



# FOIL UPDATE

November 2009

## RTA Process Reform – More FAQs

As the Rules Committee move on to drafting the Rules for the new process and the procedure is considered in more detail further queries are arising on how it will work in practice. We look at some of the points below:

- 1. I see from the MOJ process document that where it becomes clear during Stage 2 that the claim is worth less than £1000 the claim will exit the process. Does that mean that the Stage 1 costs of £400 will be refunded?**

No, the fixed Stage 1 costs will be payable on all claims which enter the process. This is an issue where insurers and solicitors will need to be alive to potential abuse. Although the MOJ has indicated that insurers will be able to protect themselves from abuse by not admitting liability in cases worth less than £1000, in reality the information to enable them to do so will not be available in Stage 1.

- 2. All the fields in the CNF must be completed with the exception of the referral source field. Is this not open to abuse by claimant solicitors who fail to provide information to reserve or report to CRU?**

The portal will automatically check if all fields have been completed. If any have been left blank the CNF will be rejected. Obviously this does not deal with the problem of inadequate completion. As set out in the MOJ process document if the insurer is unable to make a decision on liability due to missing information the claim will exit the process and the fixed recoverable costs will not apply. If the court subsequently considers that the missing information could have been obtained, the claimant's recoverable costs will be limited to those that would have been payable under the new process. There is no procedure to enable the insurer to obtain further information from the claimant.

- 3. When does the obligation arise to pay Stage 1 costs – I thought it was 10 days after the date of the response admitting liability?**

The 10 day period within which payment of Stage 1 costs must be paid starts at the end of Stage 1. Therefore payment must be made within 10 days from the end of the 15 day period allowed for an insurer response. If payment is not made the claim leaves the process.

- 4. When are Stage 2 costs payable?**

Stage 2 ends five days after receipt of the Settlement Pack by the defendant's insurer, upon expiry of the insurer's time for responding to the pack. Stage 2 costs are payable within 10 business days of the end of Stage 2.

5. **The sections dealing with payment (3.1.15, 3.2.17) indicate that payment should be made “within 10 business days”. What exactly does that mean?**

At present it is not clear whether the Rules will require that payment be sent within the 10 day period, or received. There are pros and cons with both although receipt reduces uncertainty. The point is still to be clarified.

6. **Under para 4.8 a claimant can seek an interim payment of more than £1000. The insurer will then have 10 days to decide whether to make a higher payment and to make payment. That’s a very tight timescale.**

At present that is correct, although there is a possibility that that will be increased to 15 days to allow more time.

7. **The procedure for requesting an interim payment of more than £1000 seems open to abuse. As I understand it if the insurer rejects the interim payment request and the claimant decides to pursue it, the claim leaves the process. That would mean that a deliberately excessive request would scupper the process?**

At present that is correct. An amendment is being considered which would allow an insurer to offer more than £1000 but less than requested, although that would still leave open the problem of handling a disagreement.

8. **Will the admission made by the insurer be binding on the defendant driver? Currently the insurer will usually agree to settle the claim without formally admitting, to protect the insured’s own right to pursue an action for his own injuries.**

It appears that the admission will bind the insured. If the issue cannot be resolved with the policyholder and the insurer does not want to go against the policyholder’s wishes the claim will leave the process.

9. **It’s disappointing to see that normal Part 36 rules will apply to the new process rather than something more robust. If that’s the case wouldn’t it be better to revert to the pre-Carver position to achieve certainty and avoid satellite litigation?**

There is a school of thought that supports that view. Although that approach would benefit the claimant slightly more when considering the question of success, there would be benefits to defendants in removing the ‘Carver’ discretion to avoid uncertainty and disputes, and discourage local ‘forum shopping’.

**If you have any further questions about the operation of the new procedure please contact Shirley Denyer at [shirley.denyer@foil.org.uk](mailto:shirley.denyer@foil.org.uk)**

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