insurer, the claimant may make the application to the court for the amount of damages to be determined, whether or not a response has been received from the defendant's insurer. The application will be made to the appropriate court in accordance with the provisions of the Civil Procedure Rules.
- 3.3.4 Where the claimant solicitor has not sent the Stage 3 Settlement Pack to the defendant's insurer within 15 business days of the end of the 20-day negotiation period, the insurer may take the steps set out above i.e. to prepare the Stage 3 Settlement Pack, and commence proceedings.
- 3.3.5 The aim is to adopt the simplest possible process for a quantum application. However, we recognise that there may be factual disputes related to the amount of damages to be paid. We are therefore proposing a simple application process that will require the lodging of standard forms but which has sufficient flexibility for the court to order additional evidence if it considers necessary. The claimant (or where appropriate the defendant's insurer) will file at court a claim form, medical report and the Stage 3 Settlement Pack Form (A) and (B). Receipts supporting the claim for special damages and disbursements incurred during the process, such as the cost of medical reports should also be provided.
- 3.3.6 There will be a paper hearing unless the judge otherwise directs or either party requests an oral hearing.

Further evidence

- 3.3.7 The claimant solicitor will set out both parties' final offers as agreed in the Stage 3 Settlement Pack Form (A) and lodge in a sealed envelope (Stage 3 Settlement Pack Form (B)) to be seen by the judge only after the decision is made. No further new documents or evidence should be provided save where ordered by the judge.

Written reasons

- 3.3.8 Where there is a paper hearing the court will notify parties of its decision with written reasons.

Interest

3.3.9 The offers made by the parties will be exclusive of interest. Interest will be calculated by the parties, following the hearing, in accordance with the current law depending on the nature of the damages and the amount and timing of any interim payments made.

Costs consequences

3.3.10 Part 36 of the CPR will apply to the final offers made by parties in the Stage 3 Settlement Pack to be submitted to court.

End of Stage 3 fixed recoverable costs

Claimant Solicitor

3.3.11 There will be separate fixed recoverable costs for Stage 3 of the process for paper hearings (£250) and oral hearings (£500). There will be a fixed success fee of 100%, which will only apply where the claim concludes at trial, and the claimant has won.

3.3.12 Payment of Stage 3 fixed recoverable costs should be made within the general timescale set by the CPR or as ordered by the court.

3.3.13 Where an offer is made and settlement is reached between the issue of the claim and before the trial commences fixed recoverable costs of £250 will apply and there will be a fixed success fee of 12.5%. The agreed damages and fixed costs should be paid within 10 days of settlement being reached.

Defendant Solicitor

3.3.14 The defendant solicitor's recoverable costs will be fixed in Stage 3 only. The fixed recoverable costs will be £250 for paper hearings and £500 for an oral hearing. This will provide certainty to the claimant solicitor advising a client on the merits of an offer and the risks of proceeding to Stage 3.

Success Fee Uplift

3.3.15 Civil Procedure Rule 45.9(2) and Practice Direction 45, para 25A.6 will apply. Those claims that meet the criteria of PD 45 para 25A.6 will be allowed, in addition to the fixed recoverable costs an amount equal to 12.5% of the fixed recoverable costs.

4. Subsequent Medical Reports/Interim Payments

Stage 2

- 4.1 There should be a limited need for additional medical reports at this value of claim, but the process will allow for subsequent medical reports where strictly necessary.

Subsequent medical reports

- 4.2 A subsequent medical report may be obtained where an initial medical report obtained at the beginning of Stage 2, indicates the need for another medical report after a period of time (a) waiting until a final prognosis can be made or (b) where ongoing treatment is necessary.
- 4.3 Where a medical report indicates that there must be a delay due to the reasons in 4.2, the claimant solicitor should arrange for the appropriate medical report to be obtained. The parties should then agree to stay¹⁵ the process for the required period of time and no further work should be carried out on the personal injury claim until that time has expired. Claimant solicitors should retain contact with their client as necessary during this stay period and may conduct work in relation to the non-personal injury element of the claim (e.g. vehicle and hire claim).
- 4.4 In these circumstances an automatic interim payment of £1000 will be made by the insurer to the claimant, (see para 4.6 and 4.7 on the process for applying for an interim payment).

Unprompted medical reports

- 4.5 Where the claimant obtains a medical report outside the parameters of the process, the defendant's insurer or the judge at a Stage 3 hearing, will have discretion as to whether to allow the costs of obtaining it to be recovered.

Interim payment of £1000

- 4.6 The claimant solicitor will send the initial medical report(s) and the Interim Settlement Pack (Appendix 5) to the insurer. This will provide the insurer with the information necessary to make an interim payment of £1000. The defendant's insurer will have 10 business days from receipt of the Interim Settlement Pack to make the payment.

¹⁵ The term 'stay' is used here to refer to the parties' agreement that the claimant solicitor will carry out no further work in relation to the personal injury claim between the request for a medical report and its receipt.

- 4.7 As Stage 2 has not concluded, fixed recoverable costs would not be payable at this interim stage.

Interim Payment over £1000

- 4.8 Where there an interim payment in excess of £1000 is sought, the claimant solicitor will send the initial medical report(s) and the Interim Settlement Pack to the insurer¹⁶ stating the reasons why a payment in excess of £1000 is required.
- 4.9 The defendant's insurer will have 10 business days to decide whether payment of interim damages will be made and to issue payment. Where payment is to be made, the insurer will use the Interim Settlement Pack to respond.
- 4.10 If the insurer rejects the interim payment request, they must notify the claimant solicitor of the reasons why and make an interim payment of £1000 within 10 business days. Where the interim payment above £1000 is not agreed but the claimant decides to pursue the additional payment, the claim will leave the process. The claimant solicitor will issue Part 7 proceedings in the usual way and will also provide the court with the Interim Settlement Pack, medical report, and receipts for disbursements. Stage 1 costs will have been paid. However, as the claim has not completed Stage 2, fixed recoverable costs will not apply.
- 4.11 If the court subsequently concludes that it was not reasonable for the claimant to pursue the additional interim payment, the claimant's recoverable costs will be limited to the fixed recoverable costs associated with the new process. This means that where the case settles the fixed recoverable costs up to the end of Stage 2 (excluding Stage 1) will be payable. Where the case is decided at trial the costs recoverable will be no greater than the fixed recoverable costs which the claimant would have recovered under the process, had the case been concluded at the end of Stage 3. In this instance, the claimant solicitor will also pay the costs of the trial hearing.

¹⁶ The Interim Settlement Pack should be sent to the appropriate electronic address for the defendant insurers.

5. Vehicular damage and hire charges

- 5.1 Typically, any vehicular damage and hire charges, policy excess etc are settled separately from a claim for personal injuries. However, the claimant solicitor may also be dealing with this aspect of the claim. A claimant could lose their right of action to make a claim for personal injuries if the vehicular damage and hire charge element of the claim were issued and concluded independently. Therefore, even where the vehicular damage and hire charges are being dealt with by a third party they will need to be brought together with the personal injury process if they remain unsettled at Stage 3.

Stage 1

- 5.2 The claimant solicitor should note on the CNF if they have been instructed to deal with vehicular damage/hire charges as well as the personal injury claim. Invoices for vehicular damage and hire charges should be sent with the CNF so that the defendant's insurer can settle this aspect of the claim as appropriate during the liability period. Where details cannot be provided with the CNF they should be sent as soon as possible and on the defendant's admission of liability.

Stage 2

- 5.3 Where the claimant solicitor has notified the defendant's insurer that they are involved in the vehicular and hire charge, parties would be able to negotiate vehicular damage/hire charges along with other heads of damage during Stage 2. If parties have not been able to settle in Stage 2, the claim would proceed into Stage 3.
- 5.4 Where the claimant solicitor is not initially instructed on vehicular damage and hire charges. They would need to contact the third party (e.g. a claims handler or car hire company) dealing with them to ensure that both elements of the claim are brought together for Stage 3.

Stage 3

- 5.5 Where there is a quantum dispute over vehicular damage/hire charges it will be resolved at a Stage 3 hearing. This would include disputes over the rate and period of credit hire, subject to the judges' directions. Disputes about issues other than the amount of damages to be paid will leave the process. For example, a challenge to the validity of the hire agreement, or a technical argument not relating to quantum.
- 5.6 The evidence required will be invoices, engineer's report/vehicle report, hire rate, and valuation evidence such as Glass's guide.
- 5.7 Where the personal injury element of the claim had settled and the vehicular damage and hire charge element of the claim was ongoing, Stage

3 could be used for resolution of any quantum only issue, subject to direction by the judge for example in the event of claims that raise more complex issues. Disputes that concern issues other than quantum will leave the process and be resolved in the relevant case track.

6. Process for Seatbelt Contributory Negligence

Stage 1

- 6.1 The claimant solicitor will need to establish whether the claimant was wearing a seatbelt and fill out the relevant section of the CNF. The CNF will then be sent to the defendant's insurer who will have 15 business days to admit or deny liability subject to contributory negligence on the basis of failure to wear a seatbelt.

Stage 2

- 6.2 Once an admission of liability (with an allegation of seatbelt contributory negligence) has been made, the claimant solicitor will obtain a medical report. The medical report will provide the parties with enough information to calculate the amount of deduction according to case law principles. Disagreements between the parties as to the amount of the deduction will be addressed during the negotiation and consideration period.
- 6.3 The Settlement Pack should include a suggested percentage reduction for seatbelt contributory negligence.
- 6.4 Where a dispute over the percentage deduction is not resolved, it will be necessary for the judge to consider this at a Stage 3 hearing.
- 6.5 Where there is a dispute of fact, which would require evidence from the defendant and possibly a medical expert, the claim should exit the process.

7. Claims involving children

Claims involving children will follow the general process set out in this paper save where indicated below

Stage 1

- 7.1 The claimant solicitor will ensure that the person providing instructions on behalf of the child is the appropriate person to do so. There will be an additional box on the CNF in which to state whether the claim is for injury to an adult or a child.
- 7.2 The remainder of the Stage 1 process will continue as set out in the standard process above, save that where the defendant is a child, the insurer should notify this fact to the claimant in the CNF response form.

Stage 2

Interim Payments

- 7.3 For adult claims, the process allows for an interim payment in the event of a delay before a subsequent medical report can be prepared and where agreement has not been reached at the end of stage 2. Part 21 of the Civil Procedure Rules¹⁷ states that no payment, including any voluntary interim payment so far as it relates to a claim on behalf of a child shall be valid without the approval of the court. Accordingly, this pre-proceedings process does not provide for interim payments to be made to a child. If an interim payment is required, the claim must leave the process and the claimant must issue proceedings in the usual way.
- 7.4 If the court subsequently concludes that it was not reasonable for the claimant to request an interim payment the recoverable costs that will be allowed to the claimant will be limited to the fixed recoverable costs associated with the new process.

Offers to settle and negotiation

- 7.5 The claimant's solicitor will complete and agree the Stage 3 Settlement Pack as set out at paragraph 3.2.11 above.
- 7.6 Where settlement is reached at the end of Stage 2 there will be an oral approval hearing for the settlement and investment decisions in relation to the agreed damages.

¹⁷ CPR 21.8

Stage 3 – Approval hearing where a settlement is reached at the end of Stage 2

- 7.7 The claimant's solicitor will arrange for the appointment of a litigation friend on behalf of the child in accordance with the practice set out at Rule 21 of the CPR.
- 7.8 The claimant's solicitor will then make an application to the court for approval of the settlement in accordance with Rule 21 (10) of the CPR. The hearing will always be an oral hearing in accordance with the current practice and the claimant solicitor will need to file and serve any additional documents required by the CPR.
- 7.9 There will be fixed costs for preparation and attendance at the approval/investment hearing, to be paid by the defendant insurer, together with any disbursements and any expenses incurred by the litigation friend and awarded by the court in accordance with Rule 21.12 of the CPR.
- 7.10 The fixed recoverable costs for the hearing will be £500. This will be in addition to the fixed recoverable costs payable as Stage 2 has been completed (£800). These will attract a fixed 12.5% success fee on the total amount. Where the judge does not approve the parties settlement or award damages and requests further evidence the claim will exit the process, however, the £500 for the approval hearing and the fixed costs payable in respect of Stage 2 of the process will still be payable by the insurer.

Stage 3 - Where quantum cannot be agreed

- 7.11 The claimant's solicitor will arrange for the appointment of a litigation friend on behalf of the child in accordance with the practice set out at Rule 21 of the CPR.
- 7.12 The Stage 3 hearing process will be as set out at section 3 above save that it will always be an oral hearing, which the litigation friend should attend. The Stage 3 hearing will also act as an investment hearing and the claimant solicitor will need to file and serve any additional documents required by the CPR.
- 7.13 Any expenses incurred by the litigation friend and awarded by the court in accordance with Rule 21.12 will be payable by the insurer.
- 7.14 The fixed recoverable costs for the oral hearing will be £500. In addition £500 will be payable for preparing for the approval hearing, which will form part of the quantum hearing. Where the claim concludes at trial and the claimant wins in accordance with Part 36 Civil Procedure Rules then the total would attract a fixed 100% success fee.
- 7.15 If during the hearing, the judge does not award damages and requests further evidence the claim will exit the process. In these circumstances the £500 for an oral hearing, and £500 for preparing for the approval part of the

hearing will **not** be payable and as the claim has not concluded the success fee will not apply.

8. Claimants in person

- 8.1 There will be an overarching principle that claimants in person will be encouraged to seek independent legal advice. This is included in the CNF and will be further explained in guidance. Claimants in person will as now, be able to deal directly with the defendant/insurer without using the process.
- 8.2 Where an offer is made to a claimant in person, through the new process, he or she should be informed of the set time period in which they can accept or reject the offer and that if the offer is accepted; there can be no further claim. Claimants in person should be informed of their right to seek independent legal advice for example from a solicitor, Citizens Advice Bureau (CAB), or local law centre or from their trade union if they or a family member is a trade union member.

9. Limitation Period

- 9.1 Where a claim is submitted close to the three-year limitation date, it is expected that the claimant solicitor will issue a court proceedings in the usual way and then seek permission from the court to stay the claim. The claimant will then continue to use the new process. Where the claim is settled at Stage 2 the claimant's solicitor will withdraw the claim by agreement with the insurer and the defendant's insurers will pay the court fee for lodging the claim.
- 9.2 Where quantum cannot be agreed in Stage 2, or where the parties do not comply with the timetable for offers and negotiation, the claim will proceed to Stage 3. The process will proceed as set out above.
- 9.3 However, court proceedings will have already been issued and stayed. We propose that the existing proceedings will be reactivated to follow the Stage 3 procedure. The claimant would therefore file at court an application within the proceedings for a decision on quantum together with the medical report, a completed settlement pack, and receipts for special damages and disbursements incurred as a result of making the claim. The remaining process will be as set out above.

10. Payment of Fixed Recoverable Costs and Damages

Stage 1

- 10.1 Fixed recoverable costs will be paid by the defendant insurer within 10 business days of Stage 1 being completed. If fixed recoverable costs are not paid the claim will exit the process. Where the claimant solicitor issues proceedings they will need to provide the CNF and the response from the insurer to the court.

Stage 2

Claim has settled at the end of Stage 2

- 10.2 Fixed recoverable costs should be paid within 10 business days of Stage 2 being completed. Where fixed recoverable costs and/or disbursements have not been paid the claimant can apply to the court for payment to be enforced through the procedure set out at Rule 44.12A of the CPR.

Claim has not settled at the end of Stage 2

- 10.3 It is proposed that any fixed recoverable costs, disbursements or interim payment that have not been paid at the end of Stage 2 will be dealt with at the Stage 3 quantum hearing. The claimant will provide the court with the medical report, disbursements and special damages receipts and the Stage 3 Settlement Pack.

Damages

- 10.4 Damages will be paid within 10 business days of the end of Stage 2 in the event of a settlement or where the claim has not settled then in accordance with the usual CPR provisions following judgement at a Stage 3 hearing.

End of Stage 2

- 10.5 Where damages have been agreed by the parties but the defendant does not then pay the relevant amount, it is proposed that the claimant will be able to make an application to the court for an order to pay the agreed damages. Where there are also outstanding fixed recoverable costs and/or disbursements, it is proposed that this will be dealt by the court at the same time. It is proposed that this will be a paper hearing unless the judge directs otherwise. The claimant will provide the court with the medical report, disbursement receipts, and Settlement Pack.

Stage 3

- 10.6 Where payment is not received the claimant solicitor will be able to issue proceedings for the enforcement of the court's order.