



PUMP COURT

CHAMBERS

The RTA Protocol

New Practitioners Series

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THE RTA PROTOCOL

‘The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (from 31 July 2013)’.

- First introduced 30/04/10.
- Introduced in response to rapidly increasing claim numbers & disproportionate costs.
- Re: PI claims arising from RTAs up to a value of £25k.
- Beware potholes which could adversely affect outcomes & result in costs & damages sanctions.
- To cover: Applicability; Stages 1, 2 and 3.

Applicability

- **Para 4.1:** *“This Protocol applies where—*
 - *(1) a claim for damages arises from a road traffic accident where the CNF is submitted on or after 31st July 2013;*
 - *(2) the claim includes damages in respect of personal injury;*
 - *(3) the claimant values their claim at no more than the Protocol upper limit; and*
 - *(4) if proceedings were started the small claims track would not be the normal track for that claim.”*
- Other exclusions: **para 1.1(16); para 1.2; para 4.5; s. 185 RTA 1988.**

Protocol upper & lower limit

- **Para 1.2:** *“1. The ‘Protocol upper limit’ is—
 - (a) £25,000 where the accident occurred on or after 31 July 2013; or
 - (b) £10,000 where the accident occurred on or after 30 April 2010 and before 31 July 2013,*
on a full liability basis including pecuniary losses but excluding interest.”
- Claimant’s reasonable belief.
- Excluding vehicle related losses: **para 4.4.**
- Lower limit = Small Claims Track, **CPR r.26.6** (i.e. below value of £1k).

STAGE 1 - Claim Notification Form

- Claim commenced by submitting a CNF (**para 6.1**).
- **Para 6.8:** consequences of failure to complete mandatory information within CNF – cost risk.
- CNF validated by Claimant with a statement of truth: ***Molodi v Cambridge Vibration Maintenance Services*** [2018] EWHC 1288 (QB).

Defendant's response

- **Para 6.10:** electronic acknowledgement.
- **Para 6.11:** CNF 'Insurer Response' within 15 days:
 - 1. Admit liability;
 - 2. Deny liability;
 - 3. Allege contributory negligence;
 - 4. Fail to respond;
 - 5. Notify Claimant the value falls below the small claims limit; or
 - 6. Allege failure to complete mandatory information in CNF.

Defendant's response - consequences

- **Paras 6.15 / 6.17:** Unless Def admits liability, claim will automatically exit the portal.
- Admissions are binding: ***Blake v Croasdale*** [2017] EWHC 1336 (QB); ***Chimal v Chibwana & Williams*** (Brighton CC, 27 October 2016).

STAGE 2

- Stage 2 Settlement Pack:
 - 1. Stage 2 Settlement Pack Form;
 - 2. Medical report(s);
 - 3. Evidence of pecuniary losses;
 - 4. Evidence of disbursements;
 - 4A. In a soft tissue injury claim, the invoice for the cost of obtaining the fixed cost medical report, and any invoice for the cost of obtaining medical records;
 - 5. Any non medical expert report;
 - 6. Any medical records/photographs served with medical reports; and
 - 7. Any witness statements.
- Evidence required to support a claim will be limited: ***Fitton v Ageas***, Liverpool CC, 8 November 2018.

Stage 2 timing

- **Para 7.33:** “The claimant should send the Stage 2 Settlement Pack to the defendant within 15 days of the claimant approving—
 - (1) the final medical report and agreeing to rely on the prognosis in that report; or
 - (2) any non-medical expert report, whichever is later.”
- Delays: ***Lyle v Allianz Insurance Plc*** (Chester CC, 21 December 2017).

Stage 2 medical evidence

- N.B! **CPR r.45.19 2B**: no fee recoverable, except in exceptional circumstances, where the expert (or an associate) has provided or will provide medical treatment to the claimant.
- Discharge reports claimed on many physiotherapy invoices should fall foul of this rule, and the fee should not be awarded.

Soft tissue injuries

- **Para 7.8A(1):** *“the first report must be a fixed cost medical report from an accredited medical expert selected for the claim via the MedCo portal”.*
- **Para 7.8B:** limits for additional medicolegal reports for soft tissue injuries.
- Breach of the rules to obtain a report outside the MedCo Portal, commission an unjustified medical report or rely on further medical evidence, when the first report has not been disclosed to the defendant.
- Consequences (or lack thereof) of breaches.
- **Para 7.3:** *“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”* – findings of dishonesty and/or costs sanctions.

Interim payments

- Submitting an Interim Settlement Pack to the defendant: £1k +.
- If request is £1k, Defendant must pay within 10 days (**paras 7.13/7.18**). If more, can (**para 7.19**):
 - 1. Pay full amount requested;
 - 2. Make the minimum payment of £1k; or
 - 3. Pay another amount between £1k and the amount requested.
- **Para 7.28:** Where interim payment/full amount not made, CI can choose to remove the claim from the portal.
 - **Para 7.29 / CPR r.45.24(3):** cost risk.

Stage 2 – Defendant's Response

- Stage 2 = 35 days: 15 day 'initial consideration period' + 20 days to negotiate settlement and narrow issues in dispute.
- Both periods may be extended by consent; no maximum time limit.
- Where offer made less than 5 days before the end of the total period, it will be extended by 5 days.

Defendant's Response (cont.)

- Defendant's Response:
 - (1) Notify claimant they consider Small Claims Track would be normal track;
 - (2) Withdraw admission of causation;
 - (3) Agree claimant's valuation, or any individual heads of loss; or
 - (4) Make a counter-offer.
- **Para 7.41:** Where head of loss not agreed, defendant must propose alternative amount & explanation.
- Defendant's evidence & future reliance: ***Mulholland v Hughes*** [2015] Lexis Citation 333.

Failure to reach agreement

- Court Proceedings Pack: end of Stage 2.
 - Part A: damages grid;
 - Part B: last offers (**CPR PD 8B, para 6.1(2)**)
 - N.B. Part 36 consequences.
- **Para 7.70:** Where settlement can't be achieved, a defendant must pay the Part B figure (+ fixed costs and disbursements) within 15 days.

STAGE 3

- Part 8 Proceedings: Claim Form N208 (**CPR PD 8B, para 5.2**); + evidence per **CPR PD 8B, para 6.2**.
- **CPR PD 8B, para 6.3 and 6.4**: Claimant not entitled to rely on any evidence not included within the Claim Form / not previously served on Defendant with Court Proceedings Pack.

Stage 3: Defendant's Response

- 14 days to file acknowledgement of service.
- **CPR PD 8, para 8.3:**
 - 1. Contest amount of damages claimed;
 - 2. Contest making of an order for damages;
 - 3. Dispute court's jurisdiction; or
 - 4. Object to use of Stage 3 Procedure.

Consideration of claim

- **CPR PD 8B, para 11.1:** Court will order damages assessed either on the papers or at an oral Stage 3 Hearing.
 - **CPR PD 8B, para 11.1(2):** parties may request oral hearing/Court may make its own determination.
 - **CPR PD 8B, para 15.1:** where judgment determined on papers, formal appeal necessary.

Costs

- **CPR r.45.17:**
 - (a) fixed costs in **CPR r.45.18** (Table 6); and
 - (b) disbursements in accordance with **CPR r.45.19**; and
 - (c) where applicable, fixed costs in accordance with **CPR r.45.23A or 45.23B**.
- **CPR Part 36** applies to complaint offers made where the RTA Protocol has been followed & Part 8 proceedings issued.

Withdrawal from RTA Protocol

- Designed for cases with limited areas of dispute & complexity.
- A number of points where a case might automatically fall from the process, or where a party might actively choose to remove a case.



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