Civil Procedure Rule Committee

Fixed recoverable costs in package holiday gastric illness claims – further information required by the Civil Procedure Rule Committee

Response by Thompsons Solicitors

January 2018

THOMPSONS SOLICITORS

STANDING UP FOR YOU

Thompsons Solicitors maintain that there is no requirement for a Fixed Recoverable Costs (FRC) scheme for package holiday gastric illness claims.

We are aware of the allegations raised by tour operators, the Association of British Travel Agents (ABTA) and affiliated organisations about the increasing volumes of fraudulent claims being presented. In fact:

1. Statistical data from the Food Standards Agency demonstrates that there were increasing numbers of laboratory confirmed cases of Infectious Intestinal Disease between 2000 – 2012. Due to the significant growth of confirmed cases, it is perhaps not surprising that there is a similarly growing number of cases where personal injury claims are instigated in relation to illness suffered at a holiday resort.
2. Tour operators (TOs) have consistently raised a "floodgates" argument about their potential liability for every single case of a consumer having an upset stomach incurred during the course of an international holiday.

However, that argument was expressly considered and rejected by the Court of Appeal in Wood v. TUI Travel Plc [2017] EWCA Civ 11. In para of 34 of the Judgment, Sir Brian Leveson, P said:

> *"Neither do I accept the floodgates argument which Mr Aldous advanced. I agree that it will always be difficult (indeed, very difficult) to prove that an illness is a consequence of food or drink which was not of a satisfactory quality, unless there is cogent evidence that others have been similarly affected and alternative explanations would have to be excluded. The fact is, however, that the judge found as facts that this had been proved in this case and no appeal has been pursued against those findings. In any event, although I recognise that tour operators will complain that they are being held liable for events outside their control, there are many ways in which protection from exposure in this area can be achieved."*

The Court of Appeal has therefore already considered the matter and in their view existing provisions provide appropriate levels of protection to the holiday providers.

If the Civil Procedure Rule Committee nevertheless considers it appropriate to respond to holiday company and ABTA pressure to investigate this area, despite the absence of any independent evidence of there being a 'crisis' from anyone other than those with an interest in promoting it, then our response to the request for information is as follows:

Firstly, the FRC schemes which already exist for Road Traffic Accident (RTA) and Employer's Liability / Public Liability (EL/PL) Fast Track, low value personal injury claims are founded in the Claims Portal structure.

That structure allows parties to limit their costs exposure and accurately to assess the cost of the work involved to prosecute or defend a claim successfully.

In the absence of a portal, or similar structure, the application of FRC to such claims is unjust and will prevent access to justice for genuinely injured people.

If, contrary to our opinion that the system of reasonably incurred costs should continue to prevail, we would recommend a two-tier system for FRC:

1. The FRC scheme shall apply only to illness claims alleged to have been caused by consumption of contaminated foods / beverages where a full and unambiguous admission of liability and causation of some illness has been made within the protocol period. We accept that such an admission would remove much of the complexity which typically arises in disease and illness claims, and which makes them more suited to Multi Track case allocation and exclusion from the fixed costs regime.
2. However, and as per the current position in disease claims, if liability and causation remain in dispute beyond the protocol period and/or there is incomplete disclosure made by the TO in accordance with the protocol then in our submission, reasonably incurred costs should continue to apply.

The FRC costs regime should properly reflect the significantly more complex nature of these cases compared to, for example, RTA cases.

The issues that can arise in illness claims are not simple or straightforward. The numerous publications and articles on this area of law are testament to that, it is undoubtedly both complex and diverse.

For the purposes of Thompsons Solicitors' response to the consultation paper, given that the consultation has been requested by UK based tour operators (TO) and/or ABTA on their behalf we will limit our response to package holiday claims. We also assume it is reasonable to conclude that any amended protocol would apply to package holiday claims only and will not, for instance, apply to illness claims in a non-package holiday context, nor to claims against a foreign supplier of services (whether such an action is pursued in England, or overseas).

What does the claimant need to prove?

1. The nature and extent of the contractual agreement. Is it a package or non-package holiday.
2. Who is the other party to the contract (the travel agent, the tour operator, another supplier or all of the aforementioned).
3. What terms apply between those parties? Are there strict liability provisions or not. In other words, what would constitute improper performance of those contractual obligations.
4. Has the Injured Party suffered a loss as a result of the improper performance of the holiday contract.
5. What is the precise extent of the losses suffered.

Does this represent any difference to the normal tortious liability that exists (Establish a duty of care, breach of duty, causation and quantum)?

Yes. The claim is in contract and not in tort.

The parties are free to engage with the terms of the contract. The party with power in the relationship is the tour operator and so they can choose bespoke wording for the terms of the contract if they desire this to be the case. This can be designed to expand or reduce the scope of their liability. In reality, as the terms and conditions are drafted by the tour operators, it is rare for the wording to expand their obligations under the holiday contract.

The duties of care are not standardised as they would be, for instance, for employers and public authorities under the Pre-Action Protocol for Low Value Personal Injury (EL and PL) claims. Instead, they are set by the express and implied terms of the individual contract. The TO can draft express terms and conditions that suit their needs and that are subject to change over time.

Different TOs can and do offer different terms and conditions within their package holiday contracts, even though the format may look the same. There are no standard terms and conditions. This means that the express terms for each holiday contract fall to be considered in each individual claim in order to establish the precise duty of care owed to the consumer.

Further, the general rule in relation to package holiday claims is that the service provider is expected to provide the services that have been contracted for under the holiday contract with reasonable skill and care: see for instance Hone v. Going Places Leisure Travel Limited [2001] EWCA Civ 947 (though decided before the Package Travel Regulations came into force, this remains an accurate assessment of the current situation).

What will constitute reasonable skill and care in any given case is to be judged by reference to the standards in force in the country in which the service is being provided. This requires consideration of foreign regulations, local custom and practice. In other words, the prosecuting lawyer must establish breach of foreign regulations or negligence in the provision of the service that had been purchased under the holiday contract by reference to the standards that existed in the country being visited at the time that the illness was contracted.

A notable exception to the general rule appears to have been created with regards to illness claims that arise as a result of breach of food hygiene standards and/or supply of beverages. In that regard, case law has determined that the application of s.4(2), 4(2A) and 13 of the Supply of Goods and Services Act 1982 means that if a hotelier, or other food supplier in resort, provides food or drink that is contaminated with bacteria in sufficient quantity to cause illness then this food or drink can never be considered to have been "fit for purpose" or of "satisfactory quality". See Kempson & Kempson v. First Choice Holidays (2007) and Wood v. TUI Travel Plc [2017] EWCA Civ 11.

Many authors erroneously refer to this exception that exists for food hygiene and beverage standard as amounting to a "strict liability" regime. This is not the case as was made clear by the Court of Appeal in Wood:

> *"Underlying this appeal was a concern that package tour operators should not become the guarantor of the quality of food and drink the world over when it is provided as part of the holiday which they have contracted to provide. Mr Aldous spoke of First Choice being potentially liable for every upset stomach which occurred during one of their holidays and the term "strict liability" was mentioned. That is not what the finding of the judge or the conclusion that he applied the correct legal approach dictates. The judge was satisfied on the evidence that Mr and Mrs Wood suffered illness as a result of the contamination of the food or drink they had consumed. Such illness can be caused by any number of other factors. Poor personal hygiene is an example but equally bugs can be picked up in the sea or a swimming pool. In a claim for damages of this sort, the claimant must prove that food or drink provided was the cause of their troubles and that the food was not "satisfactory". It is well-known that some people react adversely to new food or different water and develop upset stomachs. Neither would be unsatisfactory for the purposes of the 1982 Act. That is an accepted hazard of travel. Proving that an episode of this sort was caused by food which was unfit is far from easy. It would not be enough to invite a court to draw an inference from the fact that someone was sick. Contamination must be proved; and it might be difficult to prove that food (or drink) was not of satisfactory quality in this sense in the absence of evidence of others who had consumed the food being similarly afflicted. Additionally, other potential causes of the illness would have to be considered such as a vomiting virus".*

However, there are still considerable disputes as to whether an analogous argument would prevail in a case of contaminated water, such as if the Injured Party contracts Legionnaires' Disease infection as a result of inhalation or consumption of contaminated water from defective air conditioning units, or poorly maintained bathing / showering systems etc. The questions relate to whether the contaminated water ought properly to be defined as "goods" for the purposes of the definition contained within the Supply of Goods and Services Act 1982 and whether property passes as a result of the holiday contract in this context.

As such, it is only certain that the Claimant will avoid having to establish breach of local standards in a food or beverage hygiene claim where the Defendant accepts that it was food or a drink that caused the illness. The same is not true of other types of illness claims where expert evidence of regulations, local standards, customs or practice will still be required; or where the tour operator denies that the food or drink that the injured party consumed was contaminated with bacteria.

We hope it goes almost without saying that where it is necessary to establish breach of regulations, local standards, customs or practice, the levels of investigation and the burden of securing appropriate documentation and witness evidence increase thereby significantly raising the complexity of the issues in dispute and the costs in the case.

A real source of dispute in food illness claims is the issue of causation. Tour operators increasingly insist on identification of the specific pathogen that caused the illness, particularly since the judgment in Wood quoted above.

The identification of the specific pathogen that caused the illness is crucial in such matters because it influences amongst other things:

1. The accepted incubation period for such illnesses.
2. The source of the bacteria (food, water, sewerage etc).
3. Alternative potential causes of the illness.
4. Whether the injured parties' medication or pre-existing condition has caused or materially contributed towards the development of the symptoms.

It is only by forensic analysis of such matters that liability can be determined and non-fault based causes of illness excluded from consideration.

Disclosure issues frequently create difficulties in package holiday illness claims. Documentation that would be helpful to establish breach or compliance with relevant food hygiene standards tends to be held by the supplier of the service (the hotel or restaurateur that is alleged to have fallen foul of the relevant regulation, local standard, custom or practice). Larger tour operators and other package holiday providers often audit the establishments where consumers with whom they have contracted are known to frequent as part of the holiday contract but this is not invariably the case.

The audits are often insufficient to establish breach or otherwise of an express or implied contractual term and will therefore not be determinative of such illness claims in their own right. The injured party may need to engage a representative in the resort in question in order to obtain documentation that is relevant to the issues in dispute from the service provider, or other relevant third party. In the event that the need for an application for disclosure arises, this is just as likely to be an application overseas as in England or Wales.

Further, to identify the specific cause of any given illness, it can be necessary for the legal representative and/or an expert witness to visit the resort for the purposes of attending the site of the exposure. In the context of a package holiday claim, this inevitably means transportation and accommodation costs due to the international nature of these agreements.

Finally, in contested illness claims, experts from multiple fields of expertise may be required including:

1. Microbiology – to identify cause of the illness (e.g. salmonella, campylobacter, viral infection etc); incubation periods, probable cause of infection (food, swimming pool water, virus like Norovirus etc).
2. Food hygiene standards.
3. Swimming pool management.
4. Virology.
5. Local standards – dependent upon whether the tour operator concedes that the illness was caused by provision of contaminated food / beverage services. meaning that s.4(2) and (2A) of the Sale & Supply of Goods and Services Act 1982 apply. In the event that the tour operator denies that the illness was caused by food exposure and alleges viral infection or some other cause, then local standards expert evidence can still be required to rebut those allegations.
6. Medical experts – GP, Gastroenterologist.
7. Other medical experts if and when required due to the Claimant's individual symptoms, for example where there is damage to internal organs – liver, kidneys etc or fatigue / chronic pain issues.

The range of experts that can be required is extensive meaning that the work involved can be extremely complex, even in a claim that has a value of less than £25,000. Estimated lengths of hearing often exceed one day and allocation to the multi-track in a fully contested package travel illness claim involving multiple experts on liability, causation and quantum is not unusual.

In our submission, the formulaic approach being proposed for such illness claims (not even limited to food related illness claims) is likely to be detrimental to those that have genuine illness claims that fall outside the limited scope of liability admitted, food or beverage, package travel illness claims where symptoms are short-lived.

Issues that need to be identified in each food / beverage related illness claim:

1. The specifics of the holiday booking including contractual documentation relating to the holiday, advertising literature, correspondence between tour operator and consumer, the terms and conditions of the holiday contract, booking invoice, receipts for payment made etc.
2. What the contract states about performance. Is it strict liability, or a question of reasonable skill and care.
3. Name, address, Date of Birth (DOB), National Insurance (NI) number of the injured party.
4. Dates of the holiday (arrival in resort and departure from resort).
5. Where did the injured person (IP) eat / drink? Only in resort, or was food/beverage consumed outside the resort? List of excursions to be provided by the TO.
6. What did the IP eat / drink? Food diary to be prepared, if possible. Menu cards to be provided by the TO.
7. What does the IP believe caused the illness.
8. What were food hygiene and beverage standards like in the resort? Extensive disclosure from the TO will be required:
   - i. Audit reports.
   - ii. Hazard Analysis and Critical Control Point [HACCP] documents to be provided.
   - iii. Hygiene training records of hotel staff.
   - iv. Copy of food safety management policy.
   - v. Documentary record trails supporting quality systems.
   - vi. Details of businesses producing or importing food for the hotelier.
   - vii. Copy of TO inspections of food service areas (both in and out of season).
   - viii. Details of any external inspections of the hotel's food hygiene standards i.e. from the local authority in resort that is equivalent to the Environmental Health Office in England / Wales, including copies of any improvement notices or hygiene prohibition orders (or equivalent).

- ix. Copies of illness reports from resort for 6 months prior and 6 months post IP's illness and that relate to food / beverage related illnesses.
- x. Copies of hygiene complaints from consumers in resort relating to food hygiene standards for 6 months prior and 6 months post IP's illness.
- xi. Catering staff sick leave absence records for 3 months pre and 3 months post IP illness.
- xii. Computer records of all meals / drinks signed for in resort.
- xiii. All correspondence to / from the tour operator about the illness in resort, including recording of any complaints made and responses provided.
- xiv. Illness report from the IP.
- xv. Post illness investigation report from the TO.
- xvi. Photographs of food preparation areas (in season and out of season).

9. Was the illness reported in resort and if so, to who and when.
10. Date of onset of first symptoms.
11. Full description of symptoms and treatment received.
12. Duration of symptoms, or nature and extent of residual complaints.
13. Whether the IP attended a GP, or equivalent in resort? If so, details.
14. The date on which the IP first saw any GP, or equivalent in resort or upon their return from the holiday.
15. Whether a stool sample was taken.
16. If sample taken, whether a specific pathogen was identified, and if so, what.

Matters that ought to be included by the Claimant in the letter of claim for a Package Travel Illness Claim:

1. Name, address, DOB, NI number of IP.
2. Details of the resort attended; name of hotel.
3. Dates of the holiday (arrival in resort and departure from resort).
4. Whether it was an all-inclusive holiday.
5. What the IP believes caused the illness.
6. Short summary of allegations about failings with regards to the food or beverage hygiene standards in resort.
7. Confirmation as to whether the illness reported in resort? If so, who to and when.
8. Date of onset of symptoms.
9. Brief description of symptoms and treatment received.
10. Brief description of duration of symptoms, or nature and extent of residual complaints.
11. The date on which the IP first saw any GP, or equivalent in resort or upon their return from the holiday.
12. Whether a stool sample was taken.
13. If sample, whether a specific pathogen was identified and, if so, what.

Wording of existing PAP that it may be appropriate to adopt with amended timeframes:

It would appear to Thompsons that if FRC are to be applied to Package Travel Illness claims that arise purely in the context of food / beverage consumption then there need to be only modest adaptations to the wording currently adopted in the Pre-Action Protocol for Low Value Personal Injury (EL and PL) Claims (please see page 9 for proposals).

However, where liability and/or causation are contested, or the protocol is otherwise breached, then these types of claim are typically allocated by the Court to the Multi Track, rather than the Fast Track due to complexity and as such ought to fall outside the scope of the FRC regime.

In order to achieve that aim, there would need to be an amendment to CPR Part 45:

45.29A

(1) Subject to paragraph (3), this section applies where a claim is started under—
(a) the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol'); or
(b) the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ('the EL/PL Protocol'),
but no longer continues under the relevant Protocol or the Stage 3 Procedure in Practice Direction 8B.

(2) This section does not apply to a disease claim which is started under the EL/PL Protocol **or a Package Travel Illness claim stated under the Package Travel Illness Protocol.**

DRAFT PAP WORDING FOR PACKAGE TRAVEL FOOD AND BEVERAGE ILLNESS CLAIMS
SECTION 1 – 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 Regulation 15(2) of the Package Travel, Package Holidays and Package Tours Regulations 1992, and/or any superseding legislation implemented thereto;
(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 36.22(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) 'deductible amount' has the same meaning as in rule 36.22(1)(d) of the Civil Procedure Rules 1998;
(10) 'defendant' includes, where the context indicates, the defendant's insurer or legal representative;
(11) 'disease claim' means a claim within sub-paragraph (14)(b);
(12) 'Package Holiday' means:
(a) A combination of two or more of the qualifying components (transport, accommodation or other tourist services);
(b) which extends for a period exceeding 24 hours, or includes overnight accommodation;
(c) the combination of the qualifying components having been pre-arranged; and
(d) the holiday being sold or offered for sale at an inclusive price.
(13) \`Organiser' and \`Retailer' means the \`organiser' or \`retailer' as defined in Regulation 2(1) of the 1992 Regulations and/or any superseding legislation thereto;
(14) \`Package Holiday Travel, Food and Beverage Illness claim' means a claim by a consumer against the tour operator or organiser in relation to an illness sustained by the consumer during the course of the Package Holiday that is said to arise as a result of the consumption of food or beverages contaminated with a pathogen (whether or not the identity of that pathogen is known);
(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) 'Type C fixed costs' has the same meaning as in rule 45.18(2) of the Civil Procedure Rules 1998; and
(19) '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.

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 a package travel, food or beverage related illness 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) the claim arises from a consumer illness suffered as a result of consuming food or beverages that were provided to them during the course of a Package Holiday and where such exposure to contaminated food or beverages occurred on or after [date of Protocol coming into force];
(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) where the claimant is bankrupt;
(4) where the defendant is insolvent and there is no identifiable insurer;
(5) in the case of such an illness claim, where there is more than one defendant;

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 first class post and/or DX and/or email. The claimant will give an e-mail address for contact in the Letter of Claim in Package Travel Illness Claims ("LOC PTI"). All written communications not required by the Protocol must be sent by e-mail.

5.2 Where the claimant has sent the LOC PTI 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 7 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 LOC PIT 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 Letter of Claim, Package Travel Illness Claims

6.1
(1) The claimant must complete and send—
(a) the LOC PTI to the defendant and their insurer, if known
but the requirement to send the form to the defendant may be ignored in a 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 LOC PTI must be sent to the defendant's registered office or principal place of business.

6.2 If the LOC PTI cannot be sent to the defendant via email, it must be sent via first class post; and this must be done, in a case where the LOC PTI is sent to the insurer, at the same time or as soon as practicable after the LOC PTI is sent.

6.3 All boxes in the LOC PTI 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 LOC PTI.

6.5 The statement of truth in the LOC PTI 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 LOC PTI 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 LOC PTI. The parties should at all stages consider the Rehabilitation Code which may be found at: http://www.iua.co.uk/IUA_Member/Publications

Failure to complete the Claim Notification Form

6.7 Where the defendant considers that inadequate mandatory information has been provided in the LOC PTI 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 LOC PTI.

Response

6.9 The defendant must send to the claimant an electronic acknowledgment the next day after receipt of the LOC PTI.

6.10 If the claimant has sent the LOC PTI 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 LOC PTI and send the LOC PTI 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 LOC PTI to the insurer via email 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 LOC PTI ("the LOC PTI response") and send it to the claimant 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 LOC PTI response;
(3) does not admit liability; or
(4) notifies the claimant that the defendant considers that—
(a) there is inadequate mandatory information in the LOC PTI; 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 LOC PTI response and provide disclosure of the following documents insofar as they are in existence and held by them:

1. Audit reports.
2. Hazard Analysis and Critical Control Point [HACCP] documents to be provided.
3. Hygiene training records of hotel staff.
4. Copy of food safety management policy.
5. Documentary record trails supporting quality systems required.
6. Details of businesses producing or importing food for the hotelier required.
7. Copy of TO inspections of food service areas required (both in and out of season).
8. Details of any external inspections of the hotel's food hygiene standards will also be required i.e. from the local authority in resort that is equivalent to the Environmental Health Office in England / Wales; including copies of any improvement notices or hygiene prohibition orders (or equivalent).
9. Copies of illness reports from resort for 6 months prior and 6 months post IP's illness and that relate to food / beverage related illnesses.
10. Copies of hygiene complaints from consumers in resort relating to food hygiene standards for 6 months prior and 6 months post IP's illness.
11. Catering staff sick leave absence records for 3 months pre and 3 months post IP illness.
12. Computer records of all meals / drinks signed for in resort.
13. All correspondence to / from the tour operator about the illness in resort; including recording of any complaints made and responses provided.
14. Illness report from the IP.
15. Post illness investigation report from the TO.
16. Photographs of food preparation areas (in season and out of season).

6.15 Where paragraph 6.13 applies the claim will proceed under the relevant Pre-Action Protocol and the LOC PTI 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 LOC PTI 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.

Witness Statements

7.9 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

7.10 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 7.11 to 7.19.

Request for an interim payment

7.11 Where the claimant requests an interim payment of £1,000, the defendant should make an interim payment to the claimant in accordance with paragraph 7.16.

7.12 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.

7.13 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.

7.14 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.

7.15 Unless the parties agree otherwise—
(1) the interim payment of £1,000 is only in relation to general damages; and
(2) 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

7.16
(1) Where paragraph 7.11 applies the defendant must pay £1,000 within 10 days of receiving the Interim Settlement Pack.
Interim payment of more than £1,000

7.17 Subject to paragraphs 7.18 and 7.20, 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.

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

7.19 Where the claim is valued at more than £10,000, the claimant may use the procedure at paragraphs 7.11 to 7.18 to request more than one interim payment.

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

Application for a certificate of recoverable benefits

7.21 Paragraph 7.22 applies where the defendant agrees to make a payment in accordance with paragraph 7.17(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.

7.22 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 7.17(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

7.23 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.)

7.24 Paragraph 7.23 does not prevent a defendant from making a payment direct to a treatment provider.

Interim payment – supplementary provisions

7.25 Where the defendant does not comply with paragraphs 7.16 or 7.17 the claimant may start proceedings under Part 7 of the CPR and apply to the court for an interim payment in those proceedings.

7.26 Where the defendant does comply with paragraph 7.17(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.

7.27 Where paragraph 7.25 or 7.26 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 7.16, 7.17 or 7.22 as appropriate, the claim will continue under this Protocol.

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

7.28

(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

7.29 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.

7.30 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

7.31 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.

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

7.33 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 7.31), 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

7.34 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.

7.35 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).

7.36 Where the defendant does not respond within the initial consideration period (or any extension agreed under paragraph 7.32), the claim will no longer continue under this Protocol and the claimant may start proceedings under Part 7 of the CPR.

7.37 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.

7.38 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.

7.39 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.

7.40 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).

7.41 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

7.42 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

7.43 Except where the claimant is a child or paragraphs 7.45 and 7.46 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.)

7.44 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

7.45 Paragraph 7.46 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.

7.46 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 7.43 within 30 days of the end of the relevant period in paragraphs 7.31 to 7.33.

Failure to reach agreement – general

7.47 Where the parties do not reach an agreement on the damages to be paid within the periods specified in paragraphs 7.31 to 7.33, 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 7.31 to 7.33, 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.

7.48 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.

7.49 The defendant should then check that the Court Proceedings Pack (Part A and Part B) Form complies with paragraphs 7.47 to 7.48. 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.

7.50 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.

7.51 Where the defendant fails to return the Court Proceedings Pack (Part A and Part B) Form within the period in paragraph 7.49, 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

7.52 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.

7.53 Where the amount of a disbursement is not agreed the defendant must pay such amount for the disbursement as the defendant considers reasonable.

7.54 Subject to paragraphs 7.55 and 7.56 the defendant must pay the amounts in paragraph 7.52 and 7.53 within 15 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.

7.55 Paragraph 7.56 applies where the defendant is required to make the payments in paragraph 7.52 but does not have a certificate of recoverable benefits that remains in force for at least 10 days.

7.56 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 7.52 within 30 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.

7.57 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

7.58 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

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

PD 8B would need to be amended. Please see below.

PRACTICE DIRECTION 8B – PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN rta

TRAFFIC ACCIDENTS AND LOW VALUE PERSONAL INJURY (EMPLOYERS' LIABILITY AND PUBLIC LIABILITY) CLAIMS – 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'), the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ("the EL/PL Protocol") or the Pre-Action Protocol for Low Value Package Travel Holiday Illness Claims; but
(b) are unable to agree the amount of damages payable at the end of Stage 2 of the relevant 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 relevant 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 relevant 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 or LOC PTI Response Form' are references to the forms used in the Protocols.
3.2 '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.
3.5 Accredited medical expert', 'fixed costs medical report', 'MedCo' and 'soft tissue injury claim' have the same meaning as in paragraph 1.1(A1), (10A), (12A), and (16A), respectively, of the RTA Protocol.

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 relevant 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; and
(5) evidence of disbursements (for example the cost of any medical report) in accordance with rule 45.19(2).
6.1A
(1) In a soft tissue injury claim, the claimant may not proceed unless the medical report is a fixed cost medical report. Where the claimant includes more than one medical report, the first report obtained must be a fixed cost medical report from an accredited medical expert selected via the MedCo Portal (website at: www.medco.org.uk) and any further report from an expert in any of the following disciplines must also be a fixed cost medical report—
(a) Consultant Orthopaedic Surgeon;
(b) Consultant in Accident and Emergency Medicine;
(c) General Practitioner registered with the General Medical Council;
(d) Physiotherapist registered with the Health and Care Professions Council.

(2) The cost of obtaining a further report from an expert not listed in paragraph (1)(a) to (d) is not subject to rule 45.19(2A)(b), but the use of that expert and the cost must be justified.

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 relevant 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 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 relevant Protocol; or
(2) filed and served additional or new evidence with the claim form that had not been provided under the relevant Protocol.
The court will dismiss the claim and the claimant may start proceedings under Part 7. (Rule 45.24 sets out the costs consequences of failing to comply with the relevant Protocol.)

Withdrawal of the Protocol offer

10.1 A party may only withdraw a 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 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 45.21(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 45.21(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 45.23 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 45.22(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 45.27.

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 relevant 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 relevant 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 relevant 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 relevant 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.

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