
Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents

I INTRODUCTION

Definitions

1.1 In this Protocol –

- (1) ‘claim’ means a claim, prior to the start of proceedings, for payment of damages under the process set out in this Protocol;
 - (2) ‘claimant’ means a person starting a claim under this Protocol;
 - (3) ‘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; or
 - (c) the Motor Insurers’ Bureau (‘MIB’);
 - (4) ‘legal representative’ has the same meaning as in rule 2.3(1) of the Civil Procedure Rules 1998;
 - (5) ‘pecuniary losses’ means past and future expenses and losses;
 - (6) ‘vehicle related damages’ means damages for –
 - (a) the pre-accident value of the vehicle;
 - (b) vehicle repair;
 - (c) vehicle insurance excess;
 - (d) vehicle hire;
 - (7) ‘child’ means a person under 18;
 - (8) ‘business day’ means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;
 - (9) ‘bank holiday’ means a bank holiday under the Banking and Financial Dealings Act 1971;
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- (10) ‘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 provisions¹ as defined by section 53 of the Health and Safety at Work etc Act 1974;
- (11) ‘motor vehicle’ means a mechanically propelled vehicle intended for use on roads;
- (12) ‘road’ means any highway and any other road to which the public has access and includes bridges over which a road passes;
- (13) ‘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;
- (14) ‘admission of liability’ means the defendant admits that –
- (a) the accident occurred;
 - (b) the accident was caused by the defendant’s breach of duty; and
 - (c) the defendant caused some loss to the claimant, the nature and extent of which is not admitted;
- (15) ‘deductible amount’ has the same meaning as in rule 36.15(1)(d) of the Civil Procedure Rules 1998; and
- (16) ‘certificate of recoverable benefits’ has the same meaning as in rule 36.15(1)(e)(i) of the Civil Procedure Rules 1998.
- 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 Service (‘HMCS’) website at www.hmcourts-service.gov.uk–
- (1) Claim Notification Form (‘Form RTA 1’);
 - (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’);

¹ 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)

(6) Court Proceedings Pack (Part A) Form ('Form RTA 6'); and

(7) Court Proceedings Pack (Part B) Form ('Form RTA 7').

1.4 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 will normally expect of the parties prior to the start of proceedings where a claimant claims damages valued at no more than £10,000 as a result of a personal injury sustained by that person in a road traffic accident.

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 the end of each stage in this Protocol.

Scope

4.1 This Protocol applies where –

- (1) a claim for damages arises from a road traffic accident occurring on or after 30th April 2010;
- (2) the claim includes damages in respect of personal injury;
- (3) the claimant values the claim at not more than £10,000 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.

(Paragraphs 1.1(6) and 4.3 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** 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** A claim may include vehicle related damages but these are excluded for the purposes of valuing the claim under paragraph 4.1.
- 4.4** 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 is –
 - (a)** deceased; or
 - (b)** a protected party as defined in rule 21.1(2)(d);
 - (4)** where the claimant is bankrupt; or
 - (5)** where the defendant's vehicle is registered outside the United Kingdom.
- 4.5** The fixed costs in rule 45.29 apply in relation to a claimant only where a claimant has a legal representative.

II GENERAL PROVISIONS

Communication between the parties

5.1

The address for electronic communication with the defendant can be found at www.rtapiclaimsprocess.org.uk. The claimant will give an address for contact in the Claim Notification Form ('CNF'). Subject to paragraph 6.1(2) where the Protocol requires information to be sent to a party it must be sent electronically.

- 5.2** Where the claimant has sent the CNF electronically to the wrong defendant the claimant may, in this circumstance only, resubmit 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(8).
- 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 7.30 (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 £10,000 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, for example from a legal representative, a Citizens Advice Bureau, a local law centre or a trade union.

Discontinuing the Protocol process

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

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.
- 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 by the claimant or the claimant's legal representative. 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 is set out in Annex D of the Pre-Action Protocol for Personal Injury Claims.

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 45.36(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.

(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 45.29 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 sending the CNF response to the claimant as provided in paragraph 6.11 or 6.13.
- 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

The medical report

- 7.1** The claimant should obtain a medical report, if one has not already been obtained.
- 7.2** 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.
- 7.3** 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.

Initial medical reports

- 7.4** It is expected that most claimants will obtain a medical report from one expert. Where it is clear that one expert cannot deal with all elements of the injury the claimant may obtain a report from a second medical expert in a different discipline.

Further initial medical report on recommendation

- 7.5 Those two medical experts may each separately recommend that the claimant obtain a further initial medical report from a medical expert in a different discipline. Therefore the claimant may obtain a maximum of one initial medical report from four different disciplines, two of which are only on the recommendation of one or both of the first two medical experts.

Subsequent medical reports

- 7.6 On the recommendation of the medical expert who provided the initial medical report, a subsequent medical report may be obtained from that same medical expert. A subsequent medical report may be necessary –
- (1) where the first medical report recommends that further time is required before a prognosis of the claimant's injuries can be determined; or
 - (2) where the claimant is receiving continuing treatment.

Stay of process

- 7.7 Where subsequent medical reports need to be obtained 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 7.8 to 7.11.

Request for an interim payment

- 7.8 Where the claimant requests an interim payment of £1,000, the defendant should make an interim payment to the claimant in accordance with paragraph 7.13.
- 7.9 The claimant must send to the defendant the Interim Settlement Pack and initial medical reports (containing the recommendation that a subsequent medical report is required) in order to request the interim payment.
- 7.10 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.
- 7.11 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.
- 7.12 The interim payment of £1,000 is only in relation to general damages. 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

- 7.13 Where paragraph 7.8 applies the defendant must pay £1,000 within 10 days of receiving the Interim Settlement Pack.

Interim payment of more than £1,000

- 7.14** Subject to paragraphs 7.17 and 7.18, 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.
- 7.15** Where a payment is made under paragraphs 7.14(2) or (3) the defendant must briefly explain in the Interim Settlement Pack why the full amount requested by the claimant is not agreed.

Vehicle related damages – interim payments

- 7.16** 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 7.11.

Application for a certificate of recoverable benefits

- 7.17** Paragraph 7.18 applies where the defendant agrees to make a payment in accordance with paragraph 7.14(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.
- 7.18** 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 7.14(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

- 7.19** 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.)

- 7.20** Paragraph 7.19 does not prevent a defendant from making a payment direct to a treatment provider.

Interim payment – supplementary provisions

- 7.21** Where the defendant does not comply with paragraphs 7.13 or 7.14 the claimant may start proceedings under Part 7 of the CPR and apply to the court for an interim payment in those proceedings.

- 7.22** Where the defendant does comply with paragraph 7.14(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.
- 7.23** Where paragraph 7.21 or 7.22 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 7.13, 7.14 or 7.18 as appropriate, the claim will continue under this Protocol.

Medical reports obtained without recommendation

- 7.24** Where a further initial medical report or a subsequent medical report is obtained without recommendation from a medical expert –
- (1) the defendant at the end of Stage 2 may refuse to pay; or
 - (2) the court at Stage 3 may refuse to allow, the costs of this medical report.
- 7.25** Brief details should be provided in the Stage 2 Settlement Pack Form –
- (a) by the claimant explaining why they obtained a further initial report or a subsequent medical report without recommendation; and
 - (b) if relevant, by the defendant explaining why they will not pay for the report.

Submitting the Stage 2 Settlement Pack to the defendant

- 7.26** The Stage 2 Settlement Pack which must comprise –
- (1) the Stage 2 Settlement Pack Form;
 - (2) a medical report or reports;
 - (3) evidence of pecuniary losses; and
 - (4) evidence of disbursements (for example the cost of any medical report), should be sent to the defendant within 15 days of the claimant approving the final medical report and agreeing to rely on the prognosis in that report.
- 7.27** 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

- 7.28** 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.

- 7.29** The total consideration period can be extended by the parties agreeing to extend either the initial consideration period or the negotiation period or both.
- 7.30** 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 7.29), 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

- 7.31** Within the initial consideration period (or any extension agreed under paragraph 7.29) 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.
- 7.32** 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 7.29) 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.
- 7.33** Where the defendant does not respond within the initial consideration period (or any extension agreed under paragraph 7.29), the claim will no longer continue under this Protocol and the claimant may start proceedings under Part 7 of the CPR.
- 7.34** 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.
- 7.35** 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.
- 7.36** 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.
- 7.37** Any offer to settle made at any stage by either party will automatically include, and cannot exclude –
- (1) the Stage 2 fixed costs in rule 45.29;
 - (2) an agreement in principle to pay disbursements;
 - (3) a success fee in accordance with rule 45.31(1).

- 7.38** Where there is a dispute about the amount or validity of any disbursement the parties may use the procedure set out in rule 44.12A.

(Rule 44.12A 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

- 7.39** 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

- 7.40** Except where the claimant is a child or paragraphs 7.41 and 7.42 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 45.29;
- (3) the Stage 2 fixed costs in rule 45.29;
- (4) the relevant disbursements allowed in accordance with rule 45.30; and
- (5) a success fee in accordance with rule 45.31 for Stage 1 and Stage 2 fixed costs, within 10 days of the end of the relevant period in paragraphs 7.28 to 7.30 during which the parties agreed 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.)

Application for certificate of recoverable benefits

- 7.41** Paragraph 7.42 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.
- 7.42** 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 7.40 within 30 days of the end of the relevant period in paragraphs 7.28 to 7.30.

Vehicle related damages – additional damages

- 7.43** Paragraph 7.44 applies where at the end of the relevant period in paragraphs 7.28 to 7.30 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.

7.44 Where paragraph 7.43 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.

7.45 Within 15 days of the claimant sending the offer under paragraph 7.44(3), the defendant must either agree the offer made by the claimant or make a counter-offer.

7.46 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

7.47 Where the original damages and additional damages are agreed within the period in paragraph 7.45 the defendant must pay the claimant in accordance with paragraph 7.53.

Original damages are not agreed, additional damages are agreed

7.48 Paragraph 7.49 applies where –

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

7.49 Where paragraph 7.48 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 7.55 to 7.66 of this Protocol.

Original damages are agreed, additional damages are not agreed

7.50 Paragraph 7.51 applies where –

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

7.51 Where paragraph 7.50 applies –

- (1) the defendant must, in relation to the original damages, pay the claimant in accordance with paragraph 7.53; 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

7.52 Paragraphs 7.55 to 7.66 apply where the original and additional damages are not agreed.

Settlement after claim for additional damages

7.53 Except where the claimant is a child or paragraph 7.54 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 45.29;
- (3) the Stage 2 fixed costs in rule 45.29;
- (4) the relevant disbursements allowed in accordance with rule 45.30; and
- (5) a success fee in accordance with rule 45.31 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

7.54 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 7.53 within 30 days of the date on which damages are agreed.

Failure to reach agreement – general

7.55 Where the parties do not reach an agreement on –

- (1) the original damages within the periods specified in paragraphs 7.28 to 7.30; or
- (2) the original damages and, where relevant, the additional damages under paragraph 7.45, the claimant must send to the defendant the Court Proceedings Pack (Part A and Part B) Form which must contain –
 - (a) the final offer and counter-offer from the Stage 2 Settlement Pack Form;
 - (b) supporting comments from both parties on disputed heads of damages; and
 - (c) where relevant, the offer, and if made, the counter-offer under paragraph 7.45.

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

7.57 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.

- 7.58** The defendant should then check that the Court Proceedings Pack (Part A and Part B) Form complies with paragraphs 7.55 to 7.57. 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.
- 7.59** 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.
- 7.60** Where the defendant fails to return the Court Proceedings Pack (Part A and Part B) Form within the period in paragraph 7.58, 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

- 7.61** 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 45.29;
 - (3) the Stage 2 fixed costs in rule 45.29; and
 - (4) the disbursements in rule 45.30(2) that have been agreed.
- 7.62** Where the amount of a disbursement is not agreed the defendant must pay such amount for the disbursement as the defendant considers reasonable.
- 7.63** Subject to paragraphs 7.64 and 7.65 the defendant must pay the amounts in paragraph 7.61 and 7.62 within 15 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.
- 7.64** Paragraph 7.65 applies where the defendant is required to make the payments in paragraph 7.61 but does not have a certificate of recoverable benefits that remains in force for at least 10 days.
- 7.65** 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 7.61 within 30 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.
- 7.66** Where the defendant does not comply with paragraphs 7.63 or 7.65 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

- 7.67** 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 in relation to the vehicle related damages) 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 45.29.

Stage 3

Stage 3 Procedure

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

