

## 65<sup>th</sup> UPDATE – PRACTICE DIRECTION AMENDMENTS

The new Practice Directions and the amendments to the existing Practice Directions supplementing the Civil Procedure Rules 1998 are made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by \_\_\_\_\_, Parliamentary Under Secretary of State, by the authority of the Lord Chancellor.

The new Pre-Action Protocols for Low Value Personal Injury Claims in Road Traffic Accidents and Low Value Personal Injury (Employers' Liability and Public Liability) Claims are approved by the Master of the Rolls as Head of Civil Justice.

The new Practice Directions and amendments to the existing Practice Directions, and the new Pre-Action Protocols come into force as follows—	
Practice Direction 8B – The Pre-Action Protocol For Low Value Personal Injury Claims In Road Traffic Accidents	31 <sup>st</sup> July 2013
Practice Direction 45 – Fixed Costs	31 <sup>st</sup> July 2013
Practice Direction – Civil Recovery Proceedings	31 <sup>st</sup> July 2013
Practice Direction RSC Order 79 - Criminal Proceedings - Prosecutor's Appeal to the High Court against the Grant of Bail under Section 1(1A) and (1B) of the Bail (Amendment) Act 1993 (rule 9(15))	31 <sup>st</sup> July 2013
Pre-Action Protocol for Personal Injury Claims	31 <sup>st</sup> July 2013
Pre-Action Protocol for Disease and Illness Claims	31 <sup>st</sup> July 2013
Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents	31 <sup>st</sup> July 2013
Pre-Action Protocol for Low Value Personal Injury (Employers' Liability And Public Liability) Claims	31 <sup>st</sup> July 2013

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The Right Honourable The Lord Dyson  
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

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Parliamentary Under Secretary of State  
Ministry of Justice

**PRACTICE DIRECTION 8B – THE PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS**

1. For the title to Practice Direction 8B, substitute—

“PRACTICE DIRECTION 8B – THE PRE-ACTION PROTOCOLS FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS AND LOW VALUE PERSONAL INJURY (EMPLOYERS’ LIABILITY AND PUBLIC LIABILITY) CLAIMS – STAGE 3 PROCEDURE”.

2. In the contents to the Practice Direction, in the entry for paragraph 10.1, for “RTA Protocol”, substitute “protocol”.

3. In paragraph 1.1—

(a) in subparagraph (1)(a), after “(‘the RTA Protocol’”, insert “or the Pre-Action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims (‘the EL/PL Protocol’)”; and

(b) in subparagraphs (1)(b), (2) and (3), for “RTA Protocol”, in each place it occurs, substitute “relevant Protocol”.

4. In paragraph 3.1, for “RTA Protocol”, substitute “Protocols”.

5. In paragraph 3.2, omit “RTA”.

6. In paragraph 5.2, in subparagraph (2), for “RTA Protocol”, substitute “relevant Protocol”.

7. In paragraph 6.1, in subparagraph (5), for “45.30(2)”, substitute “45.19(2)”.

8. In paragraph 6.3, for “RTA Protocol”, substitute “relevant Protocol”.
9. In paragraph 9.1, for “RTA Protocol”, in each place it occurs, substitute “relevant Protocol”.
10. In paragraph 10.1—
  - (a) in the heading to that paragraph, omit “RTA”; and
  - (b) for “an RTA Protocol”, substitute “a Protocol”.
11. In paragraph 12.1, in subparagraph (2), omit “RTA”.
12. In paragraph 12.2, for “45.33(2)”, substitute “45.21(2)”.
13. In paragraph 12.4, for “45.35”, substitute “45.23”.
14. In paragraph 13.2, for “45.34(2)”, substitute “45.22(2)”.
15. In paragraph 14.1, for “45.39”, substitute “45.27”.
16. In paragraph 16.1 to paragraph 16.7, for “RTA Protocol” in each place it occurs, substitute “relevant Protocol”.

**PRACTICE DIRECTION 45 – FIXED COSTS**

17. In the contents to Practice Direction 45, after the entry for paragraph 2.10, insert—

“SECTION IIIA – CLAIMS WHICH NO LONGER CONTINUE UNDER  
THE RTA OR EL/PL PROTOCOLS – DISBURSEMENTS

Claims for loss of earnings: Rule 45.29I(2)(g)

Para. 2A.1”.

18. After paragraph 2.10, insert—

“SECTION IIIA – CLAIMS WHICH NO LONGER CONTINUE UNDER THE RTA OR  
EL/PL PROTOCOLS – DISBURSEMENTS

**Claims for loss of earnings: Rule 45.29I(2)(g)**

**2A.1**

Where, under rule 45.29I(2)(g) (loss of earnings), the court allows a claim for any loss of earnings or leave by a party or witness due to attending a hearing or staying away from home for the purpose of attending a hearing, the specified sums, per day, for each person are—

- (a) £90, where the value of the claim for damages is not more than £10,000; and
- (b) £135, where the value of the claim for damages is more than £10,000.”.

**PRACTICE DIRECTION – CIVIL RECOVERY PROCEEDINGS**

19. In Practice Direction – Civil Recovery Proceedings—

(a) in paragraph 7.3(2), for “Precedent H in the Schedule of Costs Precedents annexed to the Costs Practice Direction” substitute “Precedent for Estimate of Costs in relation to Civil Recovery (Precedent Q)”;

(b) after paragraph 7A.1, insert—

“7A.1A To enable the court to consider whether it is appropriate to make or vary an exclusion, the court may order a party to file an estimate of costs (unless the person has previously filed such an estimate in the same civil recovery proceedings and there has been no material change in the facts set out in that estimate).”;

(c) in paragraph 7B.2, for “Part 47 and Section 49A of the Costs Practice Direction” substitute “Part 47 as modified by Parts 4 and 5 of the Regulations and paragraphs 7B.3 to 7B.7 of this Practice Direction (“the civil recovery costs provisions”)”; and

(d) after paragraph 7B.2, insert-

“7B.3 In detailed assessment proceedings to which the civil recovery costs provisions apply-

- (1) the paying party is the trustee for civil recovery;

(2) the receiving party is the person whose reasonable legal costs are payable pursuant to provision made in the recovery order under section 266(8A) of the Act or article 177(10) of the Order in Council; and

(3) the relevant persons for the purpose of rule 47.6(2) includes the enforcement authority or the appropriate officer in addition to the persons referred to in paragraph 5.5 of Practice Direction 47 - Procedure for Detailed Assessment of Costs and Default Provisions.

7B.4 On commencing detailed assessment proceedings, the receiving party must, in addition to serving the documents listed in paragraph 5.2 of Practice Direction 47 on the paying party and all other relevant persons, serve a statement giving the date, amount and source of all interim payments which have been released in respect of any of those costs under Part 3 of the Regulations.

7B.5 By virtue of regulation 13(2) of the Regulations, detailed assessment proceedings must be commenced not later than 2 months after the date of the recovery order, and a request for a detailed assessment hearing must be filed not later than 2 months after the expiry of the period for commencing the detailed assessment proceedings.

7B.6 The documents which must accompany the request for a detailed assessment hearing must include copies of all exclusions from property freezing orders or interim freezing orders made by the court for the purpose of enabling the receiving party to meet the costs which are to be assessed, and of every estimate of costs filed in relation to such an exclusion.

7B.7 The receiving party's costs will be assessed on the standard basis, subject to Part 5 of the Regulations (and in particular regulation 17, which specifies the hourly rates which may be allowed). Attention is also drawn to regulation 14, which provides that the amounts of any interim payments released in respect of the receiving party's costs will be deducted from the costs allowed in accordance with Part 5 of the Regulations."

**PRACTICE DIRECTION RSC ORDER 79 – CRIMINAL PROCEEDINGS –  
PROSECUTOR'S APPEAL TO THE HIGH COURT AGAINST THE GRANT OF BAIL  
UNDER SECTION 1(1A) AND (1B) OF THE BAIL (AMENDMENT) ACT 1993 (rule  
9(15))**

20. After Practice Direction RSC Order 54 – Applications for Writ of Habeas Corpus, insert Practice Direction RSC Order 79 – Criminal Proceedings - Prosecutor’s Appeal to the High Court against the Grant of Bail under Section 1(1A) and (1B) of the Bail (Amendment) Act 1993 (rule 9(15)), as set out in Annex A to this Update.

### **PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS**

21. In paragraph 2.10A—
- (a) after “Road Traffic Accidents”, insert “or the Pre-Action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims”;
  - and
  - (b) for “that Protocol”, substitute “the relevant Protocol”.

### **PRE-ACTION PROTOCOL FOR DISEASE AND ILLNESS CLAIMS**

22. After paragraph 6.10, insert—

“6.10A

Where a claim no longer continues under the Pre-Action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims, the Claim Notification Form (‘CNF’) completed by the claimant under that Protocol can be used as the letter of claim under this protocol unless the defendant has notified the claimant that there is inadequate information in the CNF.”.

### **PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS**

23. For the current Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents, substitute the new Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents as set out at **Annex B**.

## **PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY (EMPLOYERS' LIABILITY AND PUBLIC LIABILITY) CLAIMS**

- 24.** Insert the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims as set out at **Annex C**.

## **TRANSITIONAL AND SAVING PROVISION**

- 25.** The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents in Annex B to this update only applies to claims where the Claim Notification Form is sent in accordance with that protocol on or after 31<sup>st</sup> July 2013. The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents which was in force before 31<sup>st</sup> July 2013 shall continue to have effect in respect of any claim where the Claim Notification Form was sent before that date.

## **ANNEX A**

### **“PRACTICE DIRECTION RSC ORDER 79 – CRIMINAL PROCEEDINGS – PROSECUTOR’S APPEAL TO THE HIGH COURT AGAINST THE GRANT OF BAIL UNDER SECTION 1(1A) AND (1B) OF THE BAIL (AMENDMENT) ACT 1993 (rule 9(15))**

#### *Appeals under section 1(1A) of the Bail (Amendment) Act 1993*

1. Paragraphs 2 to 6 apply in the case of an appeal under section 1(1A) of the Bail (Amendment) Act 1993 (“the 1993 Act”).
2. The prosecutor should file the copy of the notice of appeal at the Administrative Court Office in London.
3. The Prosecutor should also file the following documents with that court, as appropriate—
  - (a) a copy of the notice of the decision about bail, served on the prosecutor under rule 19.4(2) of the Criminal Procedure Rules 2012; and
  - (b) in cases under Part 1 of the Extradition Act 2003 (“2003 Act”), a copy of the European Arrest Warrant; or
  - (c) in cases under Part 2 of the 2003 Act, a copy of the certificate issued by the Secretary of State under section 70 of that Act.
4. The hearing of the appeal will be listed to commence within 48 hours, excluding weekends and any public holiday (that is to say, Christmas Day, Good Friday or a bank holiday), from the date on which oral notice of appeal was given under section 1(4) of the 1993 Act. (Section 1(8) of the 1993 Act requires that the hearing of an appeal under section 1(1A) of the 1993 Act shall commence within that time period.)
5. Section 1(9) of the 1993 Act provides that the hearing of the appeal shall be by way of re-hearing, and the judge hearing any such appeal may remand the person concerned in custody or may grant bail subject to such conditions (if any) as the judge thinks fit.
6. The High Court will provide to the Magistrates’ Court and the prison in which the respondent is held on remand a record of the decision on the appeal.



*Appeals under section 1(1B) of the Bail (Amendment) Act 1993*

7. Paragraphs 8 to 13 apply in the case of an appeal under section 1(1B) of the 1993 Act.

8. The prosecutor should file the copy of the notice of appeal at the Queen's Bench Listing Office in London.

9. The following documents should also be filed with the court, as appropriate—

- (a) a copy of the notice of the decision about bail, served on the prosecutor under rule 19.4(2) of the Criminal Procedure Rules 2012;
- (b) form of notice of application relating to bail lodged by the respondent in the Crown Court under rule 19.7 of the Criminal Procedure Rules 2012;
- (c) form MG4 in relation to the charges against the respondent;
- (d) a case summary in relation to the charges against the respondent;
- (e) a copy of any other relevant material which was provided to the Crown Court in relation to the application for bail;
- (f) notice of the date of the next hearing in the court which has granted bail.

10. The Queen's Bench Listing Office may make arrangements for the appeal to be heard by a High Court Judge sitting at a District Registry of the High Court on the same circuit.

11. The hearing of the appeal will be listed to commence within 48 hours, excluding weekends and any public holiday (that is to say, Christmas Day, Good Friday or a bank holiday), from the date on which oral notice of appeal was given under section 1(4) of the 1993 Act. (Section 1(8) of the 1993 Act requires that the hearing of an appeal under section 1(1B) of the 1993 Act shall commence within that time period.)

12. Section 1(9) of the 1993 Act provides that the hearing of the appeal shall be by way of re-hearing, and the judge hearing any such appeal may remand the person concerned in custody or may grant bail subject to such conditions (if any) as the judge thinks fit.

13. The High Court will provide to the Crown Court and the prison in which the respondent is held on remand a record of the decision on the appeal.”.

## **ANNEX B**

### **“PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS**

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## **SECTION I - INTRODUCTION**

### **Definitions**

**1.1** In this Protocol—

- (1) ‘admission of liability’ means the defendant admits that—
  - (a) the accident occurred;
  - (b) the accident was caused by the defendant’s breach of duty;

- (c) the defendant caused some loss to the claimant, the nature and extent of which is not admitted; and
  - (d) the defendant has no accrued defence to the claim under the Limitation Act 1980;
- (2) 'bank holiday' means a bank holiday under the Banking and Financial Dealings Act 1971;
  - (3) 'business day' means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;
  - (4) 'certificate of recoverable benefits' has the same meaning as in rule 36.15(1)(e)(i) of the Civil Procedure Rules 1998.
  - (5) 'child' means a person under 18;
  - (6) 'claim' means a claim, prior to the start of proceedings, for payment of damages under the process set out in this Protocol;
  - (7) 'claimant' means a person starting a claim under this Protocol unless the context indicates that it means the claimant's legal representative;
  - (8) 'CNF' means a Claim Notification Form;
  - (9) 'deductible amount' has the same meaning as in rule 36.15(1)(d) of the Civil Procedure Rules 1998;
  - (10) 'defendant' means the insurer of the person who is subject to the claim under this Protocol, unless the context indicates that it means—
    - (a) the person who is subject to the claim;
    - (b) the defendant's legal representative;
    - (c) the Motor Insurers' Bureau ('MIB'); or
    - (d) a person falling within the exceptions in section 144 of the Road Traffic Act 1988 (a "self-insurer");
  - (11) 'legal representative' has the same meaning as in rule 2.3(1) of the Civil Procedure Rules 1998;
  - (12) 'medical expert' means a person who is—
    - (a) registered with the General Medical Council;
    - (b) registered with the General Dental Council; or
    - (c) a Psychologist or Physiotherapist registered with the Health Professions Council;
  - (13) 'motor vehicle' means a mechanically propelled vehicle intended for use on roads;
  - (14) 'pecuniary losses' means past and future expenses and losses;
  - (15) 'road' means any highway and any other road to which the public has access and includes bridges over which a road passes;

- (16) 'road traffic accident' means 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<sup>1</sup> as defined by section 53 of the Health and Safety at Work etc Act 1974;
- (17) 'Type C fixed costs' has the same meaning as in rule 45.18(2) of the Civil Procedure Rules 1998; and
- (18) 'vehicle related damages' means damages for—
- (a) the pre-accident value of the vehicle;
  - (b) vehicle repair;
  - (c) vehicle insurance excess; and
  - (d) vehicle hire.

## 1.2

- (1) The 'Protocol upper limit' is—
- (a) £25,000 where the accident occurred on or after 31 July 2013; or
  - (b) £10,000 where the accident occurred on or after 30 April 2010 and before 31 July 2013,
- on a full liability basis including pecuniary losses but excluding interest.
- (2) Any reference in this Protocol to a claim which is, or damages which are, valued at no more than the Protocol upper limit, or between £1,000 and the Protocol upper limit, is to be read in accordance with subparagraph (1).

- 1.3** A reference to a rule or practice direction, unless otherwise defined, is a reference to a rule in the Civil Procedure Rules 1998 ('CPR') or a practice direction supplementing them.

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<sup>1</sup> See—

Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677)  
Lifting Operations and Lifting Equipment Regulations 1998 (S.I. 1998/2307)  
Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242)  
Manual Handling Operations Regulations 1992 (S.I. 1992/2793)  
Personal Protective Equipment at Work Regulations 1992 (S.I. 1992/2966)  
Provision and Use of Work Equipment Regulations 1998 (S.I. 1998/2306)  
Work at Height Regulations 2005 (S.I. 2005/735)  
Workplace (Health, Safety and Welfare) Regulations 1992 (S.I. 1992/3004)  
The Construction (Design and Management) Regulations 2007 (S.I. 2007/320)

**1.4** Subject to paragraph 1.5 the standard forms used in the process set out in this Protocol are available from Her Majesty's Courts and Tribunals Service ('HMCTS') website at [www.justice.gov.uk/forms/hmcts](http://www.justice.gov.uk/forms/hmcts) —

- (1) Claim Notification Form ('Form RTA 1' – referred to in this Protocol as 'the CNF');
- (2) Defendant Only Claim Notification Form ('Form RTA 2');
- (3) Medical Report Form ('Form RTA 3');
- (4) Interim Settlement Pack Form ('Form RTA 4');
- (5) Stage 2 Settlement Pack Form ('Form RTA 5');
- (6) Court Proceedings Pack (Part A) Form ('Form RTA 6'); and
- (7) Court Proceedings Pack (Part B) Form ('Form RTA 7').

**1.5** The information required in Form RTA 3 may be provided in a different format to that set out in that Form.

## **Preamble**

**2.1** This Protocol describes the behaviour the court expects of the parties prior to the start of proceedings where a claimant claims damages valued at no more than the Protocol upper limit as a result of a personal injury sustained by that person in a road traffic accident. The Civil Procedure Rules 1998 enable the court to impose costs sanctions where it is not followed.

## **Aims**

**3.1** The aim of this Protocol is to ensure that—

- (1) the defendant pays damages and costs using the process set out in the Protocol without the need for the claimant to start proceedings;
- (2) damages are paid within a reasonable time; and
- (3) the claimant's legal representative receives the fixed costs at each appropriate stage.

## **Scope**

**4.1** This Protocol applies where—

- (1) a claim for damages arises from a road traffic accident where the CNF is submitted on or after 31st July 2013;

- (2) the claim includes damages in respect of personal injury;
- (3) the claimant values the claim at no more than the Protocol upper limit;  
and
- (4) if proceedings were started the small claims track would not be the normal track for that claim.

(Paragraphs 1.1(18) and 4.4 state the damages that are excluded for the purposes of valuing the claim under paragraph 4.1.)

(Rule 26.6 provides that the small claims track is not the normal track where the value of any claim for damages for personal injuries (defined as compensation for pain, suffering and loss of amenity) is more than £1,000.)

- 4.2** The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents which commenced on 30<sup>th</sup> April 2010 will continue to apply (as it stood immediately before 31 July 2013) to all claims where the CNF was submitted before 31 July 2013.
- 4.3** This Protocol ceases to apply to a claim where, at any stage, the claimant notifies the defendant that the claim has now been revalued at more than the Protocol upper limit.
- 4.4** A claim may include vehicle related damages but these are excluded for the purposes of valuing the claim under paragraph 4.1.
- 4.5** This Protocol does not apply to a claim—
  - (1) in respect of a breach of duty owed to a road user by a person who is not a road user;
  - (2) made to the MIB pursuant to the Untraced Drivers' Agreement 2003 or any subsequent or supplementary Untraced Drivers' Agreements;
  - (3) where the claimant or defendant acts as personal representative of a deceased person;
  - (4) where the claimant or defendant is a protected party as defined in rule 21.1(2);
  - (5) where the claimant is bankrupt; or
  - (6) where the defendant's vehicle is registered outside the United Kingdom.



- 4.6** The fixed costs in rule 45.18 apply in relation to a claimant only where a claimant has a legal representative.

## **SECTION II – GENERAL PROVISIONS**

### **Communication between the parties**

- 5.1** Subject to paragraph 6.1(2), where the Protocol requires information to be sent to a party it must be sent via [www.claimsportal.org.uk](http://www.claimsportal.org.uk) (or any other Portal address that may be prescribed from time to time). The claimant will give an e-mail address for contact in the Claim Notification Form ('CNF'). All written communications not required by the Protocol must be sent by e-mail.
- 5.2** Where the claimant has sent the CNF to the wrong defendant, the claimant may, in this circumstance only, send the CNF to the correct defendant. The period in paragraph 6.11 or 6.13 starts from the date the CNF was sent to the correct defendant.

### **Time periods**

- 5.3** A reference to a fixed number of days is a reference to business days as defined in paragraph 1.1(3).
- 5.4** Where a party should respond within a fixed number of days, the period for response starts the first business day after the information was sent to that party.
- 5.5** All time periods, except those stated in—
- (1) paragraph 6.11 (the insurer's response);
  - (2) paragraph 6.13 (MIB's response); and
  - (3) paragraph 7.37 (the further consideration period),
- may be varied by agreement between the parties.
- 5.6** Where this Protocol requires the defendant to pay an amount 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 in the relevant provision.

## **Limitation period**

**5.7** Where compliance with this Protocol is not possible before the expiry of the limitation period the claimant may start proceedings and apply to the court for an order to stay (i.e. suspend) the proceedings while the parties take steps to follow this Protocol. Where proceedings are started in a case to which this paragraph applies the claimant should use the procedure set out under Part 8 in accordance with Practice Direction 8B (“the Stage 3 Procedure”).

**5.8** Where the parties are then unable to reach a settlement at the end of Stage 2 of this Protocol the claimant must, in order to proceed to Stage 3, apply to lift the stay and request directions in the existing proceedings.

## **Claimant’s reasonable belief of the value of the claim**

**5.9** Where the claimant reasonably believes that the claim is valued at between £1,000 and the Protocol upper limit, but it subsequently becomes apparent that the value of the claim is less than £1,000, the claimant is entitled to the Stage 1 and (where relevant) the Stage 2 fixed costs.

## **Claimants without a legal representative**

**5.10** Where the claimant does not have a legal representative, on receipt of the CNF the defendant must explain—

- (1) the period within which a response is required; and
- (2) that the claimant may obtain independent legal advice.

## **Discontinuing the Protocol process**

**5.11** Claims which no longer continue under this Protocol cannot subsequently re-enter the process.

## SECTION III – THE STAGES OF THE PROCESS

### Stage 1

#### Completion of the Claim Notification Form

- 6.1** The claimant must complete and send—
- (1) the CNF to the defendant’s insurer; and
  - (2) the ‘Defendant Only CNF’ to the defendant by first class post, except where the defendant is a self-insurer in which case the CNF must be sent to the defendant as insurer and no ‘Defendant Only CNF’ is required.
- 6.2** The ‘Defendant Only CNF’ must be sent at the same time or as soon as practicable after the CNF is sent.
- 6.3** All boxes in the CNF that are marked as mandatory must be completed before it is sent. The claimant must make a reasonable attempt to complete those boxes that are not marked as mandatory.
- 6.4** A claim for vehicle related damages will ordinarily be dealt with outside the provisions of this Protocol under industry agreements between relevant organisations and insurers. Where there is a claim for vehicle related damages the claimant must—
- (1) state in the CNF that the claim is being dealt with by a third party; or
  - (2)
    - (a) explain in the CNF that the legal representative is dealing with the recovery of these additional amounts; and
    - (b) attach any relevant invoices and receipts to the CNF or explain when they are likely to be sent to the defendant.
- 6.5** Where the claimant is a child, this must be noted in the relevant section of the CNF.
- 6.6** The statement of truth in the CNF must be signed either by the claimant or by the claimant’s legal representative where the claimant has authorised the legal representative to do so and the legal representative can produce written

evidence of that authorisation. Where the claimant is a child the statement of truth may be signed by the parent or guardian. On the electronically completed CNF the person may enter their name in the signature box to satisfy this requirement.

### **Rehabilitation**

- 6.7** The claimant must set out details of rehabilitation in the CNF. The parties should at all stages consider the Rehabilitation Code which may be found at: <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/pre-action-protocols>

### **Failure to complete the Claim Notification Form**

- 6.8** Where the defendant considers that inadequate mandatory information has been provided in the CNF, that shall be a valid reason for the defendant to decide that the claim should no longer continue under this Protocol.
- 6.9** Rule 45.24(2) sets out the sanctions available to the court where it considers that the claimant provided inadequate information in the CNF.

### **Response from insurer**

- 6.10** The defendant must send to the claimant an electronic acknowledgment the next day after receipt of the CNF.
- 6.11** The defendant must complete the 'Insurer Response' section of the CNF ("the CNF response") and send it to the claimant within 15 days.

### **Application for a certificate of recoverable benefits**

- 6.12** The defendant must, before the end of Stage 1, apply to the Compensation Recovery Unit (CRU) for a certificate of recoverable benefits.

### **Motor Insurers' Bureau**

- 6.13** Where no insurer is identified and the claim falls to be dealt with by the MIB or

its agents the CNF response must be completed and sent to the claimant within 30 days.

- 6.14** Where the MIB passes the claim to an insurer to act on its behalf, that insurer must notify the claimant of that fact. There is no extension to the time period in paragraph 6.13.

**Contributory negligence, liability not admitted or failure to respond**

- 6.15** The claim will no longer continue under this Protocol where the defendant, within the period in paragraph 6.11 or 6.13—
- (1) makes an admission of liability but alleges contributory negligence (other than in relation to the claimant's admitted failure to wear a seat belt);
  - (2) does not complete and send the CNF response;
  - (3) does not admit liability; or
  - (4) notifies the claimant that the defendant considers that—
    - (a) there is inadequate mandatory information in the CNF; or
    - (b) if proceedings were issued, the small claims track would be the normal track for that claim.
- 6.16** Where the defendant does not admit liability under paragraph 6.15(3), the defendant must give brief reasons in the CNF response.
- 6.17** Where paragraph 6.15 applies the claim will proceed under the Pre-Action Protocol for Personal Injury Claims starting at paragraph 3.7 of that Protocol (which allows a maximum of three months for the defendant to investigate the claim) except that where paragraph 6.15(4)(a) applies the claim will proceed under paragraph 3.1 of that Protocol.

(For admissions made in the course of the process under this Protocol, see rule 14.1B.)

(Paragraph 2.10A of the Pre-Action Protocol on Personal Injury provides that the CNF can be used as the letter of claim except where the claim no longer continues under this Protocol because the CNF contained inadequate information.)

## **Stage 1 fixed costs**

- 6.18** Except where the claimant is a child, the defendant must pay the Stage 1 fixed costs in rule 45.18 where—
- (1) liability is admitted; or
  - (2) liability is admitted and contributory negligence is alleged only in relation to the claimant's admitted failure to wear a seat belt, within 10 days after receiving the Stage 2 Settlement Pack.
- 6.19** Where the defendant fails to pay the Stage 1 fixed costs within the period specified in paragraph 6.18 the claimant may give written notice that the claim will no longer continue under this Protocol. Unless the claimant's notice is sent to the defendant within 10 days after the expiry of the period in paragraph 6.18 the claim will continue under this Protocol.

## **Stage 2**

### **Medical Reports**

- 7.1** The claimant should obtain a medical report, if one has not already been obtained.
- 7.2** It is expected that most claimants will obtain a medical report from one expert, but additional medical reports may be obtained from other experts where the injuries require reports from more than one medical discipline.
- 7.3** The claimant must check the factual accuracy of any medical report before it is sent to the defendant. There will be no further opportunity for the claimant to challenge the factual accuracy of a medical report after it has been sent to the defendant.
- 7.4**
- (1) The medical expert should identify within the report—
    - (a) the medical records that have been reviewed; and
    - (b) the medical records considered relevant to the claim.
  - (2) The claimant must disclose with any medical report sent to the defendant any medical records which the expert considers relevant.

- 7.5** In most claims with a value of no more than £10,000, it is expected that the medical expert will not need to see any medical records.
- 7.6** Any relevant photograph(s) of the claimant's injuries upon which the claimant intends to rely should also be disclosed with the medical report.
- 7.7** Where the claimant was not wearing a seat belt the medical report must contain sufficient information to enable the defendant to calculate the appropriate reduction of damages in accordance with principles set out in existing case law.

### **Subsequent medical reports**

- 7.8** A subsequent medical report from an expert who has already reported must be justified. A report may be justified where—
- (1) the first medical report recommends that further time is required before a prognosis of the claimant's injuries can be determined; or
  - (2) the claimant is receiving continuing treatment; or
  - (3) the claimant has not recovered as expected in the original prognosis.

### **Non-medical expert reports**

- 7.9**
- (1) In most cases, a report from a non-medical expert will not be required, but a report may be obtained where it is reasonably required to value the claim.
  - (2) Paragraph 7.3 applies to non-medical expert reports as it applies to expert medical reports.

### **Specialist legal advice**

- 7.10** In most cases under this Protocol, it is expected that the claimant's legal representative will be able to value the claim. In some cases with a value of more than £10,000 (excluding vehicle related damages), an additional advice from a specialist solicitor or from counsel may be justified where it is reasonably required to value the claim.

## **Witness statements**

**7.11** In most cases, witness statements, whether from the claimant or otherwise, will not be required. One or more statements may, however, be provided where reasonably required to value the claim.

## **Stay of process**

**7.12** Where the claimant needs to obtain a subsequent expert medical report or a non-medical report, the parties should agree to stay the process in this Protocol for a suitable period. The claimant may then request an interim payment in accordance with paragraphs 7.13 to 7.16.

## **Request for an interim payment**

**7.13** Where the claimant requests an interim payment of £1,000, the defendant should make an interim payment to the claimant in accordance with paragraph 7.18.

**7.14** The claimant must send to the defendant the Interim Settlement Pack and initial medical report(s) (including any recommendation that a subsequent medical report is justified) in order to request the interim payment.

**7.15** The claimant must also send evidence of pecuniary losses and disbursements. This will assist the defendant in considering whether to make an offer to settle the claim.

**7.16** Where an interim payment of more than £1,000 is requested the claimant must specify in the Interim Settlement Pack the amount requested, the heads of damage which are the subject of the request and the reasons for the request.

**7.17** Unless the parties agree otherwise—

- (a) the interim payment of £1,000 is only in relation to general damages; and
- (b) where more than £1,000 is requested by the claimant, the amount in excess of £1,000 is only in relation to pecuniary losses.



### **Interim payment of £1,000**

**7.18** Where paragraph 7.13 applies the defendant must pay £1,000 within 10 days of receiving the Interim Settlement Pack.

### **Interim payment of more than £1,000**

**7.19** Subject to paragraphs 7.24 and 7.25, where the claimant has requested an interim payment of more than £1,000 the defendant must pay—

- (1) the full amount requested less any deductible amount which is payable to the CRU;
- (2) the amount of £1,000; or
- (3) some other amount of more than £1,000 but less than the amount requested by the claimant,

within 15 days of receiving the Interim Settlement Pack.

**7.20** Where a payment is made under paragraphs 7.19(2) or (3) the defendant must briefly explain in the Interim Settlement Pack why the full amount requested by the claimant is not agreed.

**7.21** Where the claim is valued at more than £10,000 the claimant may use the procedure at paragraphs 7.13 to 7.20 to request more than one interim payment.

**7.22** Nothing in this Protocol is intended to affect the provisions contained in the Rehabilitation Code.

### **Vehicle related damages – interim payments**

**7.23** Claims for vehicle related damages will ordinarily be dealt with outside the provisions of this Protocol under industry agreements between relevant organisations and insurers. However, where the claimant has paid for the vehicle related damages, the sum may be included in a request for an interim payment under paragraph 7.16.

### **Application for a certificate of recoverable benefits**

**7.24** Paragraph 7.25 applies where the defendant agrees to make a payment in accordance with paragraph 7.19(1) or (3) but does not yet have a certificate of recoverable benefits or does not have one that will remain in force for at least 10 days from the date of receiving the Interim Settlement Pack.

**7.25** The defendant should apply for a certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must make the interim payment under paragraph 7.19(1) or (3) no more than 30 days from the date of receiving the Interim Settlement Pack.

### **Request for an interim payment where the claimant is a child**

**7.26** The interim payment provisions in this Protocol do not apply where the claimant is a child. Where the claimant is a child and an interim payment is reasonably required proceedings must be started under Part 7 of the CPR and an application for an interim payment can be made within those proceedings.

(Rule 21.10 provides that no payment, which relates to a claim by a child, is valid without the approval of the court.)

**7.27** Paragraph 7.26 does not prevent a defendant from making a payment direct to a treatment provider.

### **Interim payment – supplementary provisions**

**7.28** Where the defendant does not comply with paragraphs 7.18 or 7.19 the claimant may start proceedings under Part 7 of the CPR and apply to the court for an interim payment in those proceedings.

**7.29** Where the defendant does comply with paragraph 7.19(2) or (3) but the claimant is not content with the amount paid, the claimant may still start proceedings. However, the court will order the defendant to pay no more than the Stage 2 fixed costs where the court awards an interim payment of no more than the amount offered by the defendant or the court makes no award.

**7.30** Where paragraph 7.28 or 7.29 applies the claimant must give notice to the defendant that the claim will no longer continue under this Protocol. Unless the claimant's notice is sent to the defendant within 10 days after the expiry of the period in paragraphs 7.18, 7.19 or 7.25 as appropriate, the claim will continue under this Protocol.

### **Costs of expert medical and non-medical reports and specialist legal advice obtained**

#### **7.31**

- (1) Where the claimant obtains more than one expert report or an advice from a specialist solicitor or counsel—
  - (a) the defendant at the end of Stage 2 may refuse to pay; or
  - (b) the court at Stage 3 may refuse to allow,the costs of any report or advice not reasonably required.
- (2) Therefore, where the claimant obtains more than one expert report or obtains an advice from a specialist solicitor or counsel—
  - (a) the claimant should explain in the Stage 2 Settlement Pack why they obtained a further report or such advice; and
  - (b) if relevant, the defendant should in the Stage 2 Settlement Pack identify the report or reports or advice for which they will not pay and explain why they will not pay for that report or reports or advice.

### **Submitting the Stage 2 Settlement Pack to the defendant**

**7.32** The Stage 2 Settlement Pack must comprise—

- (1) the Stage 2 Settlement Pack Form;
- (2) a medical report or reports;
- (3) evidence of pecuniary losses;
- (4) evidence of disbursements (for example the cost of any medical report);
- (5) any non-medical expert report,
- (6) any medical records/photographs served with medical reports; and
- (7) any witness statements.

**7.33** The claimant should send the Stage 2 Settlement Pack to the defendant within 15 days of the claimant approving —

- (1) the final medical report and agreeing to rely on the prognosis in that report; or
  - (2) any non-medical expert report,
- whichever is later.

**7.34** Where the defendant alleges contributory negligence because of the claimant's failure to wear a seat belt, the Stage 2 Settlement Pack Form must also suggest a percentage reduction (which may be 0 per cent) in the amount of damages.

### **Consideration of claim**

**7.35** There is a 35 day period for consideration of the Stage 2 Settlement Pack by the defendant ("the total consideration period"). This comprises a period of up to 15 days for the defendant to consider the Stage 2 Settlement Pack ("the initial consideration period") and make an offer. The remainder of the total consideration period ("the negotiation period") is for any further negotiation between the parties.

**7.36** The total consideration period can be extended by the parties agreeing to extend either the initial consideration period or the negotiation period or both.

**7.37** Where a party makes an offer 5 days or less before the end of the total consideration period (including any extension to this period under paragraph 7.36), there will be a further period of 5 days after the end of the total consideration period for the relevant party to consider that offer. During this period ("the further consideration period") no further offers can be made by either party.

### **Defendant accepts offer or makes counter-offer**

**7.38** Within the initial consideration period (or any extension agreed under paragraph 7.36) the defendant must either accept the offer made by the claimant on the Stage 2 Settlement Pack Form or make a counter-offer using that form.

**7.39** The claim will no longer continue under this Protocol where the defendant gives notice to the claimant within the initial consideration period (or any extension agreed under paragraph 7.36) that the defendant—

- (a) considers that, if proceedings were started, the small claims track would be the normal track for that claim; or
- (b) withdraws the admission of causation as defined in paragraph 1.1(1)(c).

- 7.40** Where the defendant does not respond within the initial consideration period (or any extension agreed under paragraph 7.36), the claim will no longer continue under this Protocol and the claimant may start proceedings under Part 7 of the CPR.
- 7.41** When making a counter-offer the defendant must propose an amount for each head of damage and may, in addition, make an offer that is higher than the total of the amounts proposed for all heads of damage. The defendant must also explain in the counter-offer why a particular head of damage has been reduced. The explanation will assist the claimant when negotiating a settlement and will allow both parties to focus on those areas of the claim that remain in dispute.
- 7.42** Where the defendant has obtained a certificate of recoverable benefits from the CRU the counter-offer must state the name and amount of any deductible amount.
- 7.43** On receipt of a counter-offer from the defendant the claimant has until the end of the total consideration period or the further consideration period to accept or decline the counter offer.
- 7.44** Any offer to settle made at any stage by either party will automatically include, and cannot exclude—
- (1) the Stage 1 and Stage 2 fixed costs in rule 45.18;
  - (2) an agreement in principle to pay a sum equal to the Type C fixed costs of an additional advice on quantum of damages where such advice is justified under paragraph 7.10;
  - (3) an agreement in principle to pay relevant disbursements allowed in accordance with rule 45.19; or
  - (4) where applicable, any success fee in accordance with rule 45.31(1) (as it was in force immediately before 1 April 2013).

**7.45** Where there is a dispute about whether an additional advice on quantum of damages is justified or about the amount or validity of any disbursement, the parties may use the procedure set out in rule 45.29.

(Rule 45.29 provides that where the parties to a dispute have a written agreement on all issues but have failed to agree the amount of the costs, they may start proceedings under that rule so that the court can determine the amount of those costs.)

### **Withdrawal of offer after the consideration period**

**7.46** Where a party withdraws an offer made in the Stage 2 Settlement Pack Form after the total consideration period or further consideration period, the claim will no longer continue under this Protocol and the claimant may start proceedings under Part 7 of the CPR.

### **Settlement**

**7.47** Except where the claimant is a child or paragraphs 7.49 and 7.50 apply, the defendant must pay—

- (1) the agreed damages less any—
  - (a) deductible amount which is payable to the CRU; and
  - (b) previous interim payment;
- (2) any unpaid Stage 1 fixed costs in rule 45.18;
- (3) the Stage 2 fixed costs in rule 45.18;
- (4) where an additional advice on quantum of damages is justified under paragraph 7.10, a sum equal to the Type C fixed costs to cover the cost of that advice;
- (5) the relevant disbursements allowed in accordance with rule 45.19; and
- (6) where applicable, any success fee in accordance with rule 45.31(1) (as it was in force immediately before 1 April 2013),

within 10 days of the parties agreeing a settlement.

(Rule 21.10 provides that the approval of the court is required where, before proceedings are started, a claim is made by a child and a settlement is reached. The provisions in paragraph 6.1 of Practice Direction 8B set out what must be filed with the court when an application is made to approve a settlement.)

- 7.48** Except where paragraph 7.51 applies, where the parties agree a settlement for a greater sum than the defendant had offered during the total consideration period or further consideration period and after the Court Proceedings Pack has been sent to the defendant but before proceedings are issued under Stage 3—
- (1) paragraph 7.47 applies; and
  - (2) the defendant must also pay the fixed late settlement costs in rule 45.23A.

#### **Application for certificate of recoverable benefits**

- 7.49** Paragraph 7.50 applies where, at the date of the acceptance of an offer in the Stage 2 Settlement Pack, the defendant does not have a certificate of recoverable benefits that will remain in force for at least 10 days.

- 7.50** The defendant should apply for a fresh certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.47 within 30 days of the end of the relevant period in paragraphs 7.35 to 7.37.

#### **Vehicle related damages - additional damages**

- 7.51** Paragraph 7.52 applies where at the end of the relevant period in paragraphs 7.35 to 7.37 the claim (“the original damages”) has not settled and there remain vehicle related damages (“the additional damages”) being dealt with by a third party separate from the claim. The original damages include all elements of the claim in the existing Stage 2 Settlement Pack.

- 7.52** Where paragraph 7.51 applies the claimant must, in relation to the additional damages—
- (1) notify the defendant that this separate claim is being considered;
  - (2) obtain all relevant information from the third party; and
  - (3) make a separate offer by amending the Stage 2 Settlement Pack Form.

- 7.53** Within 15 days of the claimant sending the offer under paragraph 7.52(3), the defendant must either agree the offer made by the claimant or make a counter-offer.

**7.54** The counter offer must explain why a particular head of damage has been reduced to assist the claimant when negotiating a settlement and to allow both parties to focus on those areas of the claim that remain in dispute.

**Original damages and additional damages are agreed**

**7.55** Where the original damages and additional damages are agreed within the period in paragraph 7.53 the defendant must pay the claimant in accordance with paragraph 7.62.

**7.56** Where the parties agree a settlement for a greater sum than the Defendant had offered during the period in paragraph 7.53 but after the Court Proceedings Pack has been sent to the Defendant and before proceedings are issued under Stage 3,

- (1) paragraph 7.55 applies; and
- (2) the defendant must also pay the fixed late settlement costs in rule 45.23A.

**Original damages are not agreed, additional damages are agreed**

**7.57** Paragraph 7.58 applies where—

- (1) the original damages are not agreed; but
- (2) the additional damages are agreed.

**7.58** Where paragraph 7.57 applies—

- (1) the defendant must pay the agreed amount of the additional damages within 10 days of agreeing those damages, and
- (2) the claimant must continue with the provisions in paragraphs 7.64 to 7.75 of this Protocol.

**Original damages are agreed, additional damages are not agreed**

**7.59** Paragraph 7.60 applies where—

- (1) the original damages are agreed; but
- (2) the additional damages are not agreed.



**7.60** Where paragraph 7.59 applies—

- (1) the defendant must, in relation to the original damages, pay the claimant in accordance with paragraph 7.62; and
- (2) the claimant may start proceedings under Part 7 of the CPR in relation to the additional damages.

### **Original damages and additional damages are not agreed**

**7.61** Paragraphs 7.70 to 7.75 apply where the original and additional damages are not agreed.

### **Settlement after claim for additional damages**

**7.62** Except where the claimant is a child or paragraph 7.64 applies, the defendant must pay—

- (1) the agreed damages less any—
  - (a) deductible amount which is payable to the CRU; and
  - (b) previous interim payment;
- (2) any unpaid Stage 1 fixed costs in rule 45.18;
- (3) the Stage 2 fixed costs in rule 45.18;
- (4) where an additional advice on quantum of damages is justified under paragraph 7.10, a sum equal to the Type C fixed costs to cover the costs of that advice;
- (5) the relevant disbursements allowed in accordance with rule 45.19; and
- (6) where applicable, any success fee in accordance with rule 45.31 (as it was in force immediately before 1 April 2013) for Stage 1 and Stage 2 fixed costs,

within 10 days of agreeing to pay the damages.

(Rule 21.10 provides that the approval of the court is required where, before proceedings are started, a claim is made by a child and a settlement is reached. The provisions in paragraph 6.1 of Practice Direction 8B set out what must be filed with the court when an application is made to approve a settlement.)

### **Application for certificate of recoverable benefits**

**7.63** Where at the date on which damages are agreed the defendant does not have a certificate of recoverable benefits that remains in force for at least 10 days the defendant should apply for a fresh certificate as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.62 within 30 days of the date on which damages are agreed.

#### **Failure to reach agreement - general**

**7.64** Where the parties do not reach an agreement on—

- (1) the original damages within the periods specified in paragraphs 7.35 to 7.37; or
- (2) the original damages and, where relevant, the additional damages under paragraph 7.51,

the claimant must send to the defendant the Court Proceedings Pack (Part A and Part B) Form which must contain—

- (a) in Part A, the final schedule of the claimant's losses and the defendant's responses comprising only the figures specified in subparagraphs (1) and (2) above, together with supporting comments and evidence from both parties on any disputed heads of damage; and
- (b) in Part B, the final offer and counter offer from the Stage 2 Settlement Pack Form and, where relevant, the offer and any final counter offer made under paragraph 7.53.

**7.65** The deductible amount should only be deducted from the personal injury damages.

**7.66** Comments in the Court Proceedings Pack (Part A) Form must not raise anything that has not been raised in the Stage 2 Settlement Pack Form.

**7.67** The defendant should then check that the Court Proceedings Pack (Part A and Part B) Form complies with paragraphs 7.64 to 7.66. If the defendant considers that the Court Proceedings Pack (Part A and Part B) Form does not comply it must be returned to the claimant within 5 days with an explanation as to why it does not comply.

- 7.68** Where the defendant intends to nominate a legal representative to accept service the name and address of the legal representative should be provided in the Court Proceedings Pack (Part A) Form.
- 7.69** Where the defendant fails to return the Court Proceedings Pack (Part A and Part B) Form within the period in paragraph 7.67, the claimant should assume that the defendant has no further comment to make.

### **Non-settlement payment by the defendant at the end of Stage 2**

- 7.70** Except where the claimant is a child the defendant must pay to the claimant—
- (1) the final offer of damages made by the defendant in the Court Proceedings Pack (Part A and Part B) Form less any—
    - (a) deductible amount which is payable to the CRU; and
    - (b) previous interim payment;
  - (2) any unpaid Stage 1 fixed costs in rule 45.18;
  - (3) the Stage 2 fixed costs in rule 45.18; and
  - (4) the disbursements in rule 45.19(2) that have been agreed.
- 7.71** Where the amount of a disbursement is not agreed the defendant must pay such amount for the disbursement as the defendant considers reasonable.
- 7.72** Subject to paragraphs 7.73 and 7.74 the defendant must pay the amounts in paragraph 7.70 and 7.71 within 15 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.
- 7.73** Paragraph 7.74 applies where the defendant is required to make the payments in paragraph 7.70 but does not have a certificate of recoverable benefits that remains in force for at least 10 days.
- 7.74** The defendant should apply for a fresh certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.70 within 30 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.

**7.75** Where the defendant does not comply with paragraphs 7.72 or 7.74 the claimant may give written notice that the claim will no longer continue under this Protocol and start proceedings under Part 7 of the CPR.

### **General provisions**

**7.76** Where the claimant gives notice to the defendant that the claim is unsuitable for this Protocol (for example, because there are complex issues of fact or law) then the claim will no longer continue under this Protocol. However, where the court considers that the claimant acted unreasonably in giving such notice it will award no more than the fixed costs in rule 45.18.

## **Stage 3**

### **Stage 3 Procedure**

**8.1** The Stage 3 Procedure is set out in Practice Direction 8B.”.

## **ANNEX C**

### **“PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY (EMPLOYERS’ LIABILITY AND PUBLIC LIABILITY) CLAIMS**

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## **SECTION I - INTRODUCTION**

### **Definitions**

**1.1** In this Protocol—

- (1) ‘admission of liability’ means the defendant admits that—
  - (a) the breach of duty occurred;
  - (b) the defendant thereby caused some loss to the claimant, the nature and extent of which is not admitted; and
  - (c) the defendant has no accrued defence to the claim under the Limitation Act 1980;

- (2) 'bank holiday' means a bank holiday under the Banking and Financial Dealings Act 1971;
- (3) 'business day' means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;
- (4) 'certificate of recoverable benefits' has the same meaning as in rule 36.15(1)(e)(i) of the Civil Procedure Rules 1998.
- (5) 'child' means a person under 18;
- (6) 'claim' means a claim, prior to the start of proceedings, for payment of damages under the process set out in this Protocol;
- (7) 'claimant' means a person starting a claim under this Protocol ; unless the context indicated that it means the claimant's legal representative;
- (8) 'clinical negligence' has the same meaning as in section 58C of the Courts and Legal Services Act 1990;
- (9) 'CNF' means a Claim Notification Form;
- (10) 'deductible amount' has the same meaning as in rule 36.15(1)(d) of the Civil Procedure Rules 1998;
- (11) 'defendant' includes, where the context indicates, the defendant's insurer or legal representative;
- (12) 'disease claim' means a claim within sub-paragraph (14)(b);
- (13) 'employee' has the meaning given to it by section 2(1) of the Employers' Liability (Compulsory Insurance) Act 1969;
- (14) 'employers' liability claim' means a claim by an employee against their employer for damages arising from—
  - (a) a bodily injury sustained by the employee in the course of employment; or
  - (b) a disease that the claimant is alleged to have contracted as a consequence of the employer's breach of statutory or common law duties of care in the course of the employee's employment, other than a physical or psychological injury caused by an accident or other single event;
- (15) 'legal representative' has the same meaning as in rule 2.3(1) of the Civil Procedure Rules 1998;
- (16) 'medical expert' means a person who is—
  - (a) registered with the General Medical Council;
  - (b) registered with the General Dental Council; or
  - (c) a Psychologist or Physiotherapist registered with the Health Professions Council;

- (17) 'pecuniary losses' means past and future expenses and losses; and
- (18) 'public liability claim'—
  - (a) means a claim for damages for personal injuries arising out of a breach of a statutory or common law duty of care made against—
    - (i) a person other than the claimant's employer; or
    - (ii) the claimant's employer in respect of matters arising other than in the course the claimant's employment; but
  - (b) does not include a claim for damages arising from a disease that the claimant is alleged to have contracted as a consequence of breach of statutory or common law duties of care, other than a physical or psychological injury caused by an accident or other single event;
- (19) 'Type C fixed costs' has the same meaning as in rule 45.18(2) of the Civil Procedure Rules 1998; and
- (20) 'vulnerable adult' has the same meaning as in paragraph 3(5) of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

**1.2** A reference to a rule or practice direction, unless otherwise defined, is a reference to a rule in the Civil Procedure Rules 1998 ('CPR') or a practice direction supplementing them.

**1.3** Subject to paragraph 1.4 the standard forms used in the process set out in this Protocol are available from Her Majesty's Courts and Tribunals Service ('HMCTS') website at [www.justice.gov.uk/forms/hmcts](http://www.justice.gov.uk/forms/hmcts)—

- (1) Claim Notification Form ('Form EL1', 'Form ELD1' and 'Form PL1'— which are referred to in this Protocol as 'the CNF');
- (2) Defendant Only Claim Notification Form ('Form EL2', 'Form ELD2' and 'Form PL2');
- (3) Medical Report Form ('Form EPL3');
- (4) Interim Settlement Pack Form ('Form EPL4');
- (5) Stage 2 Settlement Pack Form ('Form EPL5');
- (6) Court Proceedings Pack (Part A) Form ('Form EPL6'); and
- (7) Court Proceedings Pack (Part B) Form ('Form EPL7').

**1.4** The information required in Form EPL3 may be provided in a different format to that set out in that Form.



## **Preamble**

- 2.1** This Protocol describes the behaviour the court expects of the parties prior to the start of proceedings where a claimant claims damages valued at no more than £25,000 in an employers' liability claim or in a public liability claim. The Civil Procedure Rules 1998 enable the court to impose costs sanctions where this Protocol is not followed.

## **Aims**

- 3.1** The aim of this Protocol is to ensure that—
- (1) the defendant pays damages and costs using the process set out in the Protocol without the need for the claimant to start proceedings;
  - (2) damages are paid within a reasonable time; and
  - (3) the claimant's legal representative receives the fixed costs at each appropriate stage.

## **Scope**

- 4.1** This Protocol applies where—
- (1) either—
    - (a) the claim arises from an accident occurring on or after 31 July 2013;
    - or
    - (b) in a disease claim, no letter of claim has been sent to the defendant before 31 July 2013;
  - (2) the claim includes damages in respect of personal injury;
  - (3) the claimant values the claim at not more than £25,000 on a full liability basis including pecuniary losses but excluding interest ('the upper limit'); and
  - (4) if proceedings were started the small claims track would not be the normal track for that claim.

(Rule 26.6 provides that the small claims track is not the normal track where the value of any claim for damages for personal injuries (defined as compensation for pain, suffering and loss of amenity) is more than £1,000.)

**4.2** This Protocol ceases to apply to a claim where, at any stage, the claimant notifies the defendant that the claim has now been revalued at more than the upper limit.

**4.3** This Protocol does not apply to a claim—

- (1) where the claimant or defendant acts as personal representative of a deceased person;
- (2) where the claimant or defendant is a protected party as defined in rule 21.1(2);
- (3) in the case of a public liability claim, where the defendant is an individual ('individual' does not include a defendant who is sued in their business capacity or in their capacity as an office holder);
- (4) where the claimant is bankrupt;
- (5) where the defendant is insolvent and there is no identifiable insurer;
- (6) in the case of a disease claim, where there is more than one employer defendant;
- (7) for personal injury arising from an accident or alleged breach of duty occurring outside England and Wales;
- (8) for damages in relation to harm, abuse or neglect of or by children or vulnerable adults;
- (9) which includes a claim for clinical negligence;
- (10) for mesothelioma;
- (11) for damages arising out of a road traffic accident (as defined in paragraph 1.1(16) of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents).

**4.4** The fixed costs in rule 45.18 apply in relation to a claimant only where a claimant has a legal representative.

## **SECTION II – GENERAL PROVISIONS**

### **Communication between the parties**

- 5.1** Subject to paragraphs 6.1 and 6.2, where the Protocol requires information to be sent to a party it must be sent via [www.claimsportal.org.uk](http://www.claimsportal.org.uk) (or any other Portal address that may be prescribed from time to time). The claimant will give an e-mail address for contact in the Claim Notification Form (“CNF”). All written communications not required by the Protocol must be sent by e-mail.
- 5.2** Where the claimant has sent the CNF to the wrong defendant, the claimant may, in this circumstance only, resend the relevant form to the correct defendant. The period in paragraph 6.12 starts from the date that the form was sent to the correct defendant.

### **Time periods**

- 5.3** A reference to a fixed number of days is a reference to business days as defined in paragraph 1.1(3).
- 5.4** Where a party should respond within a fixed number of days, the period for response starts the first business day after the information was sent to that party.
- 5.5** All time periods, except those stated in—  
(1) paragraph 6.11 (response);  
(2) paragraph 7.34 (the further consideration period),  
may be varied by agreement between the parties.
- 5.6** Where this Protocol requires the defendant to pay an amount 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 in the relevant provision.

### **Limitation period**

- 5.7** Where compliance with this Protocol is not possible before the expiry of the limitation period the claimant may start proceedings and apply to the court for an order to stay (i.e. suspend) the proceedings while the parties take steps to follow this Protocol. Where proceedings are started in a case to which this paragraph

applies the claimant should use the procedure set out under Part 8 in accordance with Practice Direction 8B (“the Stage 3 Procedure”).

- 5.8** Where the parties are then unable to reach a settlement at the end of Stage 2 of this Protocol the claimant must, in order to proceed to Stage 3, apply to lift the stay and request directions in the existing proceedings.

#### **Claimant’s reasonable belief of the value of the claim**

- 5.9** Where the claimant reasonably believes that the claim is valued at between £1,000 and £25,000 but it subsequently becomes apparent that the value of the claim is less than £1,000, the claimant is entitled to the Stage 1 and (where relevant) the Stage 2 fixed costs.

#### **Claimants without a legal representative**

- 5.10** Where the claimant does not have a legal representative, on receipt of the CNF the defendant must explain—
- (1) the period within which a response is required; and
  - (2) that the claimant may obtain independent legal advice.

#### **Discontinuing the Protocol process**

- 5.11** Claims which no longer continue under this Protocol cannot subsequently re-enter the process.

### **SECTION III – THE STAGES OF THE PROCESS**

#### **Stage 1**

#### **Completion of the Claim Notification Form**

- 6.1** (1) The claimant must complete and send—
- (a) the CNF to the defendant’s insurer, if known; and
  - (b) the Defendant Only Claim Notification Form (“Defendant Only CNF”) to the defendant,

but the requirement to send the form to the defendant may be ignored in a disease claim where the CNF has been sent to the insurer and the defendant has been dissolved, is insolvent or has ceased to trade.

- (2) If—
  - (a) the insurer's identity is not known; or
  - (b) the defendant is known not to hold insurance cover,the CNF must be sent to the defendant's registered office or principal place of business and no Defendant Only CNF is required.
- (3) Where the insurer's identity is not known, the claimant must make a reasonable attempt to identify the insurer and, in an employers' liability claim, the claimant must have carried out a database search through the Employers' Liability Tracing Office.
- (4) In a disease claim, the CNF should be sent to the insurer identified as the insurer last on risk for the employer for the material period of employment.

**6.2** If the CNF or Defendant Only CNF cannot be sent to the defendant via the prescribed Portal address, it must be sent via first class post; and this must be done, in a case where the CNF is sent to the insurer, at the same time or as soon as practicable after the CNF is sent.

**6.3** All boxes in the CNF that are marked as mandatory must be completed before it is sent. The claimant must make a reasonable attempt to complete those boxes that are not marked as mandatory.

**6.4** Where the claimant is a child, this must be noted in the relevant section of the CNF.

**6.5** The statement of truth in the CNF must be signed either by the claimant or by the claimant's legal representative where the claimant has authorised the legal representative to do so and the legal representative can produce written evidence of that authorisation. Where the claimant is a child the statement of truth may be signed by the parent or guardian. On the electronically completed CNF the person may enter their name in the signature box to satisfy this requirement.

## **Rehabilitation**

- 6.6** The claimant must set out details of rehabilitation in the CNF. The parties should at all stages consider the Rehabilitation Code which may be found at: <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/pre-action-protocols>

### **Failure to complete the Claim Notification Form**

- 6.7** Where the defendant considers that inadequate mandatory information has been provided in the CNF that shall be a valid reason for the defendant to decide that the claim should no longer continue under this Protocol.
- 6.8** Rule 45.24(2) sets out the sanctions available to the court where it considers that the claimant provided inadequate information in the CNF.

### **Response**

- 6.9** The defendant must send to the claimant an electronic acknowledgment the next day after receipt of the CNF.
- 6.10** If the claimant has sent the CNF to the defendant in accordance with paragraph 6.1(2)—
- (a) the defendant must send to the claimant an electronic acknowledgment the next day after receipt of the CNF and send the CNF to the insurer at the same time and advise the claimant that they have done so;
  - (b) the insurer must send to the claimant an electronic acknowledgment the next day after its receipt by the insurer; and
  - (c) the claimant must then submit the CNF to the insurer via the Portal as soon as possible and, in any event, within 30 days of the day upon which the claimant first sent it to the defendant.
- 6.11** The defendant must complete the 'Response' section of the CNF ("the CNF response") and send it to the claimant—
- (a) in the case of an employers' liability claim, within 30 days of the step taken pursuant to paragraph 6.1; and
  - (b) in the case of a public liability claim, within 40 days of the step taken pursuant to paragraph 6.1.

### **Application for a certificate of recoverable benefits**

**6.12** The defendant must, before the end of Stage 1, apply to the Compensation Recovery Unit (CRU) for a certificate of recoverable benefits.

### **Contributory Negligence, liability not admitted or failure to respond**

**6.13** The claim will no longer continue under this Protocol where the defendant, within the relevant period in paragraph 6.11 —

- (1) makes an admission of liability but alleges contributory negligence;
- (2) does not complete and send the CNF response;
- (3) does not admit liability; or
- (4) notifies the claimant that the defendant considers that—
  - (a) there is inadequate mandatory information in the CNF; or
  - (b) if proceedings were issued, the small claims track would be the normal track for that claim.

**6.14** Where the defendant does not admit liability the defendant must give brief reasons in the CNF response.

**6.15** Where paragraph 6.13 applies the claim will proceed under the relevant Pre-Action Protocol and the CNF will serve as the letter of claim (except where the claim no longer continues under this Protocol because the CNF contained inadequate information). Time will be treated as running under the relevant Pre-Action Protocol from the date the form of acknowledgment is served under paragraph 6.9 or 6.10.

(For admissions made in the course of the process under this Protocol, see rule 14.1B.)

(Paragraph 2.10A of the Pre-Action Protocol on Personal Injury and paragraph 6.10A of the Pre-Action Protocol for Disease and Illness Claims provide that the CNF can be used as the letter of claim except where the claim no longer continues under this Protocol because the CNF contained inadequate information.)

## **Stage 1 fixed costs**

- 6.16** Except where the claimant is a child, where liability is admitted the defendant must pay the Stage 1 fixed costs in rule 45.18 within 10 days after receiving the Stage 2 Settlement Pack.
- 6.17** Where the defendant fails to pay the Stage 1 fixed costs within the period specified in paragraph 6.16 the claimant may give written notice that the claim will no longer continue under this Protocol. Unless the claimant's notice is sent to the defendant within 10 days after the expiry of the period in paragraph 6.16 the claim will continue under this Protocol.

## **Stage 2**

### **Medical reports**

- 7.1** The claimant should obtain a medical report, if one has not already been obtained.
- 7.2** It is expected that most claimants will obtain a medical report from one expert but additional medical reports may be obtained from other experts where the injuries require reports from more than one medical discipline.
- 7.3** The claimant must check the factual accuracy of any medical report before it is sent to the defendant. There will be no further opportunity for the claimant to challenge the factual accuracy of a medical report after it has been sent to the defendant.
- 7.4**
- (1) The medical expert should identify within the report—
    - (a) the medical records that have been reviewed; and
    - (b) the medical records considered relevant to the claim.
  - (2) The claimant must disclose with any medical report sent to the defendant any medical records which the expert considers relevant.



**7.5** Any relevant photograph(s) of the claimant's injuries upon which the claimant intends to rely should also be disclosed with the medical report.

#### **Subsequent medical reports**

**7.6** A subsequent medical report from an expert who has already reported must be justified. A report may be justified where—

- (1) the first medical report recommends that further time is required before a prognosis of the claimant's injuries can be determined; or
- (2) the claimant is receiving continuing treatment; or
- (3) the claimant has not recovered as expected in the original prognosis.

#### **Non-medical reports**

**7.7**

- (1) In most cases, a report from a non-medical expert will not be required, but a report may be obtained where it is reasonably required to value the claim.
- (2) Paragraph 7.2 applies to non-medical expert reports as it applies to expert medical reports.

#### **Specialist legal advice**

**7.8** In most cases under this Protocol, it is expected that the claimant's legal representative will be able to value the claim. In some cases with a value of more than £10,000, an additional advice from a specialist solicitor or from counsel may be justified where it is reasonably required to value the claim.

#### **Details of loss of earnings**

**7.9** In an employers' liability claim, the defendant must, within 20 days of the date of admission of liability, provide earnings details to verify the claimant's loss of earnings, if any.

#### **Witness Statements**

**7.10** In most cases, witness statements, whether from the claimant or otherwise, will not be required. One or more statements may, however, be provided where reasonably required to value the claim.

### **Stay of process**

**7.11** Where the claimant needs to obtain a subsequent medical report or a report from a non-medical expert the parties should agree to stay the process in this Protocol for a suitable period. The claimant may then request an interim payment in accordance with paragraphs 7.12 to 7.20.

### **Request for an interim payment**

**7.12** Where the claimant requests an interim payment of £1,000, the defendant should make an interim payment to the claimant in accordance with paragraph 7.17.

**7.13** The claimant must send to the defendant the Interim Settlement Pack and initial medical reports (including any recommendation that a subsequent medical report is justified) in order to request the interim payment.

**7.14** The claimant must also send evidence of pecuniary losses and disbursements. This will assist the defendant in considering whether to make an offer to settle the claim.

**7.15** Where an interim payment of more than £1,000 is requested the claimant must specify in the Interim Settlement Pack the amount requested, the heads of damage which are the subject of the request and the reasons for the request.

**7.16** Unless the parties agree otherwise—

- (a) the interim payment of £1,000 is only in relation to general damages; and
- (b) where more than £1,000 is requested by the claimant, the amount in excess of £1,000 is only in relation to pecuniary losses.

### **Interim payment of £1,000**

## **7.17**

- (1) Where paragraph 7.12 applies the defendant must pay £1,000 within 10 days of receiving the Interim Settlement Pack.
- (2) Sub-paragraph (1) does not apply in a claim in respect of a disease to which the Pneumoconiosis etc. (Workers' Compensation) Act 1979<sup>2</sup> applies unless there is a valid CRU certificate showing no deduction for recoverable lump sum payments.

### **Interim payment of more than £1,000**

**7.18** Subject to paragraphs 7.19 and 7.21, where the claimant has requested an interim payment of more than £1,000 the defendant must pay—

- (1) the full amount requested less any deductible amount which is payable to the CRU;
- (2) the amount of £1,000; or
- (3) some other amount of more than £1,000 but less than the amount requested by the claimant,

within 15 days of receiving the Interim Settlement Pack.

**7.19** Where a payment is made under paragraphs 7.18(2) or (3) the defendant must briefly explain in the Interim Settlement Pack why the full amount requested by the claimant is not agreed.

**7.20** Where the claim is valued at more than £10,000, the claimant may use the procedure at paragraphs 7.12 to 7.19 to request more than one interim payment.

**7.21** Nothing in this Protocol is intended to affect the provisions contained in the Rehabilitation Code.

### **Application for a certificate of recoverable benefits**

**7.22** Paragraph 7.23 applies where the defendant agrees to make a payment in accordance with paragraph 7.18(1) or (3) but does not yet have a certificate of

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<sup>2</sup> 1979 c.41. The Act entitles persons disabled by a disease to which the Act applies to certain benefits and currently applies to: pneumoconiosis (including asbestosis); byssinosis; diffuse mesothelioma (excluded from this Protocol); bilateral diffuse pleural thickening; or primary carcinoma of the lung when accompanied by asbestosis or bilateral diffuse pleural thickening.

recoverable benefits or does not have one that will remain in force for at least 10 days from the date of receiving the Interim Settlement Pack.

- 7.23** The defendant should apply for a certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must make the interim payment under paragraph 7.18(1) or (3) no more than 30 days from the date of receiving the Interim Settlement Pack.

### **Request for an interim payment where the claimant is a child**

- 7.24** The interim payment provisions in this Protocol do not apply where the claimant is a child. Where the claimant is a child and an interim payment is reasonably required proceedings must be started under Part 7 of the CPR and an application for an interim payment can be made within those proceedings. (Rule 21.10 provides that no payment, which relates to a claim by a child, is valid without the approval of the court.)

- 7.25** Paragraph 7.24 does not prevent a defendant from making a payment direct to a treatment provider.

### **Interim payment – supplementary provisions**

- 7.26** Where the defendant does not comply with paragraphs 7.17 or 7.18 the claimant may start proceedings under Part 7 of the CPR and apply to the court for an interim payment in those proceedings.

- 7.27** Where the defendant does comply with paragraph 7.18(2) or (3) but the claimant is not content with the amount paid, the claimant may still start proceedings. However, the court will order the defendant to pay no more than the Stage 2 fixed costs where the court awards an interim payment of no more than the amount offered by the defendant or the court makes no award.

- 7.28** Where paragraph 7.26 or 7.27 applies the claimant must give notice to the defendant that the claim will no longer continue under this Protocol. Unless the claimant's notice is sent to the defendant within 10 days after the expiry of the period in paragraphs 7.17, 7.18 or 7.23 as appropriate, the claim will continue under this Protocol.

## **Costs of expert medical and non-medical reports and specialist legal advice obtained**

### **7.29**

- (1) Where the claimant obtains more than one expert report or an advice from a specialist solicitor or counsel—
  - (a) the defendant at the end of Stage 2 may refuse to pay; or
  - (b) the court at Stage 3 may refuse to allow,the costs of any report or advice not reasonably required.
- (2) Therefore, where the claimant obtains more than one expert report or obtains an advice from a specialist solicitor or counsel—
  - (a) the claimant should explain in the Stage 2 Settlement Pack why they obtained a further report or such advice; and
  - (b) if relevant, the defendant should in the Stage 2 Settlement Pack identify the report or reports or advice for which they will not pay and explain why they will not pay for that report or reports or advice.

## **Submitting the Stage 2 Settlement Pack to the defendant**

### **7.30** The Stage 2 Settlement Pack must comprise—

- (1) the Stage 2 Settlement Pack Form;
- (2) a medical report or reports;
- (3) evidence of pecuniary losses;
- (4) evidence of disbursements (for example the cost of any medical report);
- (5) any non-medical expert report;
- (6) any medical records/photographs served with medical reports; and
- (7) any witness statements.

### **7.31** The claimant should send the Stage 2 Settlement Pack to the defendant within 15 days of the claimant approving —

- (1) the final medical report and agreeing to rely on the prognosis in that report; or
  - (2) any non-medical expert report,
- whichever is later.

## **Consideration of claim**

- 7.32** There is a 35 day period for consideration of the Stage 2 Settlement Pack by the defendant (“the total consideration period”). This comprises a period of up to 15 days for the defendant to consider the Stage 2 Settlement Pack (“the initial consideration period”) and make an offer. The remainder of the total consideration period (“the negotiation period”) is for any further negotiation between the parties.
- 7.33** The total consideration period can be extended by the parties agreeing to extend either the initial consideration period or the negotiation period or both.
- 7.34** Where a party makes an offer 5 days or less before the end of the total consideration period (including any extension to this period under paragraph 7.32), there will be a further period of 5 days after the end of the total consideration period for the relevant party to consider that offer. During this period (“the further consideration period”) no further offers can be made by either party.

## **Defendant accepts offer or makes counter-offer**

- 7.35** Within the initial consideration period (or any extension agreed under paragraph 7.33) the defendant must either accept the offer made by the claimant on the Stage 2 Settlement Pack Form or make a counter-offer using that form.
- 7.36** The claim will no longer continue under this Protocol where the defendant gives notice to the claimant within the initial consideration period (or any extension agreed under paragraph 7.33) that the defendant—
- (a) considers that, if proceedings were started, the small claims track would be the normal track for that claim; or
  - (b) withdraws the admission of causation as defined in paragraph 1.1(1)(b).
- 7.37** Where the defendant does not respond within the initial consideration period (or any extension agreed under paragraph 7.33), the claim will no longer continue

under this Protocol and the claimant may start proceedings under Part 7 of the CPR.

- 7.38** When making a counter-offer the defendant must propose an amount for each head of damage and may, in addition, make an offer that is higher than the total of the amounts proposed for all heads of damage. The defendant must also explain in the counter-offer why a particular head of damage has been reduced. The explanation will assist the claimant when negotiating a settlement and will allow both parties to focus on those areas of the claim that remain in dispute.
- 7.39** Where the defendant has obtained a certificate of recoverable benefits from the CRU the counter offer must state the name and amount of any deductible amount.
- 7.40** On receipt of a counter-offer from the defendant the claimant has until the end of the total consideration period or the further consideration period to accept or decline the counter offer.
- 7.41** Any offer to settle made at any stage by either party will automatically include, and cannot exclude—
- (1) the Stage 1 and Stage 2 fixed costs in rule 45.18;
  - (2) an agreement in principle to pay a sum equal to the Type C fixed costs of an additional advice on quantum of damages where such advice is justified under paragraph 7.8;
  - (3) an agreement in principle to pay relevant disbursements allowed in accordance with rule 45.19; or
  - (4) where applicable, any success fee in accordance with rule 45.31(1) (as it was in force immediately before 1 April 2013).
- 7.42** Where there is a dispute about whether an additional advice on quantum of damages is justified or about the amount or validity of any disbursement, the parties may use the procedure set out in rule 46.14.

(Rule 46.14 provides that where the parties to a dispute have a written agreement on all issues but have failed to agree the amount of the costs, they may start proceedings under that rule so that the court can determine the amount of those costs.)

## **Withdrawal of offer after the consideration period**

**7.43** Where a party withdraws an offer made in the Stage 2 Settlement Pack Form after the total consideration period or further consideration period, the claim will no longer continue under this Protocol and the claimant may start proceedings under Part 7 of the CPR.

## **Settlement**

**7.44** Except where the claimant is a child or paragraphs 7.46 and 7.47 apply, the defendant must pay—

- (1) the agreed damages less any—
  - (a) deductible amount which is payable to the CRU; and
  - (b) previous interim payment;
- (2) any unpaid Stage 1 fixed costs in rule 45.18;
- (3) the Stage 2 fixed costs in rule 45.18;
- (4) where an additional advice on quantum of damages is justified under paragraph 7.8, a sum equal to the Type C fixed costs to cover the cost of that advice;
- (5) the relevant disbursements allowed in accordance with rule 45.19; and
- (6) where applicable, any success fee in accordance with rule 45.31(1) (as it was in force immediately before 1 April 2013),

within 10 days of the parties agreeing a settlement.

(Rule 21.10 provides that the approval of the court is required where, before proceedings are started, a claim is made by a child and a settlement is reached. The provisions in paragraph 6.1 of Practice Direction 8B set out what must be filed with the court when an application is made to approve a settlement.)

**7.45** Where the parties agree a settlement for a greater sum than the defendant had offered during the total consideration period or further consideration period and after the Court Proceedings Pack has been sent to the defendant but before proceedings are issued under Stage 3,

- (1) paragraph 7.44 applies; and



- (2) the defendant must also pay the fixed late settlement costs in rule 45.23A.

### **Application for certificate of recoverable benefits**

**7.46** Paragraph 7.47 applies where, at the date of the acceptance of an offer in the Stage 2 Settlement Pack, the defendant does not have a certificate of recoverable benefits that will remain in force for at least 10 days.

**7.47** The defendant should apply for a fresh certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.44 within 30 days of the end of the relevant period in paragraphs 7.32 to 7.34.

### **Failure to reach agreement - general**

**7.48** Where the parties do not reach an agreement on the damages to be paid within the periods specified in paragraphs 7.32 to 7.34, the claimant must send to the defendant the Court Proceedings Pack (Part A and Part B) Form which must contain—

- (a) in Part A, the final schedule of the claimant's losses and the defendant's responses comprising only the figures specified during the periods in paragraphs 7.32 to 7.34, together with supporting comments and evidence from both parties on any disputed heads of damage; and
- (b) in Part B, the final offer and counter offer from the Stage 2 Settlement Pack Form.

**7.49** Comments in the Court Proceedings Pack (Part A) Form must not raise anything that has not been raised in the Stage 2 Settlement Pack Form.

**7.50** The defendant should then check that the Court Proceedings Pack (Part A and Part B) Form complies with paragraphs 7.48 to 7.49. If the defendant considers that the Court Proceedings Pack (Part A and Part B) Form does not comply it must be returned to the claimant within 5 days with an explanation as to why it does not comply.

- 7.51** Where the defendant intends to nominate a legal representative to accept service the name and address of the legal representative should be provided in the Court Proceedings Pack (Part A) Form.
- 7.52** Where the defendant fails to return the Court Proceedings Pack (Part A and Part B) Form within the period in paragraph 7.50, the claimant should assume that the defendant has no further comment to make.

### **Non-settlement payment by the defendant at the end of Stage 2**

- 7.53** Except where the claimant is a child the defendant must pay to the claimant—
- (1) the final offer of damages made by the defendant in the Court Proceedings Pack (Part A and Part B) Form less any—
    - (a) deductible amount which is payable to the CRU; and
    - (b) previous interim payment(s);
  - (2) any unpaid Stage 1 fixed costs in rule 45.18;
  - (3) the Stage 2 fixed costs in rule 45.18; and
  - (4) the disbursements in rule 45.19(2) that have been agreed.
- 7.54** Where the amount of a disbursement is not agreed the defendant must pay such amount for the disbursement as the defendant considers reasonable.
- 7.55** Subject to paragraphs 7.56 and 7.57 the defendant must pay the amounts in paragraph 7.53 and 7.54 within 15 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.
- 7.56** Paragraph 7.57 applies where the defendant is required to make the payments in paragraph 7.53 but does not have a certificate of recoverable benefits that remains in force for at least 10 days.
- 7.57** The defendant should apply for a fresh certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.53 within 30 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.
- 7.58** Where the defendant does not comply with paragraphs 7.54 or 7.56 the claimant may give written notice that the claim will no longer continue under this Protocol and start proceedings under Part 7 of the CPR.

## **General provisions**

**7.59** Where the claimant gives notice to the defendant that the claim is unsuitable for this Protocol (for example, because there are complex issues of fact or law or where claimants contemplate applying for a Group Litigation Order) then the claim will no longer continue under this Protocol. However, where the court considers that the claimant acted unreasonably in giving such notice it will award no more than the fixed costs in rule 45.18.

## **Stage 3**

### **Stage 3 Procedure**

**8.2** The Stage 3 Procedure is set out in Practice Direction 8B.”.