

## PRACTICE DIRECTION 8B

# PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS – STAGE 3 PROCEDURE

**This Practice Direction supplements rule 8.1(6)**

## General

- 1.1** This Practice Direction sets out the procedure ('the Stage 3 Procedure') for a claim where –
- (1) the parties –
    - (a) have followed the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol'); but
    - (b) are unable to agree the amount of damages payable at the end of Stage 2 of the RTA Protocol;
  - (2)
    - (a) the claimant is a child;
    - (b) a settlement has been agreed by the parties at the end of Stage 2 of the RTA Protocol; and
    - (c) the approval of the court is required in relation to the settlement in accordance with rule 21.10(2); or
  - (3) compliance with the RTA Protocol is not possible before the expiry of a limitation period and proceedings are started in accordance with paragraph 16 of this Practice Direction.
- 1.2** A claim under this Practice Direction must be started in a county court and will normally be heard by a district judge.

## Modification of Part 8

- 2.1** The claim is made under the Part 8 procedure as modified by this Practice Direction and subject to paragraph 2.2.
- 2.2** The claim will be determined by the court on the contents of the Court Proceedings Pack. The following rules do not apply to a claim under this Practice Direction –
- (1) rule 8.2A (issue of claim form without naming defendants);
  - (2) rule 8.3 (acknowledgment of service);
  - (3) rule 8.5 (filing and serving written evidence);
  - (4) rule 8.6 (evidence – general);
  - (5) rule 8.7 (part 20 claims);
  - (6) rule 8.8 (procedure where defendant objects to use of the Part 8 procedure); and
  - (7) rule 8.9(c).

## Definitions

- 3.1** References to 'the Court Proceedings Pack (Part A) Form', 'the Court Proceedings Pack (Part B) Form' and 'the CNF Response Form' are references to the forms used in the RTA Protocol.

- 3.2** ‘RTA Protocol offer’ has the meaning given by rule 36.17.
- 3.3** ‘Settlement hearing’ means a hearing where the court considers a settlement agreed between the parties (whether before or after proceedings have started) and the claimant is a child.
- 3.4** ‘Stage 3 hearing’ means a final hearing to determine the amount of damages that remain in dispute between the parties.

### **Types of claim in which this modified Part 8 procedure may be followed**

- 4.1** The court may at any stage order a claim that has been started under Part 7 to continue under the Part 8 procedure as modified by this Practice Direction.

### **An application to the court to determine the amount of damages**

- 5.1** An application to the court to determine the amount of damages must be started by a claim form.
- 5.2** The claim form must state –
- (1)** that the claimant has followed the procedure set out in the RTA Protocol;
  - (2)** the date when the Court Proceedings Pack (Part A and Part B) Form was sent to the defendant. (This provision does not apply where the claimant is a child and the application is for a settlement hearing);
  - (3)** whether the claimant wants the claim to be determined by the court on the papers (except where a party is a child) or at a Stage 3 hearing;
  - (4)** where the claimant seeks a settlement hearing or a Stage 3 hearing, the dates which the claimant requests should be avoided; and
  - (5)** the value of the claim.

### **Filing and serving written evidence**

- 6.1** The claimant must file with the claim form –
- (1)** the Court Proceedings Pack (Part A) Form;
  - (2)** the Court Proceedings Pack (Part B) Form (the claimant and defendant’s final offers) in a sealed envelope. (This provision does not apply where the claimant is a child and the application is for a settlement hearing);
  - (3)** copies of medical reports;
  - (4)** evidence of special damages;
  - (5)** evidence of disbursements (for example the cost of any medical report) in accordance with rule 45.30(2); and
  - (6)** any notice of funding.
- 6.2** The filing of the claim form and documents set out in paragraph 6.1 represent the start of Stage 3 for the purposes of fixed costs.
- 6.3** Subject to paragraph 6.5 the claimant must only file those documents in paragraph 6.1 where they have already been sent to the defendant under the RTA Protocol.
- 6.4** The claimant’s evidence as set out in paragraph 6.1 must be served on the defendant with the claim form.
- 6.5** Where the claimant is a child the claimant must also provide to the court the following in relation to a settlement made before or after the start of proceedings –

- (1) the draft consent order;
  - (2) the advice by counsel, solicitor or other legal representative on the amount of damages; and
  - (3) a statement verified by a statement of truth signed by the litigation friend which confirms whether the child has recovered in accordance with the prognosis and whether there are any continuing symptoms. This statement will enable the court to decide whether to order the child to attend the settlement hearing.
- 6.6** Where the defendant is uninsured and the Motor Insurers' Bureau ('MIB') or its agents have consented in the CNF Response Form to the MIB being joined as a defendant, the claimant must name the MIB as the second defendant and must also provide to the court a copy of the CNF Response Form completed by or on behalf of the MIB.
- 6.7** Where this Practice Direction requires a step to be taken by the defendant, it will be sufficient for this step to be taken by the MIB.

### **Evidence – general**

- 7.1** The parties may not rely upon evidence unless –
- (1) it has been served in accordance with paragraph 6.4;
  - (2) it has been filed in accordance with paragraph 8.2 and 11.3: or
  - (3) (where the court considers that it cannot properly determine the claim without it), the court orders otherwise and gives directions.
- 7.2** Where the court considers that –
- (1) further evidence must be provided by any party; and
  - (2) the claim is not suitable to continue under the Stage 3 Procedure, the court will order that the claim will continue under Part 7, allocate the claim to a track and give directions.
- 7.3** Where paragraph 7.2 applies the court will not allow the Stage 3 fixed costs.

### **Acknowledgment of Service**

- 8.1** The defendant must file and serve an acknowledgment of service in Form N210B not more than 14 days after service of the claim form.
- 8.2** The defendant must file and serve –
- (1) with the acknowledgment of service, any notice of funding; and
  - (2) with the acknowledgment of service, or as soon as possible thereafter, a certificate that is in force.
- (‘Certificate’ is defined in rule 36.15(1)(e)(i).)
- 8.3** The acknowledgment of service must state whether the defendant –
- (1)
    - (a) contests the amount of damages claimed;
    - (b) contests the making of an order for damages;
    - (c) disputes the court’s jurisdiction; or
    - (d) objects to the use of the Stage 3 Procedure;
  - (2) wants the claim to be determined by the court on the papers or at a Stage 3 hearing.
- 8.4** Where the defendant objects to the use of the Stage 3 Procedure reasons must be given in the acknowledgment of service.

- 8.5** The acknowledgment of service may be signed and filed by the defendant's insurer who may give their address as the address for service.

### **Dismissal of the claim**

- 9.1** Where the defendant opposes the claim because the claimant has –
- (1)** not followed the procedure set out in the RTA Protocol; or
  - (2)** filed and served additional or new evidence with the claim form that had not been provided under the RTA Protocol,
- the court will dismiss the claim and the claimant may start proceedings under Part 7.

(Rule 45.36 sets out the costs consequences of failing to comply with the RTA Protocol.)

### **Withdrawal of the RTA Protocol offer**

- 10.1** A party may only withdraw an RTA Protocol offer after proceedings have started with the court's permission. Where the court gives permission the claim will no longer continue under the Stage 3 Procedure and the court will give directions. The court will only give permission where there is good reason for the claim not to continue under the Stage 3 Procedure.

### **Consideration of the claim**

- 11.1** The court will order that damages are to be assessed –
- (1)** on the papers; or
  - (2)** at a Stage 3 hearing where –
    - (a)** the claimant so requests on the claim form;
    - (b)** the defendant so requests in the acknowledgment of service (Form N210B); or
    - (c)** the court so orders,and on a date determined by the court.
- 11.2** The court will give the parties at least 21 days notice of the date of the determination on the papers or the date of the Stage 3 hearing.
- 11.3** Where further deductible amounts have accrued since the final offer was made by both parties in the Court Proceedings Pack (Part B) Form, the defendant must file an up to date certificate at least 5 days before the date of a determination on the papers.
- 11.4** Where the claim is determined on the papers the court will give reasons for its decision in the judgment.

(‘Deductible amount’ is defined in rule 36.15(1)(d).)

### **Settlement at Stage 2 where the claimant is a child**

- 12.1** Paragraphs 12.2 to 12.5 apply where –
- (1)** the claimant is a child;
  - (2)** there is a settlement at Stage 2 of the RTA Protocol; and
  - (3)** an application is made to the court to approve the settlement.
- 12.2** Where the settlement is approved at the settlement hearing the court will order the costs to be paid in accordance with rule 45.33(2).

- 12.3** Where the settlement is not approved at the first settlement hearing and the court orders a second settlement hearing at which the settlement is approved, the court will order the costs to be paid in accordance with rule 45.33(4) to (6).
- 12.4** Where the settlement is not approved at the first settlement hearing and the court orders that the claim is not suitable to be determined under the Stage 3 Procedure, the court will order costs to be paid in accordance with rule 45.35 and will give directions.
- 12.5** Where the settlement is not approved at the second settlement hearing the claim will no longer continue under the Stage 3 Procedure and the court will give directions.

### **Settlement at Stage 3 where the claimant is a child**

- 13.1** Paragraphs 13.2 and 13.3 apply where –
- (1) the claimant is a child;
  - (2) there is a settlement after proceedings have started under the Stage 3 Procedure; and
  - (3) an application is made to the court to approve the settlement.
- 13.2** Where the settlement is approved at the settlement hearing the court will order the costs to be paid in accordance with rule 45.34(2).
- 13.3** Where the settlement is not approved at the settlement hearing the court will order the claim to proceed to a Stage 3 hearing.

### **Adjournment**

- 14.1** Where the court adjourns a settlement hearing or a Stage 3 hearing it may, in its discretion, order the costs to be paid in accordance with rule 45.39.

### **Appeals – determination on the papers**

- 15.1** The court will not consider an application to set aside a judgment made after a determination on the papers. The judgment will state the appeal court to which an appeal lies.

### **Limitation**

- 16.1** Where compliance with the RTA Protocol is not possible before the expiry of a limitation period the claimant may start proceedings in accordance with paragraph 16.2.
- 16.2** The claimant must –
- (1) start proceedings under this Practice Direction; and
  - (2) state on the claim form that –
    - (a) the claim is for damages; and
    - (b) a stay of proceedings is sought in order to comply with the RTA Protocol.
- 16.3** The claimant must send to the defendant the claim form together with the order imposing the stay.
- 16.4** Where a claim is made under paragraph 16.1 the provisions in this Practice Direction, except paragraphs 1.2, 2.1, 2.2 and 16.1 to 16.6, are disapplied.
- 16.5** Where –
- (1) a stay is granted by the court;
  - (2) the parties have complied with the RTA Protocol; and

(3) the claimant wishes to start the Stage 3 Procedure,  
the claimant must make an application to the court to lift the stay and request directions.

**16.6** Where the court orders that the stay be lifted –

- (1) the provisions of this Practice Direction will apply; and
- (2) the claimant must –
  - (a) amend the claim form in accordance with paragraph 5.2; and
  - (b) file the documents in paragraph 6.1.

**16.7** Where, during Stage 1 or Stage 2 of the RTA Protocol –

- (1) the claim no longer continues under that Protocol; and
- (2) the claimant wishes to start proceedings under Part 7,  
the claimant must make an application to the court to lift the stay and request directions.

### **Modification to the general rules**

**17.1** The claim will not be allocated to a track. Parts 26 to 29 do not apply.