

**Credit Hire and Storage: Post Jackson Things You Need to Know**

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**1. The Small Claims Track**

- The small claims track now applies to all claims over under £10,000 where there is no personal injury claim attached, issued on or after 1 April 2013.
- All credit hire and storage claims with quantum less than £10,000 at the date of issue, and no PI claim, should now go into the small claims track but note CPR 26.8, allocation is not just in relation to value:-

***Matters relevant to allocation to a track***

**26.8**

*(1) When deciding the track for a claim, the matters to which the court shall have regard include –*

*(a) the financial value, if any, of the claim;*

*(b) the nature of the remedy sought;*

*(c) the likely complexity of the facts, law or evidence;*

*(d) the number of parties or likely parties;*

*(e) the value of any counterclaim or other Part 20 claim and the complexity of any matters relating to it;*

*(f) the amount of oral evidence which may be required;*

*(g) the importance of the claim to persons who are not parties to the proceedings;*

*(h) the views expressed by the parties; and*

*(i) the circumstances of the parties.*

**If there are complex arguments such as enforceability, forensic engineer etc, it should go into the fast track or multi track.**

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## **2. Dealing with Credit Hire in the Portal**

a) The portal now applies to :

*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.*

**This means that the credit hire and storage claims upto £25,000 will be included in the portal.**

### **b) Specialist legal advice**

*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 (excluding vehicle related damages), an additional advice from a specialist solicitor or from counsel may be justified where it is reasonably required to value the claim.*

An advice on quantum may be recovered, if the complex issues in relation to credit hire, such as enforceability

### **c) Credit Hire and Storage can no longer be dealt with completely outside the Portal**

*6.4 A claim for vehicle related damages will ordinarily be dealt with outside the provisions of this Protocol under industry agreements between relevant organisations and insurers. Where there is a claim for vehicle related damages the claimant must—*

*(1) state in the CNF that the claim is being dealt with by a third party; or*

*(2)*

*(a) explain in the CNF that the legal representative is dealing with the recovery of these additional amounts; and*

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*(b) attach any relevant invoices and receipts to the CNF or explain when they are likely to be sent to the defendant.*

**d) Witness statements**

*7.11 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.*

- Therefore, witness statements should be included at Stage 2, to include issues such as need, rate, period, and enforceability.
- Rates evidence can now be provided by both sides for the stage 3 hearing, in the form of a witness statement.

**But note;-**

**Submitting the Stage 2 Settlement Pack to the defendant**

**7.32 The Stage 2 Settlement Pack must comprise—**

- (1) the Stage 2 Settlement Pack Form;
- (3) evidence of pecuniary losses
- (7) any witness statements.

**e) If a third party deals with the credit hire/ storage note at stage 2:-**

**Vehicle related damages - additional damages i.e credit hire/ storage**

*7.51 Paragraph 7.52 applies where at the end of the relevant period in paragraphs 7.35 to 7.37 the claim (“the original damages”) has not settled and there remain vehicle related damages (“the additional damages”) being dealt with by a third party separate from the claim. The original damages include all elements of the claim in the existing Stage 2 Settlement Pack.*

*7.52 Where paragraph 7.51 applies the claimant must, in relation to the additional damages—*

- (1) notify the defendant that this separate claim is being considered;*
- (2) obtain all relevant information from the third party; and*

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***(3) make a separate offer by amending the Stage 2 Settlement Pack Form.***

*7.53 Within 15 days of the claimant sending the offer under paragraph 7.52(3), the defendant must either agree the offer made by the claimant or make a counter-offer.*

*7.54 The counter offer must explain why a particular head of damage has been reduced to assist the claimant when negotiating a settlement and to allow both parties to focus on those areas of the claim that remain in dispute.*

The credit hire and storage must therefore be eventually included in the claim, if it is going to stage 3, and does not settle at stage 2. This applies even if the claim is being dealt with by a third party i.e hire company, claims management company etc

**f) Personal injury and other special damages agreed, but credit hire/ storage and other vehicle damages not agreed at stage 2.**

***Original damages are agreed, additional damages are not agreed***

*7.59 Paragraph 7.60 applies where—*

***(1) the original damages are agreed; but***

***(2) the additional damages are not agreed.***

*7.60 Where paragraph 7.59 applies—*

***(1) the defendant must, in relation to the original damages, pay the claimant in accordance with paragraph 7.62; and***

***(2) the claimant may start proceedings under Part 7 of the CPR in relation to the additional damages.***

If the claim is agreed for PI and other special damages, save for credit hire/ storage and vehicle damage but beware the claim may go to the SCT, if issued after 1 April 2013 and worth less than £10,000 for disputed items i.e only credit hire and storage outstanding.

**g) Part 18 Questions**

**The low value portal is not designed to deal with Part 18 questions and there is no scope for them in the portal.** All communication in the portal must be via electronic communication in the portal:-

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## ***Communication between the parties***

### **5.1**

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

#### **h) Credit Hire/ Storage – Exit from the Portal?**

With the invention of statement in the portal, it will now be almost impossible to exit claims from the portal.

There may still be an argument for existing claims for issues surrounding enforceability i.e arguments over the Consumer Credit Act 1974 and other Consumer Credit Regulations but it seems that the vast majority of credit hire claim and storage claims are likely to stay within the portal.

There are penalties, if a claim exists the portal unnecessarily see:-

### **General provisions**

#### **7.67**

*Where the claimant gives notice to the defendant that the claim is unsuitable for this Protocol (for example, because there are complex issues of fact or law in relation to the vehicle related damages) then the claim will no longer continue under this Protocol. However, where the court considers that the claimant acted unreasonably in giving such notice it will award no more than the fixed costs in rule 45.18.*

#### **3. Finally a Point about Enforceability**

**It seems that most of the credit hire arguments surrounding need, rate, impecuniosity etc have been settled.**

**However, the last few months have seen the emergence of a new argument that the credit hire agreement is not enforceable because it does not comply with;-**

**3 (1) (a) (i) (cc) of the Consumer Credit (Exempt Agreements Order 1989) as amended by Regulation 66 of the Consumer Credit Act (EU Directive) Regulations 2010 SI 2010/66 says that in order for an agreement to be exempt by the Act under that article, it is a requirement that “*the credit is provided without interest and without any other charges*”.**

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**It is alleged that some credit hire agreements charge interest and ‘other charges’, such as sat nav, tow bar charges additional driver charges etc fall within the definition of ‘other charges’ and therefore agreements that the agreements which are refer to these charge are not exempt under the *Consumer Credit Act 1974*.**

**In order to resolve the issue one should look at:-** The guidance set out by the Department for Business Innovation and Skills (August 2010), in relation to the ‘*Guidance on the Regulation and implementing the Consumer Credit Directive*’ This was a document produced by the department, in relation to then implementation of the regulations referred to the regulations. This can be found in full at:-

<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1053-consumer-credit-directive-guidance.pdf>

The guidance in relation to ‘other charges’ says:-

***Article 3 – payable for the credit***

***4.11 The Article 3(1)(a)(i) and (b)-(d) exemptions require the credit to be provided without interest and any other charges, and Article 3(1)(a)(ii) requires that no or insignificant charges are payable for the credit.***

***4.12 If therefore a charge is payable under the credit agreement, or a related agreement, but is not linked in any way to the provision of credit, it will be disregarded in determining whether the exemptions apply.***

***4.13 This means that consideration needs to be given to whether and to what extent any charges are actually a charge for the credit facility.***

***4.14 In many agreements, the credit facility is the only facility being offered to the consumer and therefore the only facility to which charges could be related.***

**In such circumstances, one should consider carefully, whether the additional charges such as sat nav, tow bar charges, CDW etc are a charge for a credit facility or simply additional charges to the agreement.**

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#### **4. Do you need Assistance?**

We hope you have found the article 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](http://www.clerksroom.com) to book online.

#### **The Author.**

Andrew Mckie, Barrister of Clerksroom Manchester, is a specialist in claimant and defendant personal injury, with a particular interest in cases involving alleged fraud and credit hire. Andrew is a former Associate Solicitor and Solicitor Advocate, and was called to the Bar in July 2011.

Before qualifying, as a Barrister, Andrew has 6 years advocacy experience, as a Solicitor. Andrew has worked for a number of leading Legal 500 firms specialising in RTA fraud, including Keoghs LLP and Weightmans LLP, acting for some of the leading insurance companies in the UK.

Andrew has also worked for a number of leading claimant personal injury and credit hire law firms, acting for some of the largest credit hire companies in the UK. Most recently, Andrew was the Head of Litigation and In House Solicitor Advocate at a claimant personal injury and credit hire firm, with over 50 staff, and Andrew brings this vast experience, as a Solicitor, to the Bar.

Andrew is a Member of the Personal Injuries Bar Association and Association of Personal Injury Lawyers

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