



FOIL UPDATE

February 2010

Process Reform – the draft new rules

The Civil Procedure Rule Committee has now approved the drafts of the documentation for the new RTA process. These documents are in draft form until:

(1) the Statutory Instrument has been signed by the Civil Procedure Rule Committee and the Minister and then laid before Parliament, and

(2) the document confirming the practice direction has been signed by the Minister and the Master of the Rolls.

It is expected that the Statutory Instrument will be laid before Parliament by the beginning of March.

The documentation consists of:

- Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents;
- Section VI, Part 45 of the CPR;
- Practice Direction 8B;
- Acknowledgement of Service Form (N210B);
- Notice of Issue (N209A);
- Part 36;
- Consequential amendments;
- The Claim Notification Form;
- Defendant only, Claim Notification Form;
- Medical Report Form;
- Interim Settlement Pack Form;
- Stage 2 Settlement Pack Form; and
- Court Proceedings Pack Form (Part A and B).

Copies of all of the above are being sent with this Update and are also available on the FOIL website under 'External Information' in the members' section.

Issues

Anthony Hughes sets out below a number of issues which members can expect to have to deal with going forwards – *all paragraph numbers refer to the draft Pre-Action Protocol:*

- **Small Claims** – Paragraph 4.1(4) "...If proceedings were started the small claims track would not be the normal venue..." This seems to be the test as to whether or not a matter should proceed through the new process or not. Paragraph 5.9 also uses the word "*entitled*" in relation to the Stage 1 fee where it becomes clear that a case would be allocated to the small claims track. This would put paid to any arguments from a compensator that the fees paid at Stage 1 ought to be deducted from the damages.
- Contact details for new claims can be found a specific website, rtapiclaimsprocess.org.uk.

- When specific times are given for a [payment](#) to be made this is the point at which the payment must actually be received by the claimant representative from the compensator.
- Once a case has exited the process then there is [no opportunity to re-enter](#), (paragraph 5.11). The only exception to this will be where the claimant representative has sent the Claim Notification Form to the wrong insurer.
- All [mandatory fields](#) on the CNF must be completed and a claimant representative must use reasonable endeavours to complete non-mandatory sections. It should be noted that this is a quantitative test not a qualitative test which could lead to disputes between the parties (paragraph 6.3).
- If a compensator is unhappy as to the way the CNF has been completed it is up to the compensator decide whether or not to take the matter out of the process. This does provide an automatic right for a compensator to exit the process with the potential sanction to the claimant representative if they could and should have completed the CNF correctly (paragraph 6.8). It would be mandatory for a compensator to respond to the CNF the day after receipt. The response will be electronic with relevant contact details. This will not be a liability response (paragraph 6.10). If a compensator is to deny liability or raise arguments of contributory negligence the protocol suggests that brief reasons ought to be given, (paragraph 6.16). There is no suggestion of any sanction for a compensator who fails to do this and it is debatable whether or not this could lead to satellite litigation.
- Any claim that does [exit the process](#) at Stage 1 will fall into the current protocol for personal injury claims and as such there would be a three month period in which the insurer has to make a decision on liability (paragraph 6.17).
- A failure to make payment in relation to any of the stage fees will give the claimant representative the right to exit the process. Written notice must be given by the claimant representative within 10 days of the time limit being exceeded. If no such written notice is given then the matter will continue to proceed within the new process (paragraph 6.19).
- If a claimant has paid for vehicle damage or hire charges then at Stage 2 a request for an [interim payment](#) can be made. This would clearly not provide for interim payments in relation to credit hire vehicles (paragraph 7.15).
- There is a [settlement period](#) of 35 days at Stage 2. A compensator must make a counter offer or accept the claimant's initial offer within 15 business days. However, if an offer is made by either party with less than 5 days of the settlement window remaining then there should be an extension to this period of a further 5 business days. This will avoid the parties being ambushed (paragraph 7.28).
- Whilst the costs are fixed there is the potential for disputes in relation to the level of [disbursements](#) claimed at Stage 2 or Stage 3. If this dispute cannot be resolved then there is a mechanism under CPR 44.12A for this to proceed through the court as now (paragraph 7.38).
- If either party were to [withdraw an offer](#) then the case would automatically exit the process and cannot re-enter (paragraph 7.39).

- Additional damages- there is the possibility for additional claims to be introduced between Stages 2 and 3, for example [vehicle repair or hire](#) charges. If this is the case then the settlement period at Stage 2 will be extended, the claimant representative will be required to send an updated settlement pack and a further 15 day consideration period will be allowed following receipt of that pack so that the compensator can make a further offer or accept the proposals submitted (paragraph 7.44).
- At [Stage 3](#) any comments on the court papers must not raise new arguments that either party was not aware of previously (paragraph 7.57).
- The defendant or compensator will have the opportunity to [nominate lawyers](#) to accept service of any Stage 3 proceedings in the settlement papers (paragraph 7.59).

If you have any comments on the draft documents please contact Shirley Denyer on shirley.denyer@foil.org.uk

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