



An Update on the Ministry of Justice 'Reforms' to Personal Injury Procedures

In terms of scale, the changes to the claims process for personal injury claims that interested parties have been expecting since April 2007 were something approaching a volcanic eruption. These changes were predicted to be the biggest since Lord Woolf's reforms of 1998. Fifteen months later, and ten months overdue, it seems we have experienced the equivalent of a mild earth tremor.

It is worth remembering that in the original consultation document the Government stated that it was aware of the need to provide access to justice and to ensure that victims of negligence receive fair compensation but "...there was a need to balance this against the high cost of pursuing these claims". Collectively Insurers were no doubt breathing a heavy sigh of relief. At last it was being recognised that the costs element of these claims was getting out of hand and something was going to be done about it. The intention was to introduce fixed fees thus creating certainty and removing elements such as increasing ATE premiums (or premium equivalent where the claimant is union backed) and referral fees. The quid pro quo so far as Insurers are concerned was that they would have to deal with these claims within a much shorter time scale than previously. Some said the time limits would be impossible to meet but the majority were prepared to accept them as part of the deal and would adjust their procedures accordingly.



The Changes

Case Track Limits And The Claims Process For Personal Injury Claims – Main Points And Outcomes	
Consultation proposal (April 2007)	Outcome (July 2008)
<p style="text-align: center;">Small claims limit</p> <p>to remain at £1,000 for injury claims and £5,000 for others</p>	Accepted
<p style="text-align: center;">Fast track limit</p> <p>to be increased generally from £15,000 to £25,000</p>	Accepted
<p style="text-align: center;">Streamlined claims process</p> <p>To apply to all non-clinical injury claims in the increased fast track</p>	Shelved generally and now limited only to motor claims under £10,000
<p style="text-align: center;">Detail of the process</p> <ul style="list-style-type: none"> ▪ Five-day notification by solicitor after seeing claimant ▪ Notification via new standard forms ▪ 15- (motor) or 30-day (other) admission by insurer ▪ Early admissions of liability to be binding save for fraud ▪ Solicitor to prepare settlement pack and part 36 offer ▪ Standardised special damages ▪ Possible assessment tool for general damages ▪ Detailed timetable for negotiations and counter offers ▪ Quantum only determination by district judge 	<p>(will apply only to motor claims under 10,000)</p> <ul style="list-style-type: none"> ▪ Five days to start only after initial investigations ▪ New standard forms retained for motor ▪ 15 days (motor) retained and will not be extendable ▪ Binding admissions retained – binding on liability, not causation ▪ Settlement pack retained – but with discretion on part 36 ▪ Standardised special damages retained ▪ Assessment tool for general damages rejected ▪ Timetable generally retained and simplified ▪ Quantum only determination (a hearing) retained with some changes
<p style="text-align: center;">Fixed recoverable costs</p> <p>To be staged through the streamlined process</p>	<p style="text-align: center;">Not taken forward generally</p> <p>Staged fixed costs will apply only to motor injury claims under £10,000</p>



Claims Covered By the New Claims Process

The new claims process will be applied to RTA claims only with a value of up to £10,000. (A significant move on the original proposals which seems illogical in the face of the increase in fast track limit).

Disease claims, and EL and PL cases will be excluded from the new claims process as currently constructed. It will be restricted to RTA cases, which constitute around 70-75% of personal injury claims. (Another very significant, illogical and surprising move away from the original proposals).

Case Track Limits

The Government remains of the view that the small claims limit for personal injury claims should remain at the current level of £1,000; and the general small claims limit should remain at the current level of £5,000. (So no change there.)

The Government has concluded that the fast track limit should be increased from £15,000 to £25,000. (A sensible and welcome change).

The Government will not be taking forward the proposals to change the recoverability of ATE insurance premiums. (A surprising move from the original proposals and probably a missed opportunity. Additional liabilities have a significant and unwelcome impact on costs in many cases where frequently no risk arises).

Time limits for decisions on liability

The Government has concluded that, as proposed in the consultation paper, Insurers will have 15 working days in which to respond on liability.

There will be no scope for extensions of time for decisions on liability. (One assumes that by implication failure to meet the 15 working day deadline will result in the case being taken out of the new process and Insurers will lose the benefit of the fixed costs regime).



Fixed Costs

Fixed recoverable costs at levels yet to be determined, will bring certainty and predictability to the new claims process. This issue is being considered separately by the Advisory Committee on Civil Costs who it is said will be working with interested parties.

Other

Liability decisions will be binding except for causation.

Claimant solicitors must notify the defendants of a claim within 5 days of initial investigations being concluded.

Claimants will have 15 days to submit a settlement pack with the medical to the defendant once it has been checked.

Certain special damages are to be standardized.

Cases involving contributory negligence appear to remain outside of the fixed cost process.

An assessment tool for damages has been rejected.

Implementation/Next Steps

The Civil Procedure Rule Committee will be asked to consider draft rules, practice directions and pre-action protocols as appropriate, to implement the new claims process. As mentioned above, the Advisory Committee on Civil Costs will also be asked to make recommendations on the fixed recoverable costs.

There is nothing within the response that indicates a timescale for the introduction of the new process. In respect of many issues there is said to be a need for more work to be done. The Government will be working with stakeholders in relation to the fixed costs regime; causation; contributory negligence; standardisation of special damages; claims notification; the extent of investigation required before notification; and the interface



between the new claims process and current pre-action protocol. In other words an enormous amount of work is still required hence we can almost certainly anticipate further delays prior to implementation.

Comment

From an EL/PL Insurer's perspective what is there to look forward to? Arguably not a lot at the moment. The costs war is likely to continue.

The Government have said it will not include EL/PL cases in the new process "...as currently constructed." That might be an indication that there could be changes in the future and such changes may depend on the success of the process on RTA cases up to £10,000. If that is right, any change in relation to EL/PL is clearly some considerable time away in the future.

However, taking less time to investigate claims should enable Insurers to adopt a more proactive approach towards claims and limit costs by pushing towards a speedier resolution.

So What Does It Mean To Insurers And Adjusters Appointed On Their Behalf?

Motor Claims

1. A continued focus on speedy liability resolution. The short period of 15 working days is a real challenge. Insurers/Adjusters need to have in place a clear criteria for investigation techniques using a variety of tools, and processes which ensuring the swift appointment of investigators who in turn are focused on timescale compliant reporting.
2. A possible review of reserving strategy once the detail of the fixed costs regime becomes clear.
3. A clear approach to arguments of contributory negligence and avoidance of speculative denials of liability.



4. With credit hire forming a major element of RTA claims and the claims value limit of £10,000 it is foreseeable that adding the personal injury element will take many such cases out of the new process.
5. Policyholders need to report claims ever more promptly using a variety of methods.
6. A continued focus on fraud to counter any perception that controls will be less thorough faced with tighter timescales.

EL/PL Claims

1. On the face of it no changes aside from watching developments and continuing discussions with the MOJ.
2. The Industry could and should take the lead and voluntarily develop an alternative compensation process which cuts out unnecessary legal and associated costs.
3. The Industry should continue to work toward the liability decision making timescales originally proposed and resource and apply processes appropriately.

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