

Claims Post Jackson – Some Additional Information

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The EL and PL Position and Jackson One Month On – How are things shaping up?

1. The Position Regarding Public liability, Disease and Employers Liability claims

In 2013 the current MOJ Protocol for Low Value Personal Injury Claims in Road Traffic Accidents up to £10,000 will be extended to Employers' Liability (EL), Public Liability (PL) and motor claims with a value up to £25,000.

These come into effect at the end of July 2013.

2. What does this mean for these claims in term of costs?

	Pre Issue £1,000- £5,000	Pre Issue £5,001- £10,000	Pre Issue £10,001- £25,000	Issued – Post issue Pre Allocation	Issued – Post allocation pre listing	Issued – Post listing pre trial	Trial - Advocacy Fee
	Case Settles before Issue	Case Settles before Issue	Case Settles before Issue				
Road Traffic Accident							
Fixed Costs	Greater of £550 or £100 + 20% of Damages	£1,100 +15% of Damages over £5k	£1,930 + 10% of Damages over £10k	£1,160 + 20% of Damages	£1,880 + 20% of Damages	£2,655 + 20% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Employers Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +12.5% of Damages over £5k	£2,500 + 10% of Damages over £10k	£2,630 + 20% of Damages	£3,350 + 25% of Damages	£4,280 + 30% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Public Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +10% of Damages over £5k	£2,370 + 10% of Damages over £10k	£2,450 + 17.5% of Damages	£3,065 + 22.5% of Damages	£3,790 + 27.5% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na

This note is not a substitute for legal advice. If you require advice about a case you should consult a suitably qualified Solicitor or Barrister.

ANNEX A

MOJ PROPOSED FIXED RECOVERABLE COSTS FOR CLAIMS WITHIN THE
RTA AND EL/PL PROTOCOLS

	Claims of £1k-£10k			Claims of £10k-£25k		
	Stage 1	Stage 2	Total	Stage 1	Stage 2	Total
RTA claims	£200	£300	£500	£200	£600	£800
EL/PL claims	£300	£600	£900	£300	£1,300	£1,600

3. The Protocols

The draft protocols can be found at:-

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

The publication of the final protocols are still awaited.

The most relevant sections from the protocol are:-

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 the Limitation Act 1980;*

If causation is an issue, it should therefore exit the Portal.

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(1) **'employers' liability claim'** means a claim by an employee against their employer for damages arising from—

(a) **a bodily injury sustained by the employee in the course of employment;** or

(b) **a disease that the claimant is alleged to have contracted as a consequence of the employer's breach of statutory or common law duties of care in the course of the employee's employment,** other than a physical or psychological injury caused by an accident or other single event;

- a) Disease claims are therefore likely to start in the portal, but most will probably exit if causation is not admitted, see above.
- b) Many firms are now moving from RTA to disease work, for this reason. Disease claims ie noise induced hearing claims often have more than one defendant, multiple causation issues and therefore, very difficult to admit liability within 14 days, for the Defendant.

Most employers liability claims likely to exit, for a number of reasons:-

- i) Lack of information in portal to investigate***
- ii) Time taken to investigate = more complexity for EL claims.***
- iii) Difficult to obtain report from the policyholder and documents within time periods.***
- iv) Issue quickly once fallen out of the portal.***

(2) **'public liability claim'**—

(a) ***means a claim for damages for personal injuries arising out of a breach of a statutory or common law duty of care made against—***

(i) a person other than the claimant's employer; or

(ii) the claimant's employer in respect of matters arising other than in the course the claimant's employment; but

- (c) **does not include a claim for damages arising from a disease that the claimant is alleged to have contracted as a consequence of breach of statutory or common law duties of care, other than a physical or psychological injury caused by an accident or other single event.**

Again, most PL claims (occupiers under the Occupiers Liability Act 1957 / highways cases under Section 41 of the Highways Act 1980) likely to exit for a number of reasons;-

- a) **Lack of time to investigate for the Defendant and obtain an accident report i.e have to inspect the locus/ defect, examine records etc. The insurer needs time to obtain the records from the policyholder.**
- b) **More complexity for such claims – often more information is required from the Claimant, before an admission can be made.**
- c) **Most insurers will not admit causation without seeing the GP / hospital records, hence the claim will exit.**
- d) **Some insurers may admit for commercial reasons, but unlikely on a mass scale.**

Subject to paragraph 1.4 the standard forms used in the process set out in this Protocol are available from Her Majesty's Courts and Tribunals Service ('HMCTS') website at www.justice.gov.uk/forms/hmcts—

- (1) *Claim Notification Form ('Form EL1', 'Form ELD1' and 'Form PL1'— which are referred to in this Protocol as 'the CNF');*
- (2) *Defendant Only Claim Notification Form ('Form EL2', 'Form ELD2' and 'Form PL2');*
- (3) *Medical Report Form ('Form EPL3');*
- (4) *Interim Settlement Pack Form ('Form EPL4');*
- (5) *Stage 2 Settlement Pack Form ('Form EPL5');*
- (6) *Court Proceedings Pack (Part A) Form ('Form EPL6');* and

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(7) *Court Proceedings Pack (Part B) Form ('Form EPL7')*.

1.4 *The information required in Form EPL3 may be provided in a different format to that set out in that Form.*

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 an employer's liability claim or in a public liability claim. The Civil Procedure Rules 1998 enable the court to impose costs sanctions where this Protocol is not followed.***

You may now find that the Court expects the spirit as well as the letter of the Protocol is followed. Those who exit the portal based upon technicalities may face cost penalties.

4.1 ***This Protocol applies where—***

(1) ***either—***

(a) the claim arises from an accident occurring on or after [date to be inserted] ; or

(b) in a disease claim, no letter of claim has been sent to the defendant before [date to be inserted]

(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.***

Therefore:-

- i) **The protocol will not be retrospective, and will only apply to claims after x date.**
- ii) **If you have disease claims ensure the letter of claim are sent by x date, to ensure they are not captured by the new rules.**

The Exemptions**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) **in the case of a public liability claim, where the defendant is an individual ('individual' does not include a defendant who is sued in their business capacity or in their capacity as an office holder);**
- (4) *where the claimant is bankrupt;*
- (5) *where the defendant is insolvent and there is no identifiable insurer;*
- (6) **in the case of a disease claim, where there is more than one defendant;**
- (7) *for personal injury arising from an accident or alleged breach of duty occurring outside England and Wales;*
- (8) *for damages in relation to harm, abuse or neglect of or by children or vulnerable adults¹;*
- (9) **which includes a claim for clinical negligence;**
- (10) *for mesothelioma;*

¹ The Department of Health defines 'vulnerable adult' as "someone aged 18 or over...who is, or may be, unable to take care of himself/herself, or unable to protect himself/herself against significant harm or exploitation" (Department of Health 2000).

- (11) *for damages arising out of a road traffic accident (as defined in paragraph 1.1(16) of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents).*

Therefore,

- a) **Some occupiers claims likely to exit, if against an individual, other than a defendant sued in their business capacity.**
- b) **Most disease claims, where there is more than one defendant. This will include most noise induced hearing loss claims, often more than one defendant i.e claimant worked in number of factories.**

Completion of the Claim Notification Form

6.1 (1) The claimant must complete and send—

- (a) **the CNF to the defendant’s insurer, if known; and**
- (b) **the Defendant Only Claim Notification Form (“Defendant Only CNF”) to the defendant,**

but the requirement to send the form to the defendant may be ignored in a disease 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 CNF must be sent to the defendant and no Defendant Only CNF is required.

- (3) Where the insurer’s identity is not known, the claimant must make a reasonable attempt to identify the insurer and, in an employers’ liability claim, the claimant must have carried out a database search through the Employers’ Liability Tracing Office.**

- (4) In a disease claim, the CNF should be sent to the insurer identified as the insurer last on risk for the employer for the material period of employment.

Failure to complete the Claim Notification Form

6.7 Where the defendant considers that inadequate mandatory information has been provided in the CNF that shall be a valid reason for the defendant to decide that the claim should no longer continue under this Protocol.

6.8 Rule 45.24(2) sets out the sanctions available to the court where it considers that the claimant provided inadequate information in the CNF.

Therefore, it will be essential to:-

- a) Include all allegation of negligence and detailed accident circumstances on then CNF. More essential than in an RTA.
- b) Costs consequences if there is a failure to comply.

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 CNF response;
- (3) **does not admit liability**; or
- (4) notifies the claimant that the defendant considers that—
 - (a) there is inadequate mandatory information in the CNF; or
 - (b) if proceedings were issued, the small claims track would be the normal track for that claim

6.11 *The defendant must complete the ‘Response’ section of the CNF (“the CNF response”) and send it to the claimant—*

*(a) in the case of an employers’ liability claim, **within 30 days of the step taken pursuant to paragraph 6.1; and***

*(b) in the case of a public liability claim, **within 40 days of the step taken pursuant to paragraph 6.1***

Exit Points

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.XX 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 6.15 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 6.15 the claim will continue under this Protocol.*

Non-settlement payment by the defendant at the end of Stage 2

7.53 *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.XX;*
- (3) *the Stage 2 fixed costs in rule 45.XX; and*
- (4) *the disbursements in rule 45.XX that have been agreed.*

7.58 *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*

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.*

Details of loss of earnings

7.9 *In an employers' liability claim, the defendant must, within 20 days of the date of admission of liability, provide earnings details to verify the claimant's loss of earnings, if any.*

General provisions

7.59 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.XX.

Jackson: One Month On – How are things progressing?

CPR 3.9

From the 1st April 2013, the CPR will be significantly altered for every civil litigant. Most pertinently, the Overriding Objective will now include specific reference to undertaking litigation at proportionate cost, and ensuring compliance with (interlocutory) orders of the court.

Gone will be the checklist, oft-treated as a checklist by judges, to be replaced by a much broader discretion as to whether to grant relief, with the judge specifically referred to the need for litigation to be conducted efficiently and at proportionate cost, and to enforce compliance with rules, practice directions and orders.

Mannion v Ginty [2012] EWCA Civ 1667 at [18] as referring to “a culture of toleration of delay and non-compliance with court orders” in the civil justice system. It is suggested that the changes to CPR 3.9 will end this culture.

The Master of the Rolls has stated that parties can no longer expect indulgence if they fail to comply with procedural obligations, and that efficiency, proportionality and consideration of other litigants and court resources are to constitute new cornerstones to this ‘different justice’.

Relief from sanctions

3.9

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –

(a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.

Proportionality

The overriding objective

1.1

(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.

(2) Dealing with a case justly and at proportionate cost includes, so far as is practicable –

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate –

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly;

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and

Therefore, the Court will now;-

- a) Provide more consideration to the financial value of the case i.e does a £1,000 claim justify more than one expert report?**
- b) Will effect allocation of the case in terms of costs budgets, are they proportionate. Keep them reasonable.**
- c) The Courts are flexing their muscles starting to incorporate this into case management decisions.**

COSTS MANAGEMENT

Application of this Section and the purpose of costs management

3.12

(1) This Section and Practice Direction 3E apply to all multi-track cases commenced on or after 1st April 2013, except –

(a) cases in the Admiralty and Commercial Courts;

(b) such cases in the Chancery Division as the Chancellor of the High Court may direct; and

(c) such cases in the Technology and Construction Court and the Mercantile Court as the President of the Queen’s Bench Division may direct,

unless the proceedings are the subject of fixed costs or scale costs or the court otherwise orders. This Section and Practice Direction 3E will apply to any other proceedings (including applications) where the court so orders.

(2) The purpose of costs management is that the court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings so as to further the overriding objective.

Filing and exchanging budgets

3.13

Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets as required by the rules or as the court otherwise directs. Each party must do so by the date specified in the notice served under rule 26.3(1) or, if no such date is specified, seven days before the first case management conference.

Failure to file a budget

3.14

Unless the court otherwise orders, any party which fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees.

Costs management orders

3.15

(1) In addition to exercising its other powers, the court may manage the costs to be incurred by any party in any proceedings.

(2) *The court may at any time make a 'costs management order'. By such order the court will*

–

(a) *record the extent to which the budgets are agreed between the parties;*

(b) *in respect of budgets or parts of budgets which are not agreed, record the court's approval after making appropriate revisions.*

(3) *If a costs management order has been made, the court will thereafter control the parties' budgets in respect of recoverable costs.*

Costs management conferences

3.16

(1) *Any hearing which is convened solely for the purpose of costs management (for example, to approve a revised budget) is referred to as a 'costs management conference'.*

(2) *Where practicable, costs management conferences should be conducted by telephone or in writing.*

Court to have regard to budgets and to take account of costs

3.17

(1) *When making any case management decision, the court will have regard to any available budgets of the parties and will take into account the costs involved in each procedural step.*

(2) *Paragraph (1) applies whether or not the court has made a costs management order.*

Key Things to Note;

- a) **I would recommend you utilise a costs draftsmen for budgets unless you have in house capability.**
- b) **If you go over in one area of the budget once agreed, you cannot overspend in another.**
- c) **There will be an emphasis on parties trying to agree budgets before the costs management conference**
- d) **The Court is likely to encourage proportionality. Therefore budgets should be realistic but sensible. The Court will want to keep a tight control of the budget.**

Do you need Assistance?

We hope you have found the talk interesting.

If you need assistance with any aspect of these cases, please telephone 0845 083 3000 and the Clerks will be happy to assist or go to www.clerksroom.com to book online.