

The Lifecycle of a Personal Injury Claim

By Andrew Mckie (Barrister at Law) – Clerksroom – July 2012

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1. Introduction

The aim of the presentation is to look at the basic steps from the taking instructions in relation to a personal injury claim through to litigation and settlement.

The notes will outline the basic steps that will be required to progress a claim and these will be expanded upon in the presentation. These notes represent a starting point of the main considerations when preparing a case and they are not designed as a guide to the entire litigation process.

The notes assume that the claim is being progressed as an RTA personal injury claim.

The main notes have highlighted relevant further websites that can be visited to obtain further information on any aspects of this presentation. The links can be viewed from this page by holding ‘ctrl’ on the keyboard and then clicking on the link at the same time.

2. Initial Considerations

- a) The Contents of the Initial Interview
- b) Client Care
- c) Client Identification
- d) The Retainer – The Client Care Letter
- e) Money Laundering
- f) Conflicts of interest
- g) Solicitors Code of Conduct 2011
- h) Solicitors Accounts Rules
- i) MID search

More information can be found at the following websites:-

The Solicitors Code of Conduct 2011:-

<http://www.sra.org.uk/solicitors/handbook/code/content.page>

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The Solicitors Accounts Rules 2011:-

<http://www.sra.org.uk/solicitors/handbook/accountsrules/content.page>

The Law Society – Money Laundering Advice Practice Note:-

<http://www.lawsociety.org.uk/productsandservices/practicenotes/aml/4053.article>

MID:-

<http://stayinsured.askmid.com/about-askMID.html>

3. The Low Value RTA Portal

A streamlined process for dealing with low value road traffic accident personal injury claims worth between £1000 and £10,000 came into force on 30th April 2010.

Key stages of new process for RTA personal injury claims.

Source: www.rtapiclaimsprocess.org.uk

Stage 1 - Providing early notification of claims to defendants and insurers

The Claim Notification Form (CNF) will be sent electronically to the defendant's insurer and the claimant solicitor or claimant will sign the Statement of Truth on the CNF.

The defendant's insurer will send a receipt to acknowledge receiving the CNF.

All the fields on the CNF must be completed with the exception of the referral source field.

When the CNF has been correctly completed, the defendant's insurer will have 15 business days in which to respond - electronically - with the exception of the Motor Insurers' Bureau, which will have 30 days to respond.

Fixed recoverable costs of £400 will be paid at the end of Stage 1 where liability is admitted. A 12.5% success fee will be applied to Stage 1 fixed recoverable costs. However, the success fee element for Stage 1 will only be payable at the end of Stage 2.

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Stage 2 - Medical evidence, offers to settle and negotiation

Once the defendant's insurer has made an admission of liability, the claimant solicitor will obtain a medical report.

Where it is clear from the medical report that an additional medical report is necessary from an expert in a different discipline, the claimant solicitor may make a request for an interim payment. Additional medical evidence may also be obtained.

The acquirement of medical records will only be allowed as a disbursement where the medical expert has identified a need for them.

There is no fixed timetable for obtaining the medical report.

The claimant solicitor will complete the Stage 2 Settlement Pack form. This will be sent electronically to the insurer, together with the medical report and any receipts/evidence of special damages claimed.

The insurer has 15 business days from receipt of the Stage 2 Settlement Pack to consider and either accept the claimant's offer or make a counter offer.

Where the defendant's insurer makes a counter offer, there will be a further 20 business days for consideration and negotiation between the parties. The total consideration period for Stage 2 Settlement Packs is 35 days.

Where agreement on quantum has not been reached at the end of the 35-day total consideration period, the claimant solicitor will prepare the Stage 3 Court Pack for a hearing.

Prior to completing the Stage 3 Court Pack, any Additional Damages being claimed must be consolidated into the existing Stage 2 Settlement Pack and presented back to the defendant insurer for them to agree a further offer or make a counter offer.

Fixed recoverable costs of £800 will apply to all claims taken forward under this process from the beginning to the end of Stage 2. This will attract a 12.5% success fee uplift where the case settles.

Stage 3 - Where quantum cannot be agreed

Where quantum cannot be agreed by the end of Stage 2, an application will be made to the court to determine quantum.

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There will be separate fixed recoverable costs for claimant solicitors for Stage 3 of the process for paper (£250) and oral hearings (£500). There will be a fixed success fee of 100%, which will only apply where the claim concludes at trial and the claimant has won.

For More Information on the Low Value Portal please go to:-

RTA Portal Information website:-

<http://www.rtapiclaimsprocess.org.uk>

Pre Action Protocol for Low Value Claims – Stage 1 and 2:-

http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rta

Pre Action Protocol for Low Value Claims – Stage 3 Procedure:-

http://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_part08b

4. Where the claim falls out of the portal or claims before 30 April 2010. The Personal Injury Pre Action Protocol applies.

THE PROTOCOL

Letter of claim

3.1

Subject to paragraph 2.10A the claimant shall send to the proposed defendant two copies of a letter of claim, immediately sufficient information is available to substantiate a realistic claim and before issues of quantum are addressed in detail. One copy of the letter is for the defendant, the second for passing on to his insurers.

3.2

The letter shall contain a clear summary of the facts on which the claim is based together with an indication of the nature of any injuries suffered and of any financial loss incurred. In cases of road traffic accidents, the letter should provide the name and address of the hospital where treatment has been obtained and the claimant's hospital reference number. Where the case is funded by a conditional fee agreement (or collective conditional fee agreement), notification should be given of the existence

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of the agreement and where appropriate, that there is a success fee and/or insurance premium, although not the level of the success fee or premium.

3.3

Solicitors are recommended to use a standard format for such a letter – an example is at Annex A: this can be amended to suit the particular case.

3.4

The letter should ask for details of the insurer and that a copy should be sent by the proposed defendant to the insurer where appropriate. If the insurer is known, a copy shall be sent directly to the insurer. Details of the claimant's National Insurance number and date of birth should be supplied to the defendant's insurer once the defendant has responded to the letter of claim and confirmed the identity of the insurer. This information should not be supplied in the letter of claim.

3.5

Sufficient information should be given in order to enable the defendant's insurer/solicitor to commence investigations and at least put a broad valuation on the 'risk'.

3.6

The defendant should reply within 21 calendar days of the date of posting of the letter identifying the insurer (if any) and, if necessary, identifying specifically any significant omissions from the letter of claim. If there has been no reply by the defendant or insurer within 21 days, the claimant will be entitled to issue proceedings.

3.7

The defendant('s insurers) will have a maximum of three months from the date of acknowledgment of the claim to investigate. No later than the end of that period the defendant (insurer) shall reply, stating whether liability is denied and, if so, giving reasons for their denial of liability including any alternative version of events relied upon.

3.8

Where the accident occurred outside England and Wales and/or where the defendant is outside the jurisdiction, the time periods of 21 days and three months should normally be extended up to 42 days and six months.

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3.9

Where the claimant's investigation indicates that the value of the claim has increased to more than the value of the fast track limit since the letter of claim, the claimant should notify the defendant as soon as possible.

Documents

If the defendant denies liability, he should enclose with the letter of reply, documents in his possession which are material to the issues between the parties, and which would be likely to be ordered to be disclosed by the court, either on an application for pre-action disclosure, or on disclosure during proceedings.

3.11

Attached at Annex B are specimen, but non-exhaustive, lists of documents likely to be material in different types of claim. Where the claimant's investigation of the case is well advanced, the letter of claim could indicate which classes of documents are considered relevant for early disclosure. Alternatively these could be identified at a later stage.

3.12

Where the defendant admits primary liability, but alleges contributory negligence by the claimant, the defendant should give reasons supporting those allegations and disclose those documents from Annex B which are relevant to the issues in dispute. The claimant should respond to the allegations of contributory negligence before proceedings are issued.

3.13

No charge will be made for providing copy documents under the Protocol.

Special damages

3.14

The claimant will send to the defendant as soon as practicable a Schedule of Special Damages with supporting documents, particularly where the defendant has admitted liability.

Experts

3.15

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Before any party instructs an expert he should give the other party a list of the name(s) of one or more experts in the relevant speciality whom he considers are suitable to instruct.

3.16

Where a medical expert is to be instructed the claimant's solicitor will organise access to relevant medical records – see specimen letter of instruction at Annex C.

3.17

Within 14 days the other party may indicate an objection to one or more of the named experts. The first party should then instruct a mutually acceptable expert (which is not the same as a joint expert). It must be emphasised that if the Claimant nominates an expert in the original letter of claim, the defendant has 14 days to object to one or more of the named experts after expiration of the period of 21 days within which he has to reply to the letter of claim, as set out in paragraph 3.6.

3.18

If the second party objects to all the listed experts, the parties may then instruct experts of their own choice. It would be for the court to decide subsequently, if proceedings are issued, whether either party had acted unreasonably.

3.19

If the second party does not object to an expert nominated, he shall not be entitled to rely on his own expert evidence within that particular speciality unless:

(a) the first party agrees,

(b) the court so directs, or

(c) the first party's expert report has been amended and the first party is not prepared to disclose the original report.

3.20

Either party may send to an agreed expert written questions on the report, relevant to the issues, via the first party's solicitors. The expert should send answers to the questions separately and directly to each party.

3.21

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The cost of a report from an agreed expert will usually be paid by the instructing first party: the costs of the expert replying to questions will usually be borne by the party which asks the questions.

RESOLUTION OF ISSUES

5.1

Where the defendant admits liability in whole or in part, before proceedings are issued, any medical reports obtained under this protocol on which a party relies should be disclosed to the other party. The claimant should delay issuing proceedings for 21 days from disclosure of the report (unless such delay would cause his claim to become time-barred), to enable the parties to consider whether the claim is capable of settlement.

5.2

The Civil Procedure Rules Part 36 permit claimants and defendants to make offers to settle pre-proceedings. Parties should always consider before issuing if it is appropriate to make Part 36 Offer. If such an offer is made, the party making the offer must always supply sufficient evidence and/or information to enable the offer to be properly considered.

5.3

Where the defendant has admitted liability, the claimant should send to the defendant schedules of special damages and loss at least 21 days before proceedings are issued (unless that would cause the claimant's claim to become time-barred).

What costs does the firm get if the case settles at the pre litigation stage (not portal claims)?

Amount of fixed recoverable costs

45.9

(1) Subject to paragraphs (2) and (3), the amount of fixed recoverable costs is the total of –

(a) £800;

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(b) 20% of the damages agreed up to £5,000; and

(c) 15% of the damages agreed between £5,000 and £10,000.

(2) Where the claimant –

(a) lives or works in an area set out in the Costs Practice Direction; and

(b) instructs a solicitor or firm of solicitors who practise in that area,

the fixed recoverable costs shall include, in addition to the costs specified in paragraph (1), an amount equal to 12.5% of the costs allowable under that paragraph.

Application of fixed recoverable costs

45.8

Subject to rule 45.12, the only costs which are to be allowed are –

(a) fixed recoverable costs calculated in accordance with rule 45.9;

(b) disbursements allowed in accordance with rule 45.10; and

(c) a success fee allowed in accordance with rule 45.11.

(Rule 45.12 provides for where a party issues a claim for more than the fixed recoverable costs)

For more information please see the full Personal Injury Pre Action Protocol set out at:-

http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_pic

Costs Information can be Found at CPR Part 45.7:-

<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part45#IDAYZ0HC>

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5. Before you Issue Investigation Liability, Causation and Quantum

Liability - who was at fault, sometimes referred to as negligence.

Causation – linking the injury and / or damage caused by the accident to the Defendant

Quantum – the value of the Claimant's case.

General Damages – i.e the value of the the injury

Special Damages – quantifiable losses for a specific sum such as the costs of the repairs to the car or a claim for loss of earnings.

Balance of Probability - it is for the Claimant to proof on the balance of probability that the Defendant was at fault for the accident and the he caused the Claimant's injuries/ losses and these did not occur somewhere else

How do we investigate liability and/ or causation?

Obtain evidence from the Claimant and the witnesses to prove the accident happened in the way the Claimant suggests:-

Some examples:-

- a) Witness statements from the Claimant.
- b) Independent witnesses.
- c) Police report.
- d) CCTV.
- e) Sketch plans.
- f) Photographs of damage to vehicles.
- g) Medical records.
- h) Locus reports.

How do we investigate quantum or obtain evidence to support the claim?

Obtain witness evidence, expert evidence and documentary evidence to support the claim. Some examples:-

- a) Medical report to support the injury.
- b) Engineers report to support the damage to the vehicle.
- c) Statement from the Claimant.
- d) Documentary evidence i.e repair invoice, letter from employer etc

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6. Litigation – Issuing Court Proceedings

If the claim falls out of the portal and the claim then proceeds in the Pre-Action Protocol at the end of the Protocol, Court proceedings may be issued in the following circumstances:-

- a) The Defendant does not make an offer the Claimant accepts.
- b) The Defendant does not accept the Claimant's offer.
- c) Liability and/ or causation is disputed.
- d) The Defendant's insurer is not responding to the Court proceedings.

Issuing Proceedings and Litigation is subject to the Civil Procedure Rules 1999 which can be found at:-

<http://www.justice.gov.uk/courts/procedure-rules/civil>

The links for each section have been set out below, for those who require more information.

The presentation will finally seek to highlight briefly some of the most relevant sections of the litigation process. The notes will be expanded upon during the presentation.

1. Issuing Proceedings and How to Start the Claim –CPR Part 7 – <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part07>
2. Infant Approval Claims – CPR Part 8- <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part08>
3. Responding to the Claim – Acknowledgement of Service – Part 10 - <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part08>
4. Default Judgement – Part 12 - <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part08>
5. Defence – Part 15 - <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part15>
6. Witness statement - Part 16- <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part16>

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7. Disclosure of documents – Part 31
<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31>
8. Part 18 Requests for Further Information –
<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part18>
9. Counterclaims – Part 20 - <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part20>
10. Offers- Part 36- <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part36>
11. Expert Evidence – Part 35 - <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35>
12. Case Management Part 36 - <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part26>

Any questions?

Andrew Mckie is a Barrister at Clerksroom specialising in claimant and defendant personal injury, credit hire, costs and fraud.

Andrew undertakes Claimant and Defendant instructions in personal injury, alleged fraud and credit hire cases for the following types of work:-

- All types of interlocutory hearings including case management conferences, allocation hearings, pre-trial reviews and applications.
- Multi track, fast track and small claims track, trials and disposal hearings.
- MOJ stage 3 hearings.
- Infant approval hearings.
- All types of written advice and pleadings.

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