

**PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS BELOW THE SMALL  
CLAIMS LIMIT IN ROAD TRAFFIC ACCIDENTS**

**PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD  
TRAFFIC ACCIDENTS FROM 31ST JULY 2013**

**PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY (EMPLOYERS'  
LIABILITY AND PUBLIC LIABILITY) CLAIMS**

**PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS**

The Master of the Rolls as Head of Civil Justice approves—

- (a) the new Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents; and
- (b) the amendments to—
  - (i) the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents From 31st July 2013;
  - (ii) the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability Public Liability) Claims; and
  - (iii) the Pre-Action Protocol for Personal Injury Claims.

The new Pre-Action Protocol and the amendments to the existing Pre-Action Protocols come into force on 31 May 2021.

Signed by:

The Right Honourable Sir Geoffrey Vos

Master of the Rolls

Date: 18<sup>th</sup> February 2021

**PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS BELOW THE SMALL  
CLAIMS LIMIT IN ROAD TRAFFIC ACCIDENTS**

- 1) The new Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents is set out in the Schedule to this Update.

**PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENT 31ST JULY 2013**

1) In the table of contents—

a) after the entry for paragraph 4.1, insert—

“Whiplash injuries - children and protected parties	4.1A”; and
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b) after the entry for paragraph 7.8A, insert—

“Claims which consist of, or include, a claim for whiplash injury – Medical Reports	7.C”.
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2) In paragraph 1.1—

a) after sub-paragraph (14), insert—

“(14A) ‘protected party’ means a person who lacks capacity to conduct court proceedings, as defined in rule 21.1(2);”;

b) in sub-paragraph (16A), after “secondary in significance to the physical injury”, insert “, but excludes any claim which consists of or includes a whiplash injury”;

c) after sub-paragraph (16A), insert—

“(16B) ‘tariff’ and ‘tariff amount’ means any tariff of damages for whiplash injuries and, if relevant, minor psychological injuries suffered on the same occasion as the whiplash injuries, set by the Whiplash Injury Regulations 2021;”

d) in sub-paragraph (17), at the end, omit “and”;

e) after sub-paragraph, insert—

“(17A) ‘uplift’ means the amount greater than the tariff amount which the claimant may claim in defined exceptional circumstances as set out in the Whiplash Injury Regulations 2021;”;

f) in sub-paragraph (18), at the end, for “.”, substitute “;”;

g) after sub-paragraph (18), insert—

“(19) ‘vulnerable road user’ – a road user is treated as ‘vulnerable’ where, at the time the accident occurred, the claimant was—

(a) using a motor cycle;

(b) a pillion passenger on, or a passenger in a sidecar attached to, a motor cycle;

(c) using a wheelchair, a powered wheelchair or a mobility scooter;

(d) using a bicycle or other pedal cycle;

(e) riding a horse; or

(f) a pedestrian;

and ‘vulnerable road user’ has that meaning in this Protocol; and

(20) ‘whiplash injury’ or ‘whiplash injuries’ means an injury or injuries of soft tissue in the neck, back or shoulder suffered because of driver negligence as defined in section 1 of the Civil Liability Act 2018 and as further applied by section 3 of that Act to claims where the duration of the whiplash injury or any of the whiplash injuries—

(a) does not exceed, or is not likely to exceed, two years; or

(b) would not have exceeded, or would not be likely to exceed, two years but for the claimant’s failure to take reasonable steps to mitigate its effect.”.

3) In paragraph 1.2, in sub-paragraph (2), after “Protocol upper limit”, omit the words “, or between £1,000 and the Protocol upper limit.”.

4) In paragraph 4.1—

a) In sub-paragraph (1), for “where the CNF is submitted on or after 31st July 2013”, substitute “which occurs on or after 31st May 2021”;

b) after sub-paragraph (4), for the second set of words in parenthesis,  
substitute—

“(Rule 26.6 provides that, except where Rule 26.6B applies, the small claims track is not the normal track where the claim has a financial value of more than £10,000 or where the value of any claim for damages for personal injuries (defined as compensation for pain, suffering and loss of amenity) is more than—

(a) £5,000 where the claim arises from a road accident as defined on or after 31st May 2021, except where (b) applies;

(b) £1,000 where the claim arises from a road accident where the accident occurred before 31st May 2021, or the claimant is a child, a vulnerable road user or where any of the other categories in rule 26.6A applies.

(As to the application of rule 26.6B, see paragraph 4.1A below.)

### **Whiplash injuries – children and protected parties**

#### **4.1A**

(1) This Protocol applies where the claim consists of or includes a claim for whiplash injury and—

(a) the claimant is a child;

(b) the claim arises from a road traffic accident which occurs on or after 31<sup>st</sup> May 2021; and

(c) the claim is worth no more than the Protocol upper limit.

(2) This protocol does not apply where the claimant is a protected party.

(Rule 26.6B provides that such a claim must not be allocated to the small claims track, even though the claim for whiplash injury may be valued at less than £1,000.)”.

5) In paragraph 4.2—

a) Immediately after the paragraph number, insert—

“(1) The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents which commenced on 31 July 2013 will continue to apply (as it stood immediately before 31 May 2021 to all claims where the accident occurred before 31 May 2021, except where paragraph (2) applies.”; and

b) renumber the existing wording of this paragraph as sub-paragraph (2).

6) In paragraph 4.5(4), omit the words “claimant or” and “as defined in rule 21.1(2)”.

7) Omit paragraph 4.7.

8) For paragraph 5.9, substitute—

**“5.9**

(1) Where the claimant reasonably believes that the claim is valued at above the limit in paragraph (2) but at no more than the Protocol upper limit, but it subsequently becomes apparent that the value of the claim is below the limit in paragraph (2), the claimant is entitled to the Stage 1 and (where relevant) the Stage 2 fixed costs.

(2) The limit referred to in paragraph (1) above is £5,000 for damages for personal injury and £10,000 in total and is limited to claims where the claimant is not a child.

**5.9A**

(1) Subject to paragraph (2), where a claim has started in the RTA Small Claims Protocol and the defendant has notified the claimant that they consider the overall claim is likely to be valued at more than £10,000 or the claim for damages for injury is likely to be valued at more than £5,000, this Protocol should be applied starting at paragraph 6.1.

(2) Paragraph (1) applies only where—

(a) the defendant also notifies the claimant that they consider that the claim is worth no more than the Protocol upper limit;

(b) the claim is not one which was started in the RTA Protocol and no longer continued in that protocol; and

(c) either—

(i) there was an admission of liability in full under this Protocol within the response period;

(ii) there was an admission of liability in full but subject to an argument that the claimant contributed to their injuries by not wearing a seatbelt (where the claimant admitted not doing so); or

(iii) the period for a liability response under this Protocol has not yet expired.”.

9) After paragraph 6.15, insert—

**“6.15A** Where—

(a) paragraph 6.15(4)(b) applies;

(b) the date of the accident is on or after 31<sup>st</sup> May 2021; and

(c) the parties have agreed that the RTA Small Claims Protocol applies, the claimant must start a claim by following that Protocol, starting at paragraph 5.3.”.

10) In paragraph 7.1, for “The claimant” to the end of that paragraph, substitute—

“(1) Save where paragraph (2) applies, the claimant should obtain a medical report, if one has not already been obtained.

(2) In claims which consist of or include a whiplash injury, the claimant must obtain a medical report in accordance with paragraph 7.8C.”.

11) In paragraph 7.8, in the heading to that paragraph, for the words “other than soft tissue injury claims”, substitute “(other than soft tissue injury claims or claims which consist of, or include, a claim for a whiplash injury.

12) After paragraph 7.8B, insert—

**“Claims which consist of, or include, a claim for whiplash injury –**

**Medical Reports**

**7.8C**

(1) The provisions of paragraph 7.8A and 7.8B apply in respect of a medical report obtained under this paragraph, save that—

(a) any reference to soft tissue injury claim is to be read as referring to a claim which consists of, or includes, a claim for whiplash injury;

(b) paragraph (2) below applies in place of paragraph 7.8B(2).

(2) A further report, whether from the first expert instructed or from an expert in another discipline, will only be justified where—

(a) it is recommended in the first expert's report;

(b) the first medical report recommends that further time is required before a prognosis of the claimant's injuries can be determined;

(c) the claimant is receiving continuing treatment; or

(d) the claimant has not recovered as expected in the original prognosis.”.

13) After paragraph 7.14, insert—

“**7.14A** In a claim which consists of or includes a claim for whiplash injury, the claimant must specify in the Interim Settlement pack how much of the interim payment request relates to—

(a) the tariff amount; and

(b) the amount (if any) for damages in respect of any non-whiplash injuries.”.

14) In paragraph 7.17, after “parties agree otherwise” insert “or paragraph 7.17A applies”.

15) After paragraph 7.17, insert—

“**7.17A** Where the claim consists of or includes a whiplash injury—

(a) the interim payment of £1,000 is to be applied first to the tariff amount;

(b) the balance of the £1,000 is to be applied first to general damages in respect of any non-whiplash injuries;

(c)

(i) any remaining balance of the £1,000; and

(ii) where more than £1,000 is requested by the claimant, the amount in excess of £1,000, is only in relation to pecuniary losses.

(Paragraph 7.44B prohibits the parties from making or accepting any offer or payment in respect of a claim for whiplash injury until after the fixed cost medical report has been disclosed.)”.

16) After paragraph 7.32, insert—

“**7.A32A** Where the claim consists of or includes a whiplash injury—

- (1) the settlement pack must include the fixed cost medical report;
- (2) the claimant’s offer in the settlement pack must set out separately—
  - (a) the tariff amount; and
  - (b) the amount (if any) for damages in respect of any non-whiplash injuries;

(3) subject to paragraphs (4) and (5) below, the claimant may argue in accordance with the Whiplash Injury Regulations 2021 that there are exceptional circumstances which allow the claimant to seek an uplift on the tariff amount;

(4) a claimant who makes a request for an uplift under paragraph (3) must state in the settlement pack—

- (a) the percentage uplift claimed up to a maximum of 20% and the amount claimed; and
- (b) how the whiplash injury is exceptionally severe; or
- (c) how the claimant’s circumstances increasing the pain, suffering or loss of amenity caused by their whiplash injury are exceptional.”.

17) In paragraph 7.32A, after “in a soft tissue injury claim”, insert “or a claim which consists of, or includes, a claim for whiplash injury,”.

18) After paragraph 7.41, insert—

“7.41A Where the claim consists of or includes a claim for whiplash injury, the defendant’s counter-offer in the settlement pack must set out separately—

(a) the tariff amount;

(b) the amount (if any) for damages in respect of any non-whiplash injuries;

and

(c) where the claimant has requested an uplift, the percentage and amount (if any) for the uplift.”.

19) In paragraph 7.44—

a) after sub-paragraph (3A), insert—

“(3B) in a claim which consists of or includes a claim for whiplash injury, the cost of obtaining the fixed cost medical report in paragraph 1.14 of Practice Direction 27B.”; and

b) Omit sub-paragraph (4).

20) After paragraph 7.44A, insert—

“**7.44B** In a claim that consists of or includes a claim for whiplash injury—

(a) no offer may be made, invited or accepted by either party, and

(b) no payment may be made by the defendant or accepted by the claimant, in respect of the claim for whiplash injury until after the fixed cost medical report has been disclosed.”.

## **PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY (EMPLOYERS’ LIABILITY PUBLIC LIABILITY) CLAIMS**

1) In paragraph 4.1, in the words in parenthesis which appear immediately below sub-paragraph (4), after “(defined as compensation for pain, suffering and loss of amenity)”, insert “, other than a claim arising from a road traffic accident.”.

## **PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS**

1) In the table of contents, for the entry for paragraph 7.2, substitute

<p>“Experts</p> <p>A. Claims which do not consist of, or include, a claim for a whiplash injury</p> <p>B. Claims for whiplash injury</p>	<p>7.2</p> <p>7.12</p>
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- 2) In sub-paragraph 1.1.1—
  - a) in paragraph (c), at the end, omit “and”;
  - b) in paragraph (d), at the end, for “.” substitute “; or”; and
  - c) after paragraph (d), insert—
 

“(e) the Pre-Action Protocol for Personal Injury Claims below the small claims limit in road traffic accidents (“the RTA Small Claims Protocol”).”
- 3) In paragraph 1.2, after “prior to Stage 2, “insert “, or the RTA Small Claims Protocol,”.
- 4) In sub-paragraph 1.3.2, before “a defendant”, insert “in a claim under either low value protocol”.
- 5) After sub-paragraph 1.3.2, insert—
 

“1.3.3 Where a claim exits the RTA Small Claims Protocol and is directed to this Protocol, the claim will proceed under this Protocol from paragraph 5.5.”.
- 6) In paragraph 5.5—
  - a) before “Where a claim”, insert sub-paragraph number 5.5.1; and
  - b) after the sub-paragraph, insert—
 

“5.5.2 Where a claim no longer continues under the RTA Small Claims Protocol, the Small Claim Notification Form or SCNF completed by the claimant can be used as the Letter of Claim under this Protocol.”.
- 7) In paragraph 6.3, after “(or the CNF”, insert “or SCNF”.
- 8) In paragraph 7.2, immediately above that paragraph, insert—
 

**“A. Claims which do not consist of, or include, a claim for a whiplash injury**

(whiplash injury is defined in paragraph 7.12.7).”.

9) In paragraph 7.5, for “Where a medical expert”, substitute “Save for reports in support of a claim for whiplash injury (whether or not it is part of a claim for other injuries) to which paragraph 7.12 applies, where a medical expert”.

10) After paragraph 7.11, insert—

**“B. Claims for whiplash injury**

**7.12**

7.12.1 The provisions of this paragraph apply to any medical report in support of a claim for whiplash injury, whether or not it is part of a claim for other injuries.

7.12.2 Where there is also a claim for other injuries, the provisions of section A above apply to instructions to and reports from experts in respect of those other injuries. Section A above also applies in respect of the use of any non-medical experts.

7.12.3 In respect of a claim for a whiplash injury, the claimant must follow one of the procedures set out in paragraphs 7.12.4 to 7.12.6.

7.12.4

(a) The claimant must obtain a fixed cost medical report from an accredited medical expert who is instructed via a search of the online database of medical reporting organisations and medical experts held by MedCo (website at: [www.medco.org.uk](http://www.medco.org.uk));

(b) in instructing an expert to provide a fixed cost medical report in a claim for whiplash injury, it is expected that in most cases the medical expert will not need to see any medical records;

(c) where the claimant lives outside England and Wales, but chooses to be examined for the purposes of a medical report in England and Wales, paragraphs (a) and (b) apply.

7.12.5 Where the claimant obtains a medical report in respect of a more serious injury suffered at the same time as the whiplash injury, the claimant

may use that report instead of a report under paragraph 7.12.4 above provided that—

(a) the report is from a doctor who is listed on the General Medical Council's Specialist Register; and

(b) the report provides evidence of the whiplash injury.

7.12.6 Unless paragraph 7.12.4(c) applies, where the claimant lives outside England and Wales, the medical report in respect of the claim for the whiplash injury (or, if there is more than one report, the first report) must be from a person who is recognised by the country in which they practise as—

(a) being a medical expert; and

(b) having the required qualifications for the purposes of diagnosis and prognosis of a whiplash injury.

7.12.7 The following definitions apply in paragraph 7.12 and in paragraphs 8.2 and 8.3—

(a) 'associate' means, in respect of a medical expert, a colleague, partner, director, employer or employee in the same practice and 'associated with' has the equivalent meaning;

(b) 'accredited medical expert' means a medical expert who is accredited by MedCo to provide medical reports in whiplash injury claims;

(c) 'fixed cost medical report' means a report in a whiplash injury claim which is from a medical expert who, save in exceptional circumstances—

(i) has not provided treatment to the claimant;

(ii) is not associated with any person who has provided treatment; and

(iii) does not propose or recommend treatment that they or an associate then provide;

(d) 'MedCo' means MedCo Registration Solutions; and

(e) 'whiplash injury' means an injury or injuries of soft tissue in the neck, back or shoulder suffered because of driver negligence as defined in section 1 of the Civil Liability Act 2018 and as further applied by section 3 of that Act to claims arising from a road traffic accident on or after 31 May 2021 and where the duration of the whiplash injury or any of the whiplash injuries—

(i) does not exceed, or is not likely to exceed, two years; or

(ii) would not have exceeded, or would not be likely to exceed, two years but for the claimant's failure to take reasonable steps to mitigate its effect.

11) In paragraph 8.2, in the second paragraph, for "Medical reports may not", insert

"Except for any claim for a whiplash injury (for which see paragraphs 7.12 above and 8.3 below), medical reports may not".

12) After paragraph 8.2, insert—

**8.3**

8.3.1 In a claim that consists of or includes a claim for whiplash injury, the Whiplash Injury Regulations 2021 provide that—

(a) no offer may be made, invited or accepted by either party; and

(b) no payment may be made by the defendant or accepted by the claimant, in respect of the claim for whiplash injury until after the fixed cost medical report has been disclosed.

8.3.2

Any claim for whiplash injury and, if relevant, minor psychological injuries suffered on the same occasion as the whiplash injury, will be valued by reference to the tariffs set out in the Whiplash Injury Regulations 2021.

("Whiplash injury" is defined in paragraph 7.12.7.)".

## SCHEDULE

# **“PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS BELOW THE SMALL CLAIMS LIMIT IN ROAD TRAFFIC ACCIDENTS (“THE RTA SMALL CLAIMS PROTOCOL”)**

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### DEFINITIONS

#### Introduction

##### 1.1

(1) This section explains the meaning of certain terms used in this Protocol, shown in bold in

this Protocol.

(2) The meaning of some terms is explained as and where they are used in this Protocol.

These are not shown in bold.

(3) Certain specific definitions relating to offers and settlement are contained in paragraph 10.10 of this Protocol. These terms are underlined where used.

## **Terms used in this Protocol**

**1.2** In this Protocol—

(“**accident**” – see (28) under **road traffic accident**;) )

(1) “**accredited medical expert**” means a **medical expert** who, on the date that they are instructed, is accredited by **MedCo** to provide **fixed cost medical reports** for **claims** made under this Protocol;

(2) “**admission of liability in full**” means that the **compensator**—

(a) accepts the **accident** happened;

(b) accepts fault in full for the **accident**;

(c) accepts that the **claimant** suffered some loss including injury which was caused by the **accident**, but not the type and amount of any loss or injury; and

(d) accepts that the 3 year time limit for bringing the **claim** has not expired;

(5.4 explains the normal time limit for issuing court proceedings)

(3) “**admission of liability in part**” means that the **compensator**-

(a) accepts the **accident** happened;

(b) accepts fault in part for the **accident**;

(c) accepts that the **claimant** suffered some loss including injury which was caused by the **accident**, but not the type and amount of any loss or injury; and

(d) accepts that the 3 year time limit for bringing the **claim** has not expired;

(4) “**associate**” means, in respect of a **medical expert**, a colleague, partner, director, employer or employee in the same practice and “**associated with**” has the equivalent meaning;

(5) “**bank holiday**” and “**business day**” have the meaning set out in paragraph 1.4, covering time periods;

(6) “**child**” means a person who is under 18 years old;

(7) “**claim**” means a claim made under this Protocol, for the payment of **damages for injury** and any **other protocol damages**;

(“**claim for fees**” – see (16) under **fees**;) )

(8) “**claimant**” means a person starting a **claim** under this Protocol;

(9) “**compensator**” means—

(a) the **defendant’s** insurer whose details appear on the **Motor Insurance Database**;

(b) the **defendant** themselves if they are handling the **claim**;

(c) if the **defendant** is not insured, an **RTA insurer**, the **MIB** or their agents; or

(d) a **representative** of the **defendant**, insurer, **RTA insurer** or the **MIB**;

## **DAMAGES DEFINITIONS**

(10) “**damages for injury**” means compensation for the pain, suffering and loss of amenity suffered by the **claimant** because of a **road traffic accident**;

(11) “**other protocol damages**” means the **claimant’s** losses, costs and expenses (other than **damages for injury**) relating to the **accident**. These will consist of “**other damages – injury related**” and “**other damages – property**”, defined below. Any liability for the **claimant** to repay another person or business is included in this definition;

(12) “**other damages – injury related**” means the **claimant’s** losses, costs and expenses relating to the injury, but not the damages for the injury itself. Examples would be costs of treatment or prescriptions, loss of earnings because of time off work and clothing damaged because of the injury;

(13) “**other damages - property**” means compensation for damage to the **claimant’s** property as a result of the **accident**, but not linked to the injury. An example would be shopping or other personal items in the car which are damaged in the **accident**. This definition also includes **protocol vehicle costs**, but not **non-protocol vehicle costs** (See also under

VEHICLE COSTS DEFINITIONS below);

(14) “**defendant**” means the person against whom the **claim** is made under this Protocol, but excluding an insurer who could be subject to a direct claim under the European Communities (Rights against Insurers) Regulations 2002;

(15) “**entering the claim**” means completing and sending the online **Small Claim Notification Form** which is generated by the **Portal**. “**Enter the claim**”, “**the claim is entered**”, “**the claim has been entered**” etc. all have the same meaning;

(16) “**fees**” means the fee permitted by Practice Direction 27B for a medical report or any other disbursement permitted by that Practice Direction, as incurred or paid by the **claimant** or their **representative**. **Claim for fees** has the corresponding meaning;

(17) “**fixed cost medical report**” means a report in a **claim** to which this Protocol applies which is from a **medical expert** who, unless there are exceptional circumstances—

(a) has not provided treatment to the **claimant**;

(b) is not **associated with** any person who has provided treatment; and

(c) does not propose or recommend treatment that they or an **associate** then provide;

(18) “**Guide to Making a Claim**” means the *Guide to Making a Claim Under the RTA Small Claims Protocol*, which has been produced to assist **unrepresented claimants** and which can be found at: <https://www.officialinjuryclaim.org.uk/> (see also paragraph 2.3);

(19) “**MedCo**” means MedCo Registration Solutions: **MedCo** is the online service used to produce a randomised selection of providers for **fixed cost medical reports**;

(20) “**medical expert**” means a person who is—

(a) registered with the General Medical Council;

(b) registered with the General Dental Council; or

(c) a Psychologist or Physiotherapist registered with the Health Care Professions Council;

(d) in the case of persons outside England and Wales, a person who is recognised by the country in which they practise as being a medical expert;

(21) “**MIB**” means The Motor Insurers’ Bureau;

(22) “**Motor Insurance Database**” or “**MID**” means the central record of all insured vehicles

in the UK, managed by the **MIB**;

(23) “**motor vehicle**” means a mechanically propelled vehicle intended for use on **roads**;

(“**non-protocol vehicle costs**” – see (36) under Vehicle Costs Definitions);

(“**other damages – injury related**” – see (12) under Damages Definitions);

(“**other damages – property**” – see (13) under Damages Definitions);

(“**other protocol damages**” – see (11) under Damages Definitions);

(24) “**Portal**” means the Small Claims Portal set up to handle personal injury **claims** under this Protocol (see also paragraph 2.2);

(25) “**Portal Support Centre**” means the body contracted to—

(a) provide call centre support to users of the **Portal**; and

(b) enter **claims** on the system on behalf of **unrepresented claimants** unable to use the **Portal** themselves

(The **Portal Support Centre** can be contacted at:

Official Injury Claim

Linford Wood House, 6-12 Capital Drive,

Linford Wood,

Milton Keynes MK14 6XT

Telephone: 0800 118 1631

Email: [customer.service@officialinjuryclaim.org.uk](mailto:customer.service@officialinjuryclaim.org.uk));

(“**pre-accident value of the vehicle**” – see (34) under VEHICLE COSTS DEFINITIONS);

(“**protocol vehicle costs**” – see (35) under VEHICLE COSTS DEFINITIONS);

(26) “**representative**” means a legal representative regulated by the Law Society, the Chartered Institute of Legal Executives or the General Council of the Bar, or any other representative regulated by the Financial Conduct Authority, who—

(a) for the **claimant**, provides advice as to the content of the **claim** or takes steps in the **claim** on the **claimant**’s behalf and on their instructions, but excludes the provision of assistance from the **Portal Support Centre**; or

(b) for the **compensator**, handles the **claim** on their behalf

(and “**representation**” and “**represented**” have the equivalent meaning);

(27) “**road**” means any highway and any other road to which the public has access and includes bridges over which a road passes;

(28) “**road traffic accident**” means an **accident** resulting in bodily injury to any person caused by, or arising out of, the use of a **motor vehicle** on a **road** or other public place in England and Wales unless the injury was caused wholly or in part by a breach by the **defendant** of one or more of the relevant statutory provisions<sup>1</sup> as defined by section 53 of the Health and Safety at Work etc Act 1974

(and “**accident**” where used in this Protocol has the same meaning);

(29) “**RTA Insurer**” means an insurer with a duty under section 151 of the Road Traffic Act 1988 to satisfy a judgment against the **defendant**;

(30) “**Small Claim Notification Form**” or “**SCNF**” means the online form completed by the **claimant** which sets out the details of their **claim**;

(**Statement of Truth** – see paragraph 1.3 below);

(31) “**tariff**” and “**tariff amount**” means any tariff of damages for **whiplash injuries** and, if relevant, minor psychological injuries suffered on the same occasion as the **whiplash injuries**, set by the Whiplash Injury Regulations 2021;

(32) “**unrepresented**” and “**unrepresented claimant**” means a **claimant** who starts and continues to handle their **claim** without **representation**. “**Unrepresented claimant**” includes any **claimant** who starts and continues their **claim** without **representation**, but who receives assistance from the **Portal Support Centre**;

(33) “**uplift**” means the amount greater than the **tariff amount** which the **claimant** may claim

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<sup>1</sup> See-

Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677)  
Lifting Operations and Lifting Equipment Regulations 1998 (S.I. 1998/2307)  
Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242)  
Manual Handling Operations Regulations 1992 (S.I. 1992/2793)  
Personal Protective Equipment at Work Regulations 1992 (S.I. 1992/2966)  
Provision and Use of Work Equipment Regulations 1998 (S.I. 1998/2306)  
Work at Height Regulations 2005 (S.I. 2005/735)  
Workplace (Health, Safety and Welfare) Regulations 1992 (S.I. 1992/3004)  
The Construction (Design and Management) Regulations 2007 (S.I. 2007/320)

in defined exceptional circumstances as set out in the Whiplash Injury Regulations 2021;

## **VEHICLE COSTS DEFINITIONS**

“**Vehicle costs**” are divided into “**protocol vehicle costs**” and “**non-protocol vehicle costs**”;

(34) **Vehicle costs** (whether “**protocol vehicle costs**” or “**non-protocol vehicle costs**”) are any one or more of the following costs or **claims**—

(a) the **pre-accident value of the vehicle**, which means, where the vehicle was damaged as a result of the **accident**, the difference in the value of the vehicle immediately before the **accident** occurred and its value because of the damage caused by the **accident**;

(b) the cost of repairing the vehicle;

(c) vehicle insurance excess;

(d) the cost of hiring a vehicle;

(e) vehicle recovery and storage charges;

(35) “**protocol vehicle costs**” are **vehicle costs** which:

(a) at the time the **claim** is made, have been paid by the **claimant** personally or by an individual on behalf of the **claimant**, including any vehicle insurance excess;

(b) in the case of the **pre-accident value of the vehicle**, are claimed by the **claimant** personally and not payable by the **claimant** to the **claimant**’s insurers; or

(c) in the case of repair costs, are the subject of an estimate of the costs the **claimant** (or an individual on their behalf) intends to pay personally;

(36) “**non-protocol vehicle costs**” means **vehicle costs** which—

(a) are not **protocol vehicle costs**; and

(b) would be payable by the **claimant** to one or more third party organisations or businesses out of any damages recovered;

(37) “**vulnerable road user**” – a **road** user is treated as “vulnerable” where, at the time the **accident** occurred, the **claimant** was—

(a) using a motor cycle;

- (b) a pillion passenger on, or a passenger in sidecar attached to, a motor cycle;
- (c) using a wheel chair, a powered wheelchair or a mobility scooter;
- (d) using a bicycle or other pedal cycle;
- (e) riding a horse; or
- (f) a pedestrian;

And “**vulnerable road user**” has that meaning in this Protocol;

(38) “**whiplash injury**” or “**whiplash injuries**” means an injury or injuries of soft tissue in the neck, back or shoulder suffered because of driver negligence as defined in section 1 of the Civil Liability Act 2018 and as further applied by section 3 of that Act to **claims** where the duration of the whiplash injury or any of the whiplash injuries—

- (a) does not exceed, or is not likely to exceed, two years; or
- (b) would not have exceeded, or would not be likely to exceed, two years but for the **claimant’s** failure to take reasonable steps to mitigate its effect.

### **Statement of Truth - meaning**

#### **1.3**

(1) Where in this Protocol a document or online form is required to be verified by a **statement of truth**—

- (a) The person signing verifies that they believe the facts stated in that document/form are true;
- (b) the requirement for a signature is satisfied by the person entering their name on the online form;
- (c) the person signing needs to be aware that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document (including an online form) verified by a **statement of truth** without an honest belief in its truth.

(2) Where the **statement of truth** is completed by the **claimant's representative**, or by a member of staff at the **Portal Support Centre** on the **claimant's** behalf, the signature of that person will be taken as their statement that—

- (a) the **claimant** on whose behalf they have signed has authorised them to do so;
- (b) before signing they had explained to the **claimant** (through an interpreter where necessary) that in signing the statement of truth they would be confirming the **claimant's** belief that the facts stated in the document were true;
- (c) before signing they had informed the **claimant** of the possible consequences to the **claimant** if it should subsequently appear that the claimant did not have an honest belief in the truth of those facts; and
- (d) they hold the document with a statement of truth signed by the **claimant**.

## **Time periods**

### **1.4**

- (1) In this Protocol—
- (a) a reference to a fixed number of days is a reference to "**business days**";
  - (b) "**business day**" means any day, except Saturday, Sunday, a **bank holiday**, Good Friday or Christmas Day; and
  - (c) "**bank holiday**" means a bank holiday in England and Wales.
- (2) Where a party must respond within a fixed number of days, the time for responding starts on the first **business day** after the information was sent to that party.

**1.5** A reference to a rule or practice direction, unless otherwise defined, is a reference to a rule in the Civil Procedure Rules 1998 ("CPR") or a practice direction supplementing them.

## **Free text fields – character limits**

### **1.6**

- (1) Where a free text field is provided on the **Portal**, the content is limited to 500 characters

(including spaces). The number of characters available will be displayed immediately below the field.

(2) A party can if they wish provide more information separately by taking the following steps—

(a) include a brief summary in the field;

(b) include in the field an indication that more information is provided in a named separate document;

(c) upload that named document onto the **Portal** as soon as possible after completing the field.

## **PREAMBLE**

### **General**

#### **2.1**

(1) This Protocol applies where a **claimant** who has suffered personal injuries (including but not limited to **whiplash injuries**) because of a **road traffic accident** wishes to make a claim for compensation and the amount claimed for their injuries is not more than £5,000 and for their overall claim is not more than £10,000. This would mean that, if the **claim** was dealt with by a court, it would be normally be allocated to the small claims track and dealt with as a small claim.

(2) The Protocol describes the behaviour expected from both parties before starting court proceedings. It establishes a process to help the parties to reach a fair settlement in respect of any **claim** to which the Protocol applies.

(3) The Protocol also deals with the first steps the parties must take if they are unable to reach a settlement and the **claimant** wishes to start court proceedings. **Claims** can leave the **Portal** for the court to determine specific issues such as liability, then return to the **Portal** for later steps as directed by the court.

(4) The Civil Procedure Rules 1998 enable the court to consider costs sanctions where this Protocol is not followed.

## **The Portal**

**2.2** A key feature of this Protocol is the use of an online **Portal**. The **Portal** is an online service through which the parties communicate. The **Portal** is used to make a **claim**, to exchange information and documents, and to negotiate a settlement or start court proceedings. An **unrepresented claimant** also uses the **Portal** to obtain any medical report in support of their **claim**.

## **The Guide to Making a Claim**

### **2.3**

(1) This Protocol should be read together with the *Guide to Making a Claim Under the RTA Small Claims Protocol*, which provides more information about when and how to use this Protocol. The **Guide to Making a Claim** can be found at:

<https://www.officialinjuryclaim.org.uk/>

Copies may also be obtained from the **Portal Support Centre**.

(2) For the avoidance of doubt, if anything in the **Guide to Making a Claim** conflicts with the provisions of this Protocol, this Protocol takes precedence.

## **AIMS**

### **General**

**3.1** The aims of this Protocol are that—

(1) the **compensator** makes liability decisions promptly and communicates those decisions through the **Portal**;

(2) where liability is admitted, the parties negotiate settlement of damages and any **fees** using the **Portal** and the process set out in the Protocol without the need for the **claimant** to start proceedings;

(3) the **Portal** is used to exchange evidence that the parties may need to use in court proceedings where liability or the value of the **claim** is being decided;

(4) where **claims** cannot be settled, the **Portal** provides a process by which the **claimant** can

proceed to court with the evidence and other information uploaded onto the **Portal** in a form suitable for use at court;

(5) **claimants** can agree interim payments through the **Portal** where appropriate; and

(6) interim payments, damages and any **fees** are paid within a reasonable time.

### **Aims – medical reporting**

**3.2** This Protocol also aims to ensure that—

(1) the use and cost of medical reports is controlled;

(2) in most cases only one medical report is obtained;

(3) the first report is always a **fixed cost medical report**.

## **SCOPE: CLAIMS TO WHICH THE PROTOCOL APPLIES**

### **Introduction**

**4.1** This section explains the **claims** to which this Protocol applies, including what value of **claim** is within the scope of this Protocol.

### **When to use this Protocol**

**4.2** This Protocol applies to any **claim** where all of the following conditions apply—

(1) the **claim** arises from a **road traffic accident** which occurred in England or Wales on or after 31 May 2021;

(2) the **claim** includes a **claim for damages for injury**; and

(3) the **claimant** values the overall **claim** at no more than £10,000 and the **claim for damages for injury** at no more than £5,000,

save that the value of any **non-protocol vehicle costs** is excluded for the purposes of valuing the **claim** in this Protocol.

**4.3** Even if all of the conditions in paragraph 4.2 do apply, this Protocol does not apply to a **claim**—

- (a) in respect of a breach of duty owed to a **road** user by a person who is not a **road** user;
- (b) where the injuries which are claimed for were at least partly caused by a breach by the **defendant** of one or more of the relevant provisions as defined by section 53 of the Health and Safety at Work etc Act 1974;
- (c) to the **MIB** pursuant to the Untraced Drivers' Agreement 2017 or any subsequent or supplementary Untraced Drivers' Agreements (this agreement applies where a claim involves an **accident** with a driver who has not been identified – also known as a “hit and run” – this Protocol should not be used when making such a claim);
- (d) where at the time the **accident** occurred, the **claimant** was a **vulnerable road user**;
- (e) where the **claimant** or **defendant** acts as a personal representative of a deceased person;
- (f) where on the date the claim is started, the **claimant** is a **child**;
- (g) where the **claimant** or **defendant** is a protected party as defined in rule 21.1(2);
- (h) where the **claimant** is bankrupt; or
- (i) where the **defendant's** vehicle is registered outside the United Kingdom.

**4.4** If the **claimant** uses this Protocol where any of the circumstances in paragraph 4.3 apply, the claim will not be accepted, and the **claimant** will be notified of the reason for non-acceptance through the **Portal**. The **claimant** should also consider seeking advice in these circumstances.

#### **Circumstances when this Protocol will no longer apply to a claim**

##### **4.5**

- (1) This Protocol will no longer apply to a **claim** where—
  - (a) either **party** notifies the other through the **Portal** that the **claim** has been revalued and that they reasonably believe the overall **claim** is more than £10,000 or the **claim** for **damages for injury** is more than £5,000;
  - (b) either the **claimant** or **defendant** becomes a protected party as defined in rule 21.1(2);
  - (c) the **compensator** notifies the **claimant** through the **Portal** that the **claim** is unsuitable for

this Protocol because there are complex issues of fact or law;

(d) the **compensator** through the **Portal** makes an allegation of fraud or fundamental dishonesty against the **claimant** in respect of their **claim**;

(e) the **compensator** disputes or continues to dispute under paragraph 8.9 that the **accident** caused the **claimant** any injury following disclosure of a medical report; or

(f) the court makes an order in proceedings that the **claim** must exit the **Portal** and be added to those proceedings.

(2) When notifying the **claimant** under paragraph (1)(c) or (d) above, the **compensator** must explain on the **Portal** the reasons for their decision why the case is not suitable for the small claims track, including the allegation made under paragraph (1)(d).

(3) The **Guide to Making a Claim** provides further information on valuing the **claim**.

(4) The **claimant** should consider obtaining advice in these circumstances.

#### **4.6**

(1) In this paragraph and in paragraph 4.7, the following terms are used:

(a) “the PI Protocol” means the Pre-Action Protocol for Personal Injury Claims; and

(b) “the RTA Protocol” means the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents.

(2) In any **claim** to which paragraph 4.5(1)(a) to (d) applies and save where paragraph 4.7 below applies, the **claim** will proceed under the PI Protocol starting at paragraph 6.3 of that protocol.

(Paragraph 6.3 of the PI Protocol allows a maximum of three months for the **defendant** to investigate the **claim**)

(3) Where paragraph 4.5(1)(e) applies, the **claim** need not proceed under any pre-action protocol and the **claimant** may issue proceedings.

**4.7** The **claim** will proceed under the RTA Protocol starting at paragraph 6.1 of that protocol, as long as—

- (a) the **claimant** reasonably believes the value of the **claim** is no more than the upper limit for the RTA Protocol;
- (b) the **claim** is not one which was started in the RTA Protocol and no longer continued in that protocol; and
- (c) either—
  - (i) there was an **admission of liability in full** under this Protocol within the response period;
  - (ii) there was an **admission of liability in full** but subject to an argument that the **claimant** contributed to their injuries by not wearing a seatbelt (where the **claimant** admitted not doing so); or
  - (iii) the period for a liability response under this Protocol has not yet expired.

## **MAKING A CLAIM**

### **Introduction**

**5.1** This section explains—

- (a) the steps the **claimant** must take in order to start their **claim**;
- (b) the information that the **claimant** must give to the **compensator** through the **Portal**;
- (c) how the **claimant** may claim for **other protocol damages**; and
- (d) how an **unrepresented claimant** may ask for help in entering their **claim** on the **Portal**.

### **Using the Portal**

#### **5.2**

- (1) All **claims** to which this Protocol applies must be submitted through the online **Portal**, which can be accessed at <https://www.officialinjuryclaim.org.uk/claimants> .
- (2) Once the **compensator** is notified about the **claim**, the **Portal** must be used by both the **claimant** and the **compensator**, as set out in this Protocol.
- (3) Support for **unrepresented claimants** who are unable to use the **Portal** can be obtained from the **Portal Support Centre**.
- (4) Where—

- (a) a **claim** has started in the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents;
- (b) the date of the **accident** is on or after 31 May 2021; and
- (c) the parties have agreed that the **claim** should have started in this Protocol, this Protocol should be applied starting at this paragraph.

### **Starting a claim**

**5.3** The **claim** is started by **entering the claim** on the **Portal**.

### **Limitation period**

**5.4** The law states that in a claim for compensation for injuries, court proceedings must normally be brought (that is, started) no later than 3 years from the date of the **accident**. If the **claimant** does not start court proceedings within 3 years, they may lose their right to bring a **claim**.

**5.5** **Entering the claim** on the **Portal** does not count as starting court proceedings.

### **5.6**

(1) The **claimant** may start court proceedings if at any point they believe that the 3-year period will end before the steps that must be taken under this Protocol are completed.

(2) Where the **claimant** starts proceedings under this paragraph, they must apply to the court for an order to stay (meaning “put on hold”) those proceedings while the parties complete the steps under this Protocol.

(3) If the **claimant** has already started proceedings, for example for liability to be determined, those proceedings will count for limitation purposes and the **claimant** does not need to start proceedings again under this section.

(4) The **claimant** must, before starting proceedings, complete the **SCNF** and send it to the **compensator** as set out in paragraphs 5.9 to 5.18, below, if they have not already done so.

(5) Where the **claimant** wishes to start proceedings in a **claim** to which this Protocol applies—

(a) they must use the procedure set out in Practice Direction 27B; and

(b) Paragraph 12.12 provides more information about the steps that the **claimant** must take.

## **Conducting an askCUE PI search**

### **5.7**

(1) The askCUE PI (personal injury) service allows a **claimant's representative** to search the askCUE PI database for entries relating to the **claimant** which may be logged on the database. These records provide information regarding any earlier personal injury claims made by the **claimant**.

(2) Before **the claim is entered** on the **Portal**, the **claimant's representative** must undertake a search of askCUE PI (website at: [www.askCUE.co.uk](http://www.askCUE.co.uk)) and must supply the unique reference number generated by that search when **the claim is entered**.

(3) Where the **claim** has started in the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents and a search of askCUE PI has been undertaken for the purposes of that Protocol, the **claimant's representative** may supply the unique reference number generated by that search.

(4) Where the **claimant is unrepresented**, the **Portal** will automatically generate the askCUE PI search result, which the **claimant** may then view using the **Portal** unless the **claimant** has not undergone or has failed an identity check.

## **Other linked claims**

### **5.8**

(1) The **Portal** will conduct a search once the **claim** is entered on the **Portal**, to identify whether there are other claims entered on the **Portal** arising out of the same **accident**. This is to enable the **Portal** to link such claims together, so that a **claimant** proceeding to court knows there may be other claims to be considered by the court.

(2) Where such a link is identified, the parties in each of these claims will be notified of the link.

## **Completing the online Small Claim Notification Form**

### **5.9**

(1) The **SCNF** includes a series of “inputs” (which include boxes, fields, radio buttons and uploads) that are marked as “mandatory”, which means that they must be completed before the **claim** can be entered on the **Portal**.

(2) The **claim** cannot **be entered** on the **Portal** until all of the mandatory inputs have been completed. Until the **claim is entered** on the **Portal**, the **claim** will not be sent to the **compensator** and time for the **compensator** to respond will not start.

(3) The **claimant** must also make a reasonable attempt to complete those inputs that are not marked as mandatory.

### **5.10**

(1) The **claimant** may upload photographs, sketch plans, witness statements, dashcam or other video clips or other documents or data to the **Portal** in support of their **claim** that the **defendant** was at fault for the **accident**.

(2) Uploading under paragraph (1) can be done at any time up to the point where the **claimant** creates the Court Pack under section 12. However the **claimant** should normally allow at least 10 days for new evidence to be considered before proceedings are started.

(3) The court will take account of evidence uploaded under paragraph (1) to determine liability, and so it is important that the **claimant** uploads all evidence on which they want to rely. The court may decide not to allow new evidence to be considered if it is produced after proceedings are started.

**5.11** Where an **unrepresented claimant** asks for assistance from the **Portal Support Centre** to **enter the claim**, it is the **claimant** who must provide all the required information before the

**claim can be entered.**

## **Injuries**

### **5.12**

(1) The **claimant** will be asked to describe their injuries on the **Portal**. This information is important as it will be provided to any **medical expert** instructed to provide a report on the **claimant's** injuries.

(2) The **claimant** should enter details of all their injuries on the **Portal** as best they can, although they will have the opportunity to tell the **medical expert** more about their injuries at any medical examination.

(3) Where the **claimant** states that they suffered a **whiplash injury**, the **claimant** will also be asked to state—

(a) whether they consider their **whiplash injury** was exceptionally severe;

(b) whether their circumstances have had an impact on their pain, suffering and loss of amenity caused by the whiplash injury or injuries and if so, whether they consider those circumstances were exceptional.

(4) the information at paragraph (3) will be provided to the **medical expert** for the purposes of considering any claim for **uplift**. The **claimant** will have the opportunity to answer these questions again after the medical report has been received.

## **Other protocol damages**

### **5.13**

(1) Any claim for **other protocol damages** must be made through the **Portal** and should, where possible, be made when the **claim is entered** on the **Portal**.

(2) The **claimant** can add items of **other protocol damages** to their **claim** on the **Portal** at any time up to the point where the **claimant** sends their **fixed cost medical report** to the **compensator**.

(3) Section 7 and section 8 give more information on how to obtain a medical report and the

point at which it is appropriate to send a medical report to the **compensator**.

## **Vehicle costs**

### **5.14**

(1) Although **protocol vehicle costs** are included in **other protocol damages**, claims for **non-protocol vehicle costs** are not made under this Protocol, but are dealt with under industry agreements between relevant organisations and insurers.

(2) Where there is a **claim** for **protocol vehicle costs**, the **claimant** must—

(a) state, when **entering the claim** on the **Portal**, that the **claimant** has incurred or paid for these losses personally or intends to pay for them (or that an individual has done so/intends to do so on their behalf); and

(b) provide details of the amounts claimed, which should be supported by documents as soon as possible.

(3) Where there are **non-protocol vehicle costs**, the **claimant** must state when **entering the claim** on the **Portal** that these are being dealt with by another organisation or business.

## **Rehabilitation**

**5.15** The **claimant** will be asked when completing the **SCNF** whether they have been advised to seek further medical treatment such as physiotherapy for their injuries. The answer to this question will enable the **compensator** to decide whether to offer the **claimant** access to or funding for further treatment or therapy.

## **Statement of Truth**

**5.16** The online **SCNF** requires the **claimant** to sign a **statement of truth**, to show that the **claimant** believes that the contents of the **SCNF** are true.

**5.17** Where the **SCNF** is completed by the **claimant's representative**, they must tick the appropriate box as proof that they hold a **SCNF** signed by the **claimant**.

**5.18** Where the **SCNF** is completed by the **Portal Support Centre** on behalf of an **unrepresented claimant**, the Centre must tick the appropriate box as proof that they hold a **SCNF** signed by the **claimant** authorising them to do so.

### **Steps after the SCNF is entered on the Portal**

#### **5.19**

(1) When the **SCNF** is entered on the **Portal**, the **Portal** will—

(a) search the **Motor Insurance Database** (“**MID** search”) to identify the appropriate **compensator**;

(b) send the **claim** to the appropriate **compensator** as identified by the **MID** search.

(2) Where the **MID** search does not identify a **compensator** under paragraph (1) above, the **claim** will be sent to the **MIB** to deal as **compensator**.

### **Steps after the claim is sent to the compensator**

#### **5.20**

(1) As soon as the **claim** has been sent to the **compensator**, the **claim** is accepted on the **Portal** and the identity of the **compensator** notified to the **claimant**.

(2) At the same time the **Portal** will generate a “Defendant Only SCNF”, which will be available online through the **Portal** and must be sent to the **defendant** (not the **compensator**) by first class post as soon as practicable after it is generated.

(3) Where the **claimant** is **represented**, the **claimant’s representative** must send the Defendant Only SCNF to the **defendant**.

(4) Where the **claimant** is **unrepresented**, the **compensator** will be responsible for sending the Defendant Only SCNF to the **defendant**.

## **LIABILITY**

### **Introduction**

**6.1** This section explains—

- (a) the time in which the **compensator** must notify the **claimant** about their decision on liability;
- (b) the contents of the Compensator's Response; and
- (c) the steps that follow after the **claimant** is notified about that response, depending upon what the **compensator** has decided.

### **Response times for compensators**

**6.2** The **compensator** must provide their response on liability to the **claimant** through the **Portal** within 30 days of the date on which the **claim** is accepted on the **Portal**.

**6.3** Where the **MIB** search does not identify a **compensator** and the **claim** is to be dealt with by the **MIB** or its agents, the response on liability must be provided to the **claimant** through the **Portal** within 40 days of the date on which the **claim** is accepted on the **Portal**.

**6.4** Where the **MIB** passes the **claim** to another **compensator** to act on its behalf, that **compensator** must notify the **claimant** of that fact through the **Portal**. There is no extension to the time period in paragraph 6.3 above.

### **Other linked claims**

**6.5**

(1) Paragraph 5.8 explains the process by which the **Portal** will search for claims which are linked.

(2) Where the **Portal** identifies a link to another claim, the parties in each of these claims will be notified of the link.

### **The Compensator's Response**

**6.6**

(1) When a **compensator** provides their response on liability on the **Portal** in the “Compensator’s Response”, they must choose from the following options—

(a) make an **admission of liability in full**;

(b) make an **admission of liability in part**;

(c) deny liability; or

(d) admit fault (in full or in part) for the **accident**, but dispute that the **accident** caused any injury to the **claimant**.

(2) Unless the **compensator** makes an **admission of liability in full**, the Compensator’s Response on liability must also set out the **defendant’s** version of events and provide any evidence in support.

(3) An **admission of liability in part** under (b) and an admission of fault in part under (d) must include the percentage for which the **compensator** admits liability or fault as appropriate.

#### **Effect of admission of liability “in full” or “in part”**

#### **6.7**

(1) Save where paragraph (2) applies, an admission of liability by the **compensator** is binding only on the **compensator** and only to the extent of the **claim** as presented within this Protocol, that is for **damages for injury** and **other protocol damages**. This includes a response in which the **compensator** admits liability only in part.

(2) Where the **claimant** starts proceedings to assess the value of their **claim**, whether according to this Protocol or otherwise, the admission is binding to the extent of all claims made in those proceedings.

(3) An admission of fault in full or in part under paragraph 6.6(1)(d) above is equally binding on the **compensator**, as if paragraphs (1) and (2) above applied to that admission.

(4) Paragraph 8.9 provides that the **compensator** may in certain circumstances withdraw an admission that the **claimant** suffered some injury which was caused by the **accident** (but not any other admission).

(5) Paragraphs (1) and (2) above (but not paragraph (4)) also apply to any **claim** where liability is taken to be admitted under paragraph 6.15 below.

### **Further proposals on fault where there is an admission of liability in part**

#### **6.8**

(1) Where the **compensator** makes an **admission of liability in part**, the **claimant** may accept that part admission as determining the issue of liability. In doing so the **claimant** is accepting the remaining percentage of liability, i.e. of fault for the **accident**.

(2) Otherwise the **claimant** may challenge the part admission, by using the “challenge liability” option on the **Portal**. The challenge may be made at any time before the **claimant** is ready to send the medical report to the **compensator** for the purposes of an offer, under paragraph 8.2(3) below. The **claimant** may either—

(a) reject the **admission of liability in part** and continue to argue that the **defendant** is liable in full; or

(b) make a proposal under paragraph (3) below.

(3) The **claimant** and the **compensator** may make further proposals on the extent to which the **defendant** was liable for the **accident**, i.e. the percentage contribution by the **defendant**.

(4) All proposals must be made on the **Portal**.

(5) The **claimant** may make a counter proposal on liability in part, as long as this is for a lower percentage liability on the **defendant** than any previous proposal by the **claimant**.

(6) The **compensator** may make a further proposal on liability in part, as long as this is for a higher percentage liability on the **defendant** than any previous admission by the **compensator**.

(7) Each **party** may make up to 3 proposals on liability through the **Portal**.

(8) **The Guide to Making a Claim** provides more information on making counter proposals.

#### **6.9**

(1) A further proposal on liability in part by either the **claimant** or the **compensator** under paragraph 6.8 is made without prejudice, that is it cannot be referred to in any court proceedings (save as set out in paragraph (2) below) and is not a formal **admission of liability in part**.

(2) Where—

(a) an **admission of liability in part** is accepted by the **claimant** under paragraph 6.8(1); or

(b) a further proposal on liability in part by one party is accepted by the other party under paragraph 6.8,

that creates a binding agreement on liability for the purposes of this **claim** which can be referred to in court proceedings.

(3) Where the **claimant** starts proceedings to assess the value of their **claim**, whether according to this Protocol or otherwise, an agreement reached under paragraph (2) above is binding to the extent of all claims made in those proceedings.

(4) Neither the **claimant** nor the **compensator** can withdraw from an agreement made as set out in paragraph (2) above.

(5) An agreement under paragraph (2) above in which the **claimant** accepts any proposal for a percentage of liability in part means that any settlement agreed, any offers or interim payments will have to be reduced to take this percentage into account.

## **Steps where there is an admission of liability in full or in part – medical reports**

### **6.10**

(1) Where the **compensator** admits liability in full or in part, the **claimant** must consider obtaining a medical report.

(2) This applies whether or not the **claimant** accepts an **admission of liability in part** or challenges that part admission under paragraph 6.8. The **claimant** may take steps to obtain a medical report at the same time as challenging the **admission of liability in part**.

(3) Where the **claim** consists of, or includes, a **claim** for a **whiplash injury**, the **claimant** must obtain a medical report. The **whiplash injury** element of the **claim** cannot be settled until the **claimant** has obtained, and the **compensator** has seen, the medical report.

(4) Section 7 below provides more information about medical reports and when and how they are obtained.

(5) Paragraphs 7.1 and 8.15 below explain the circumstances in which the **claimant** may make or consider an offer to settle their **claim** for non-whiplash injury without a medical report.

### **Steps where the compensator disputes that the accident caused any injury**

#### **6.11**

(1) This paragraph applies where the **compensator** accepts fault for the **accident** (in full or in part) but disputes that the **accident** caused any injury to the **claimant**, in accordance with paragraph 6.6(1)(d) above.

(2) Where the **claimant** decides to proceed with the **claim**, paragraph 7.9 will apply and the **medical expert** will be asked to comment on the dispute in their report.

### **Steps where liability is denied by the compensator**

#### **6.12**

(1) Where the **compensator** has denied liability in full and the **claimant** wishes to continue their **claim**, the **claimant** must start proceedings for a determination of liability. This means that the court will decide whether or not the **accident** occurred through the fault of the **defendant** and, if so, whether the **compensator** is liable in full or in part.

(2) Before starting proceedings the **claimant** may challenge the **compensator's** denial via the **Portal**, by stating that the decision is challenged and setting out arguments in support of the challenge. The **claimant** may also upload further evidence to the **Portal** for the **compensator** to consider.

(3) In response to a challenge under (2) above the **compensator** may either maintain their denial or change their liability response on the **Portal** to any of the other options under

paragraph 6.6(1). Section 6 of this Protocol will apply to any new liability response once provided on the **Portal**, save that there is no time limit for the **compensator** to provide the new response.

(4) There is no time limit for the step under (3), but the **compensator** should respond within a reasonable period.

(5) Where the **claimant** wishes to apply to the court for a determination of liability in a **claim** to which this Protocol applies, they must use the procedure set out in Practice Direction 27B.

(6) Paragraph 12.9 provides more information about the steps that a **claimant** must take if they wish to apply for a determination of liability.

(7) The **Guide to Making a Claim** provides more information about applying for a determination of liability.

**6.13** Where a **claimant** makes an application for determination of liability, no further steps may be taken under this Protocol, until after the court has determined liability.

#### **6.14**

(1) Where after hearing an application for determination of liability, the court decides that the **defendant** is liable for the **accident** in full or in part, the court will stay the proceedings and direct that the parties must follow the steps in sections 7, 8 and 9 of this Protocol, unless the court considers that the value of the **claim** is likely to exceed the limit for the small claims track and for this Protocol.

(2) Where the court so directs, the **claimant** and the **compensator** must continue to use the **Portal** as set out in this Protocol.

(3) Information about the decision under paragraph (1) may be entered on the **Portal** by either party. This ensures that a decision in favour of the **claimant** is recorded, to allow the **claimant** to proceed to obtain a medical report. The parties in any linked claims identified under paragraph 5.8 will be notified of the court's determination of liability in another linked claim.

## **Where the compensator does not provide a response**

### **6.15**

(1) Where no response is provided by the **compensator** within the relevant response period in 6.2 or 6.3, liability will be taken to have been admitted in full by the **compensator**. The **claim** is then treated under this Protocol as one where liability has been admitted in full by the **compensator** and this Protocol will continue to apply.

(2) Paragraph 6.7 applies to any **claim** where liability is taken to have been admitted under paragraph (1) above.

## **Steps by the MIB or RTA insurer as compensator**

### **6.16**

(1) Where the **MIB** or its agent responds as **compensator**, the provisions of this section apply, save that the **MIB** or its agent in providing a response on liability has no authority to bind the **defendant**.

(2) Where an **RTA insurer** responds as **compensator**, the provisions of this section apply, save that the **RTA insurer** in providing a response on liability—

(a) has no authority to bind the **defendant**; and

(b) provides that response without prejudice to their contractual or statutory rights against the **defendant** or against other persons.

## **The defendant's version of events**

### **6.17**

(1) Paragraph 6.6 provides that unless the **compensator** makes an **admission of liability in full**, their response on liability must set out the **defendant's** version of events and provide any information in support.

(2) The **compensator** may upload photographs, sketch plans, witness statements, dashcam or other video clips or other documents or data to the **Portal** in support of their response on liability.

(3) Uploading under paragraph (2) can be done at any time up to the point where the **compensator** responds on the contents of the Court Pack created by the **claimant** under section 12. However, the parties should normally allow at least 10 days for new evidence to be considered before proceedings are started.

(4) The information uploaded under paragraph (2) will be used by the court to determine liability, so it is important that the **compensator** uploads any evidence on which they want to rely.

## **6.18**

(1) Where the **compensator** provides the **defendant's** version of events in the response, this must be supported by a **statement of truth** signed by the **defendant**.

(2) The signed **statement of truth** must be uploaded to the **Portal** at the same time as the **compensator** completes the response on liability, unless paragraph 6.19 applies.

(3) Annex A to this Protocol contains a standard form of **statement of truth** to be signed by the **defendant** which the **compensator** must use.

## **Witness summaries**

### **6.19**

(1) A witness summary may be used in place of the **defendant's** version of events in the response, where the **compensator** has been unable for good reason to obtain a signed version of events from the **defendant** within the 30 day period for response.

(2) A witness summary is a summary of—

(a) the evidence, if known, which would otherwise be included in the **defendant's** version of events; or

(b) if the evidence is not known, the matters about which the **compensator** wishes to question the **defendant**.

(3) The **compensator** must state when using a witness summary the reason why they have been unable to obtain a signed version of events from the **defendant**.

(4) In these circumstances only, the **compensator** must sign the **statement of truth** in the response in support of the matters stated above. The **statement of truth** must be signed by the person at the **compensator** with knowledge of the matters stated.

(5) Where the **compensator** uses a witness summary as provided in paragraph (a), they should still obtain the **defendant's** version of events, supported by a **statement of truth** signed by the **defendant** and upload this onto the **Portal** as soon as possible. This step must be taken by the time the **compensator** responds on the contents of the Court Pack created by the **claimant** under section 12, failing which the **defendant's** evidence will not be included in the Court Pack.

## **6.20**

(1) Where the **compensator** makes an **admission of liability in full** or an **admission of liability in part**, it is expected that, in most cases, the medical expert will not need to see the **defendant's** version of events.

(2) In the limited cases where it is considered appropriate following an **admission of liability in full**, the response may set out the **defendant's** version of events.

(3) Paragraphs 6.18 and 6.19 apply to the need for the **defendant's** version of events under paragraph (2) to be supported by a **statement of truth** and the option of a witness summary.

## **Contributory negligence for failure to wear a seatbelt**

### **6.21**

(1) The law provides that where the **claimant** was not wearing a seatbelt, a percentage deduction may be made from their damages. Such a deduction may be made if the court agrees that the **claimant's** failure to wear a seatbelt caused or contributed to their injuries, that is that the injuries would have been reduced or avoided altogether if the **claimant** had worn a seatbelt.

(2) The same arguments may be applied to drivers and front seat passengers and to rear seat passengers.

(3) The **compensator** may make an admission of liability, but subject to arguments about whether the **claimant** was wearing a seatbelt and, if not, the effect of this failure on the **claimant's** injuries.

(4) Where the **compensator** argues that the **claimant** contributed to their injuries by not wearing a seatbelt, they must raise this argument in their response.

(5) Where the **compensator** raises this argument—

(a) section 7 will apply and the **medical expert** will be asked to comment in their report on the effect (if any) of any failure to wear a seatbelt on the **claimant's** injuries;

(b) the **compensator** must not state the percentage by which they argue that the **claimant** contributed to their injuries until after the medical report has been disclosed to the **compensator**.

(Paragraphs 8.10 and 8.12 set out the steps the **compensator** must take if they wish to make a deduction from any offer in respect of any failure to wear a seatbelt.)

(6) Unless the **claimant** has already admitted not wearing a seatbelt, the **compensator** must follow the procedure in 6.20 above for providing the **defendant's** version of events.

## **Interim payments**

### **6.22**

(1) Where—

(a) there has been an **admission of liability in full** or **admission of liability in part** by the **compensator** under paragraph 6.6(1)(a) or (b);

(b) the **compensator** is taken to have admitted liability by virtue of paragraph 6.15;

(c) the court has determined liability in favour of the **claimant** (in full or in part) and has directed that the parties continue the **claim** under this Protocol: or

(d) the **compensator** has admitted fault in full or in part, but has disputed that the **accident** caused any injury to the **claimant** under paragraph 6.6(1)(d),

the **claimant** may at any time request an interim payment to cover items of **other protocol damages**.

(2) Section 9 of this Protocol deals with how and when a request for an interim payment may be made.

## **Compensation Recovery Unit**

### **6.23**

(1) The **compensator** must notify the **claim** to the Compensation Recovery Unit before the end of the relevant response period in 6.2 or 6.3.

(2) Section 10 contains further information about the Compensation Recovery Unit.

## **MEDICAL REPORTS**

### **Introduction**

#### **7.1**

(1) This section explains—

(a) the type of medical report that the **claimant** should obtain;

(b) how the first medical report must be obtained;

(c) the information that must be given to the **medical expert** who provides the medical report.

(2) It should be noted that where the **claim** consists of, or includes, a **claim** for a **whiplash injury**, the law requires the **claimant** to obtain a medical report before any settlement offer can be made or accepted or any payment made for the whiplash element of the claim.

(3) There is no such requirement where there is no **whiplash injury** or for the non-whiplash part of any **claim**. However, a medical report will be required if the **claimant** wishes to start proceedings and rely on medical evidence. The **compensator** may still insist on seeing a report before any offer is made or accepted for such a **claim**.

(4) Offers can be made by either party and accepted without a medical report in non-whiplash injury cases, but this can only take place outside the **Portal**. Paragraph 8.15 explains the process in more detail.

**7.2** This section applies to any **claim** made under this Protocol where—

(a) the **compensator** makes an **admission of liability in full** or **admission of liability in part**; or

(b) the **compensator** disputes that the **accident** caused any injury to the **claimant**, and the **claimant** has notified the **compensator** that they wish to continue their **claim**.

### **7.3**

(1) An **unrepresented claimant** must use the **Portal**, which will give them access to **MedCo**, to obtain their **fixed cost medical report**.

(2) The **medical expert** will be supplied with the information provided by the **claimant** about their injuries at paragraph 5.12 above, but it is important that the **claimant** tells the **medical expert** about all their injuries. The **medical expert** will need to include this information in their report, which will form the basis of valuing the claim for injuries.

(3) The **Guide to Making a Claim** provides more information on obtaining a medical report.

### **First medical report**

### **7.4**

(1) Subject to paragraph 7.5, any first report obtained by the **claimant** must be a **fixed cost medical report** from an **accredited medical expert** who is instructed via a search of the online database of medical reporting organisations and **medical experts** held by **MedCo** (website at: [www.medco.org.uk](http://www.medco.org.uk)).

(2) Where the **claim** consists of or includes a claim for a **whiplash injury**, the **claimant** must obtain a **fixed cost medical report** as set out in paragraph (1) above.

(3) Where the **claim** does not include a claim for **whiplash injury**, the **claimant** should still obtain a medical report. If they decide to do so, it must be a **fixed cost medical report**.

(4) It is expected that only one medical report will be required.

### **7.5**

(1) Where the **claimant** lives outside England and Wales, there is no requirement to obtain a **fixed cost medical report** via **MedCo** and paragraph 7.4 does not apply. The **claimant** may either—

(a) obtain a first medical report in accordance with paragraph (2) or (3) below;

(b) obtain a **fixed cost medical report** via **MedCo** where they choose to search against an address in England and Wales from which they can attend the medical examination; or

(c) seek assistance in obtaining a first medical report from the **compensator**.

(2) In a **claim** which consists of or includes a **whiplash injury**, the first report must be from a person who is recognised by the country in which they practise as—

(a) being a **medical expert**; and

(b) having the required qualifications for the purposes of diagnosis and prognosis of a **whiplash injury**.

(3) In a **claim** which does not include a **whiplash injury**, any first report obtained must be from a person who is recognised by the country in which they practise as being a **medical expert**.

### **Further medical reports**

#### **7.6**

(1) A further medical report in addition to the report referred to in paragraph 7.4 or 7.5, whether from the first expert instructed or from an expert in another discipline, will only be justified where—

(a) it is recommended in the first expert's report;

(b) the first medical report recommends that further time is required before a prognosis of the **claimant's** injuries can be determined;

(c) the **claimant** is receiving continuing treatment; or

(d) the **claimant** has not recovered as expected in the original prognosis.

(2) Paragraph 7.7 provides more information about the type of report that must be obtained where a **claimant** seeks a further report.

(3) Where a further medical report is not justified, the **claimant** may not be able to recover the **fees** paid for the further report.

(4) A further report may be obtained in accordance with paragraph (1) above at any time before the **claim** has settled, including after one or more offers have been made to settle the **claim**.

(5) Paragraph 8.2 below explains the circumstances in which the **claimant** will be asked when obtaining a further medical report if they wish to disclose the first report to the **compensator**.

## **7.7**

(1) In any **claim** made under this Protocol and save where paragraph (4) applies, where the **claimant** obtains a further medical report after the first medical report, that report must also be a **fixed cost medical report** if the **medical expert** who provides the further report is—

(a) a Consultant Orthopaedic Surgeon;

(b) a Consultant in Accident and Emergency Medicine;

(c) a General Practitioner registered with the General Medical Council; or

(d) a Physiotherapist registered with the Health and Care Professions Council.

(2) These reports, and further reports obtained from **medical experts** not mentioned in paragraph (1)(a) to (d) above, are not obtained through **MedCo. The Guide to Making a Claim** gives more information on obtaining further medical reports.

(3) This paragraph does not limit the type of **medical expert** who can be instructed to provide a further report.

(4) This paragraph does not apply where the **claimant** lives outside England and Wales and chooses to obtain a further medical report outside England and Wales.

## **Medical reports – general**

### **7.8**

Where the **claimant** is **unrepresented**—

- (1) the instructions to the **medical expert** for the first medical report are generated by the **Portal** once the **claimant** asks for the medical report, unless the **claimant** lives outside England and Wales and chooses to be examined outside England and Wales. The instructions from the **Portal** will automatically include the information required in paragraph 7.9 below. These instructions are not seen by the **compensator**.
- (2) the instructions will confirm that the **compensator** will pay the cost of the first medical report.
- (3) any request for a further medical report in addition to the report required under paragraph (1) above should be sent to the **compensator**, who must arrange and pay for the further report unless they object on the grounds that the further report is not justified under paragraph 7.6. Any such objection raised must be reasonable.
- (4) The **claimant** has the option to obtain and pay for a further medical report themselves, provided that the **claimant** does so for one of the reasons set out in paragraph 7.6 .
- (5) The **compensator** may not object under paragraph (3) above unless they are satisfied that the reason given for the request is not one of those listed in paragraph 7.6.
- (6) Unless the **compensator** objects under paragraph (3) above, they must acknowledge the request for a further report through the **Portal**. Within 10 days of acknowledging the request the **compensator** must send the instructions to the **medical expert** to arrange for the further report and upload the instructions to the **Portal** as confirmation that they have been sent.
- (7) Annex B to this Protocol contains a standard form of instruction to the **medical expert** for a further medical report, which the **compensator** must use.

## 7.9

- (1) The instructions to be sent to the **medical expert** for the first medical report must—
  - (a) provide the **medical expert** with the **claimant's** description of their injuries entered on the **Portal**;

(b) where there is a claim for **whiplash injury**, include the responses provided by the **claimant** under paragraph 5.12, as to whether they consider their injuries to be exceptionally severe or that any exceptional circumstances have had an impact on their pain, suffering and loss of amenity;

(c) tell the **medical expert** in accordance with paragraph 6.11 if the **compensator** disputes, and why they dispute, that the **accident** caused any injury to the **claimant**;

(d) tell the **medical expert** in accordance with paragraph 6.21 if the **compensator** argues that the **claimant** contributed to their injuries by not wearing a seatbelt and if so, ask the expert to comment on the effect (if any) of any failure to wear a seatbelt on the **claimant's** injuries; or

(e) include the **defendant's** version of events in accordance with paragraph 6.20, where the **compensator** has admitted liability and has provided a different account.

(2) The information at paragraph (1)(b) is provided to enable the **medical expert** to consider whether there is any support for a claim for **uplift**.

(3) The information in paragraphs (1)(c) to (e) is provided only for the purpose of asking the **medical expert** to comment on the impact, if any, on diagnosis and prognosis (including whether or not the **accident** caused any injury) if—

(a) the **claimant's** account is found to be true; or

(b) the **defendant's** account is found to be true.

(4) The instructions given to the **medical expert** will be made available to the **claimant** via the **Portal** once sent.

## **Contents of the medical report – general**

### **7.10**

(1) In a **claim** made under this Protocol, it is expected that the **medical expert** will not need to see any medical records. Any review of medical records must be justified within the report.

(2) Where medical records have been reviewed the **medical expert** should identify within the report—

- (a) the medical records that have been reviewed; and
- (b) the medical records considered relevant to the **claim**.
- (3) Copies of any medical records which the expert considers relevant to the **claim** must be provided by the expert when the report is sent to the **claimant**. Those extracts from the records must be included with the report when it is released to the **compensator**.
- (4) Where medical records are needed by the **medical expert** and there is a charge for obtaining the records, that charge can be claimed as part of the claim for experts' **fees**.

**7.11** Any relevant photograph(s) of the injuries upon which the **claimant** intends to rely should be uploaded to the **Portal** to be sent with the medical report. Such photographs can be uploaded at any time before the medical report is sent to the **compensator**.

**7.12** Where it is admitted or alleged that the **claimant** was not wearing a seatbelt, the medical report must indicate whether, in the **medical expert's** opinion and on the balance of probabilities, the **claimant's** injuries (or any part of them) would have been reduced or avoided altogether, had the **claimant** worn a seatbelt.

### **Uploading the medical report**

#### **7.13**

- (1) Where an **unrepresented claimant** obtains the first medical report through **MedCo**, the **medical expert** will upload the medical report onto the **Portal**.
- (2) The **medical expert** will also complete the following details on the **Portal**–
  - (a) the prognosis for the **claimant's** injuries;
  - (b) any recommendation to obtain a further report.
- (3) In all other cases the report will be sent to the **claimant** or their **representative**, who must upload the medical report and the details set out in paragraph (2) above onto the **Portal**.

(4) Support for **unrepresented claimants** who are unable to use the **Portal** can be obtained from the **Portal Support Centre**.

### **Steps when the claimant receives a medical report from a medical expert**

#### **7.14**

(1) The **claimant** must check the factual accuracy of any report before it is sent to the **compensator**. The facts set out in the medical report will be part of the basis on which the **claim** is valued and it is important these are correct. The **claimant** must check that all of the facts have been recorded in the medical report, including all injuries and any exceptional circumstances. The **claimant** should challenge the factual accuracy of the report if it is incorrect or incomplete.

(2) Once the medical report is sent to the **compensator** via the **Portal**, the facts will be taken to be agreed by the **claimant**. There will then be no further opportunity for the **claimant** to challenge the factual accuracy of the medical report.

(3) Where-

(a) the **claimant** has challenged the factual accuracy of the report by asking the **medical expert** to amend their report; and

(b) the **medical expert** has refused to make any amendment, the **claimant** may (in these circumstances only) send the report, together with details of the challenge and any response, to the **compensator** and continue to argue that the report is incomplete or inaccurate.

(4)

(a) Where the **claimant** is unrepresented, the challenge and response under paragraph (3) above in respect of the first report are made via the **Portal** unless the **claimant** has obtained their first report outside England and Wales;

(b) Where—

(i) the **claimant** is represented; or

(ii) the challenge in respect of either a further report or a first report obtained outside England and Wales, the challenge and response are made outside the **Portal** and the **claimant** must upload any details on which they intend to rely.

(5) Paragraph 8.2 explains when it is appropriate for the **claimant** to send their medical report to the **compensator**.

(6) The **Guide to Making a Claim** gives more information about challenging the factual accuracy of a report.

## **VALUATION OF THE CLAIM BY THE COMPENSATOR AND MAKING OFFERS TO SETTLE**

### **Introduction**

#### **8.1**

(1) This section explains—

- (a) the steps both the **claimant** and the **compensator** must take to try to settle the **claim**;
  - (b) the information that the **claimant** must send to the **compensator**, before the **compensator** makes an offer to settle the **claim**;
  - (c) when the **claimant** should send the information to the **compensator**;
  - (d) the information that the **compensator** must provide when making an offer;
  - (e) the **claimant's** options when considering the **compensator's** offer;
  - (f) making counter offers;
  - (g) when the **compensator** may indicate that they dispute that the **accident** caused the injury;
- and
- (h) the steps that the **claimant** may take if a settlement cannot be reached.

(2) Before starting proceedings, the **claimant** should make full use of the process in this section of the Protocol to try and settle their **claim**.

(3) Apart from paragraph 8.15, this section deals only with those cases where the **claimant** has obtained a medical report. Offers can be made by either party and accepted without a

medical report for non-whiplash injuries, but this can only take place outside the **Portal**. Paragraph 8.15 explains how this can be done and the risks of doing so.

(4) The parties are reminded that court proceedings are a last resort. It is expected that the parties will try to negotiate settlement of **claims** without starting court proceedings.

(5) Paragraph 4.5 of this Protocol explains the circumstances in which the **claimant** may exit the Protocol where they reasonably believe the value of the overall **claim** is more than £10,000 or the value of the **claim for damages for injury** is more than £5,000.

### **Steps to be taken by the claimant to settle the claim**

#### **8.2**

(1) Unless otherwise stated, all references to the medical report in this section are to—

(a) the **fixed cost medical report** required by paragraph 7.4 or 7.5; or

(b) a first medical report obtained by a **claimant** who lives outside England and Wales under paragraph 7.5.

(2) Where the **claimant** has obtained more than one medical report, the provisions of this paragraph apply to the **fixed cost medical report** required by paragraph 7.4 or 7.5 (or the first medical report required under paragraph 7.5) and any further medical report on which the **claimant** intends to rely.

(3) When the **claimant** is ready to settle the **claim**, including any **claim for other protocol damages**, the **claimant** must indicate on the **Portal** that they are ready to send the medical report to the **compensator**.

(4) The **claimant** must also ensure that all items of **other protocol damages** have been included in the online “List of Losses” on the **Portal** and that this is verified with a **statement of truth**, as set out in paragraph 8.3 below.

(5) The **claimant** must also have included any **fees** in the List of Losses.

(6) Once the **claimant** has completed the steps in paragraphs (3) to (5) above, the medical report and the List of Losses are sent to the **compensator** via the **Portal**.

(7) It is expected that in most cases the **claimant** should be ready to settle the **claim** once

they have accepted the medical report or reports and completed any **claim** for **other protocol damages**.

(8) Where the **claimant** is not ready to settle the **claim**, they will indicate via the **Portal** that they wish to wait before considering settlement. At this point, the **claimant** is encouraged to authorise the release of the report to the **compensator** via the **Portal**, but is not obliged to do so.

(9) The **claimant** may also choose to release the medical report to the **compensator** via the **Portal** when they request a further medical report under paragraph 7.6 above. The release of the medical report under this paragraph or under paragraph (8) above does not signify that the **claimant** is ready to settle the **claim**.

(10) Where the **claimant** wishes to release the medical report to the **compensator** subject to challenge in accordance with paragraph 7.14(3) above, they must also send details of the challenge made and the **medical expert's** response.

(11) Any medical records or photographs of the injuries uploaded to the **Portal** will be sent with the medical reports sent to the **compensator**.

### **8.3 List of Losses**

(1) The List of Losses sets out the items claimed as **other protocol damages** and as **fees**. The form must be supported by a **statement of truth** signed by the **claimant**.

(2) Before signing the **statement of truth**, the **claimant** should make sure that all items of **other protocol damages** have been included. This includes making sure that—

(a) where losses have previously been claimed as ongoing, these are updated with correct final figures;

(b) where losses are still ongoing, the full sum expected is claimed;

(c) where interim payments have been made for specific items in full, these items are removed from the List of Losses.

(3) The **claimant** will not be able to add further items on the **Portal**, once they indicate they are ready to settle the **claim**.

(4) The **claimant** should also make sure that any **fees** have been included. Whilst there is an opportunity to add such items immediately after settlement of the **claim**, **fees** added late will not be included in any offer made by the **compensator**.

(5) Where the **claimant's representative** elects to sign the **statement of truth**, they must enter their name as confirmation that they hold a List of Losses signed by the **claimant**.

(6) Where the **statement of truth** is completed by the **Portal Support Centre** on behalf of an **unrepresented claimant**, the Centre must tick the appropriate box as proof that they hold a List of Losses signed by the **claimant** authorising them to do so.

#### **8.4 Uplift in exceptional circumstances**

(1) In a **claim** which consists of or includes a **claim** for **whiplash injury or injuries**, the **claimant** may argue that there are exceptional circumstances which allow the **claimant** to seek an amount (known as the "**uplift**") greater than the **tariff amount** for the **whiplash injury or injuries**.

(2) The information provided by the **claimant** under paragraph 5.12 is provided to the **medical expert** for the purpose of considering whether there is any support for a **claim** for **uplift**.

(3) Where the **claimant** seeks an **uplift** from the **compensator**, the **claimant** must complete the necessary information on the **Portal**. This will include—

(a) explaining how either—

(i) their **whiplash injury** was exceptionally severe; or

(ii) their circumstances have had an impact on their pain, suffering and loss of amenity caused by the whiplash injury or injuries and if so, how they consider those circumstances were exceptional;

(b) confirming that the medical report supports the **claim** as set out or otherwise setting out the evidence relied upon to support the **claim** for **uplift**;

(c) sending the medical report and any other evidence relied upon to the **compensator** if they have not already done so; and

(d) stating the percentage **uplift** claimed up to a maximum of 20%.

(4) These questions must be answered again where the **claimant** provided information previously under paragraph 5.12 above. There may be good reasons why the answers provided following receipt of the medical report are different from answers given under paragraph 5.12 at an earlier date. The **claimant** may provide an explanation of any difference in their answers under paragraph (3) above.

(5) The **uplift** can only be claimed when the **claimant** sends the medical report and details of any claim for **other protocol damages** to the **compensator** under paragraph 8.2 above.

(6) the **uplift** can only be claimed or paid as a percentage of up to 20% of the **tariff amount**.

### **Information the compensator must receive from the claimant before making an offer to settle the claim**

#### **8.5**

(1) There is a time limit for the **compensator** to make an offer (see paragraph 8.7 below). That time limit does not start to run until the **claimant** has provided the items in paragraph (2) below, which will enable the **compensator** to value the **claim** and make an offer to settle.

(2) The items which the **compensator** needs to have received from the **claimant** are—

(a) the **fixed cost medical report**, or the first medical report obtained by a **claimant** who lives outside England and Wales;

(b) any other medical reports the **claimant** relies upon in support of their **claim**;

(c) the List of Losses with details of any **claim** for **other protocol damages** and for **fees**;

(d) documents in support of any **claim** for **other protocol damages**, unless no documents would be available; and

(e) documents in support of any **claim for fees**, including—

(i) invoices for the cost of any medical reports that have been obtained, which the **compensator** has not already paid for;

(ii) invoices for the **fees** of any other experts or for obtaining medical records;

(iii) invoices or receipts for any other **fees** claimed.

(3) The **claimant** must send the information in paragraph (2) above to the **compensator** through the **Portal**.

## **Supporting documents**

### **8.6**

(1) The **claimant** is reminded that—

(a) all items of **other protocol damages** must have been added on the **Portal** by the time the **claimant** sends the medical report or reports to the **compensator** (except where the **claimant** indicates under paragraph 8.2(8) above that they wish to wait before considering settlement); and

(b) the **claimant** must upload documents to support any **claim** for **other protocol damages**, unless no documents would be available.

(2) The **claimant** should be aware that where documents are not sent in support of any item of **other protocol damages**, the **compensator** may not be in a position to make any offer for that item.

(3) The **claimant** may also send further documents in support of any counter offer under paragraph 8.11.

## **Compensator's offer – time limits**

### **8.7**

(1) The **compensator** must make an offer to settle the **claim**, unless they notify the **claimant** through the **Portal** that—

(a) they consider that the value of the overall **claim** is more than £10,000 or the value of the **claim** for **damages for injury** is more than £5,000; or

(b) they dispute (or continue to dispute under paragraph 6.6(1)(d)) that the **accident** caused any injury to the **claimant**.

(Paragraph 8.9 deals with the steps that the **compensator** must take where, on receipt of the medical report, the **compensator** wishes to dispute or continue to dispute that the **accident**

caused any injury to the **claimant**.)

(2) Subject to the exceptions in paragraph (1) above, an offer to settle must be made through the **Portal** as soon as possible and in any event within a maximum of 20 days of receiving the information in paragraph 8.5.

(3) Where the **claimant** does not send documents in support or one or more items of **other protocol damages**, the **compensator** must still make an offer within the same period for the **damages for injury** and any items of **other protocol damages** for which documents in support have been sent or for which documents would not be available.

### **Claims above value limit**

#### **8.8**

(1) Where, instead of making an offer, the **compensator** notifies the **claimant** through the **Portal** that they consider that the value of the overall **claim** is more than £10,000 or of the **claim** for **damages for injury** is more than £5,000, the **claim** will be dealt with outside this Protocol.

(2) The **Guide to Making a Claim** gives more information about the steps available to a **claimant** in these circumstances.

(3) The **claimant** should also consider seeking advice in these circumstances.

### **Dispute that accident caused injury**

#### **8.9**

(1) On receiving the **medical report**, the **compensator** may decide that there is a dispute whether the **accident** caused any injury. This includes cases where the **compensator** has previously admitted liability under paragraph 6.6(1)(a) or (b) or disputed that the **accident** caused any injury under paragraph 6.6(1)(d).

(2) Where the **compensator** wishes to dispute (or continue to dispute) that the **accident** caused any injury, they must notify the **claimant** through the **Portal** within 20 days of receiving the information in paragraph 8.5 and must give reasons for doing so.

(3) At the same time the **compensator** may make a final settlement offer through the **Portal** for the **other protocol damages** claimed.

(4) Unless an offer is made under paragraph (3) above and accepted by the **claimant** in full and final settlement of all **claims** for **damages for injury** and for **other protocol damages**, the **claim** will be treated as a dispute that the **accident** caused any injury and will be dealt with outside this Protocol.

(5) The **claimant** should consider seeking advice in these circumstances.

(6) Paragraphs (1) to (4) do not apply to any **claim** where liability is taken to be admitted under paragraph 6.15.

### **Contributory negligence for failure to wear a seatbelt**

**8.10** Where the **compensator** argues in their response that the **claimant** contributed to their injuries by not wearing a seatbelt under paragraph 6.21 above—

(a) The **compensator** must consider the opinion of the **medical expert** as to whether the **claimant's** injuries would have been reduced or avoided altogether, had the **claimant** worn a seatbelt;

(b) where the **medical expert's** opinion supports the argument, the **compensator** must—

(i) state in their offer under paragraph 8.11 below the percentage reduction (if any) that is being applied to their offer; and

(ii) follow the procedure in paragraph 8.12(3).

### **Compensator's offer – information to be included in the offer to settle**

#### **8.11**

(1) A **compensator's** offer to settle under paragraph 8.7 above is a single offer for all parts of the **claim** but must set out—

(a) the fixed **tariff amount** if any;

(b) the offer for any damages for non-whiplash injuries;

(c) the offer for each item of **other protocol damages**, stating—

- (i) whether each item is accepted; and if not
- (ii) an explanation why any item is disputed;
- (d) the amount of any deductions to be made under paragraphs 8.12(2)-(6) below.
- (2) The **compensator's** offer must be supported by a **statement of truth**.
- (3) The explanations provided under paragraph (1)(c)(ii) above will be included in the Court Valuation Form created on the **Portal** as the **compensator's** formal counter schedule in the event that court proceedings are started.  
  
(see paragraphs 11.3(2) and 11.9(1) for further information on creation of the Court Valuation Form.)
- (4) The **tariff amounts** are fixed by law and the parties may not request or offer more or less than the **tariff amount**. The **compensator's** offer must include the appropriate **tariff amount**, selected from the drop down box provided. Damages for non-whiplash injuries are not fixed.
- (5) If the **claimant** has claimed an **uplift** on the **tariff amount**, the **compensator's** offer must state the percentage and amount (if any) offered in respect of the **uplift**.
- (6) The **compensator** may make an overall offer which is higher than the total of the amounts proposed for each part of the **claim**.

## **Deductions from offers – information to be included**

### **8.12**

- (1) Any deductions from the offer to be made must be dealt with in the sequence set out in the paragraphs below.
- (2) Where the **compensator** has admitted liability in part, the offer must set out the proposed or agreed deduction from the amount of damages to reflect the liability arguments.
- (3) where the **compensator** applies a percentage deduction under paragraph 8.10 above, to reflect the effect of the **claimant's** failure to wear a seatbelt, the offer must set out the proposed deduction which must only be applied to the **damages for injury**, any sum for **uplift** and items of **other damages – injury related**.
- (4) The **compensator** must state the total value of the offer less any deductions under

paragraphs (2) and (3) above.

(5) The **compensator** must state the amount of any deduction for recoverable benefits. Where a certificate of recoverable benefits is available, the **compensator** must also provide a copy of the certificate (the underlined terms are defined in paragraph 10.10).

(6) The **compensator** must also state the amount of any deduction for interim payments already paid to the **claimant** (interim payments are dealt with in section 9 of this Protocol).

### **Compensator's offer in respect of claim for fees**

#### **8.13**

(1) At the same time as the offer to settle, the **compensator** must also make a separate offer in respect of any **claim for fees**.

(2) Where the **fees** offer is to pay less than the full amount claimed, the **compensator** must set out the reasons why they dispute any item of **fees** or the sum claimed for that item.

(3) Any deduction under paragraphs 8.12(2) or (3) above must not be applied to the **claim for fees**.

(4) The **fees** offer will be disclosed to the **claimant** at the same time as the offer to settle the **claim** is sent, but is not available for the **claimant** to accept or reject until the parties have agreed to settle the **claim** for damages. Where no such agreement is reached and the **claimant** wishes to start court proceedings to assess the value of the **claim**, the **claim for fees** will be included in the proceedings, so that the **fees** may be assessed by the court if not agreed.

(Paragraphs 10.5 to 10.6 set out more information as to the **compensator's** right to dispute certain **fees**.)

### **The claimant's options on receipt of an offer**

#### **8.14**

(1) On receipt of an offer to settle, the **claimant** may select one the following options from the **Portal**—

- (a) accept the offer (see paragraph 10.2);
  - (b) reject the offer (see paragraph 8.19);
  - (c) make a counter offer of their own (see paragraph 8.17); or
  - (d) decide to put the offer “on hold” whilst they wait for developments in their **claim**. This includes waiting to see if their injuries resolve or improve as predicted in the medical report.
- (2) Where the **claimant** decides to put an offer on hold under paragraph (1)(d), the **claimant** can at any later time accept or reject the offer (unless the offer has been withdrawn under paragraph 8.18) or make a counter offer through the **Portal**.
- (3) Each party can make up to 3 offers or counter offers in total through the **Portal**. All offers and counter offers must be supported by a **statement of truth**. It is expected that each party should respond to offers or counter offers from the other within a maximum of 10 days.  
(The parties are encouraged to negotiate rather than start court proceedings.)
- (4) Where the **claimant** or the **compensator** makes an offer in a claim for **whiplash injury**, that offer must include the appropriate **tariff amount**, selected from the drop down box provided.
- (5) The **claimant** may also add further documents in support of any counter offer using the **Portal**.

### **Making or accepting an offer without a medical report**

#### **8.15**

- (1) In **claims** which consist of or include a **whiplash injury**, the parties can only make an offer, pay or accept a payment for the **whiplash injury** if the **claimant** has first disclosed a medical report complying with paragraph 7.4. The process for those offers on the **Portal** is as set out in paragraphs 8.2 to 8.14 above.
- (2) Offers can be made by either party and accepted without a medical report for non-whiplash injuries, but this can only take place outside the process set out at paragraphs 8.2 to 8.14 above.
- (3) Such offers can be made on the **Portal** only by using the message facility. This means that

the **Portal** will not be able to provide any on-screen prompts or other facilities to handle such offers.

(4) Any **claimant** considering whether to make or accept an offer without a medical report under paragraph (2) above needs to consider—

(a) whether they have claimed for all their **other protocol damages** and whether the offer takes account of those **other protocol damages**;

(b) whether the offer includes any **fees** which could be claimed under paragraph 8.13 above;

(c) the risk that without a medical report, their claim for **damages for injury** may not be accurately valued.

(5) The **claimant's** attention is also drawn to the help available on the **Portal** where court proceedings have to be started, either to assess the value of the **claim** or to deal with non-payment of any agreed settlement. This includes creating the Court Pack and court form needed to start court proceedings; such facilities will not be available to help the **claimant** in cases where an offer is made or accepted without a medical report.

### **Further medical reports**

#### **8.16**

(1) Where the **claimant** obtains a further **medical report** after one or more offers have been made, the **claimant** needs to follow the steps set out in paragraphs 8.2 to 8.14 above in respect of that report, sending the report to the **compensator** and dealing with the claim for **other protocol damages**.

(2) Once the further **medical report** is sent to the **compensator**, the **compensator** must consider whether to make a further offer to settle under paragraph 8.7.

### **Offers and counter-offers**

#### **8.17**

(1) In this paragraph and paragraph 8.18, the term “offer” refers to any offer or counter-offer.

(2) The **compensator** may at any point in the process in this section make a further, higher

offer, but may not offer less than their previous offer.

(3) Where the **claimant** makes an offer, the **claimant** can make a further, lower offer at any point in the process in this section, but may not offer to accept more than their previous offer.

(4) Any further offer under paragraph (2) or (3) above replaces the party's previous offer, which is no longer available for acceptance. The **compensator's** highest offer and the **claimant's** lowest offer therefore stay on the **Portal** and may be accepted by the other party at any time, subject to paragraph 8.18 below.

(5) An agreement under paragraph 6.8 in which the **claimant** accepts any proposal for a percentage of liability in part means that a deduction has to be made in any offers or counter offers to take this percentage into account.

#### **Withdrawal of offers or counter-offers**

##### **8.18**

(1) The **claimant** or the **compensator** may not withdraw an offer until 10 days have passed since the date on which the offer was made, but may otherwise withdraw an offer at any time. Paragraph (7) below explains when an offer can be withdrawn on the **Portal** but does not restrict the right to withdraw in this paragraph.

(2) An offer once withdrawn is no longer available for acceptance.

(3) The effect of withdrawing an offer is to leave the party doing so with no offer on the **Portal**.

(4) Where a party withdraws an offer, they may, subject to paragraph (5), replace that offer with a new offer. If the offer is withdrawn and the new offer made—

(a) before the other party has made their next offer under paragraph 8.14, the new offer counts for the purposes of paragraph 8.14(3) as the same number offer as the withdrawn offer;

(b) after the other party has made their next offer under paragraph 8.14, the new offer will count for the purposes of paragraph 8.14(3) as their next offer.

(5) Where the **compensator** withdraws their offer after the **claimant** has made their third and final offer, the **compensator** may not make a new offer on the **Portal**.

(6) The effect of the **compensator** withdrawing an offer and not replacing it with a new offer

(or not being able to do so) is also to remove any comments made by the **compensator** on the losses claimed. These comments will not then be available for the court to consider in any proceedings started by the **claimant**.

(7) Either party may withdraw an offer by using the “withdraw offer” facility on the **Portal** at any time until the **Portal** creates the Court Valuation Form. The **Portal** will warn the parties when this point is reached.

(8) Any withdrawal after the point identified under paragraph (7) above must be made by giving notice in writing to the other party, including by electronic means whether by using the message facility on the **Portal** or otherwise. Such notice is effective at the time it is received by the other party.

(Paragraphs 11.3 and 11.9 explain when the **Portal** creates the Court Valuation Form.)

## **Rejection/late acceptance of offers or failure to make an offer**

### **8.19**

(1) Where the **claimant** rejects an offer to settle in a **claim** to which this Protocol applies and does not make any counter-offer, the **claimant** may start court proceedings to assess the value of the **claim**.

(2) Where the **compensator** does not make an offer within the time specified in paragraph 8.7, the **claimant** may start court proceedings, but not until at least 20 days after sending the information required in paragraph 8.5.

(3) It is expected that the parties will use the offer and counter offer procedure on the **Portal** to try and settle the **claim** before starting proceedings under this paragraph.

(4) An offer which has been rejected may still be accepted at a later date, unless it has been withdrawn in accordance with paragraph 8.18, by using the “accept rejected offer” facility on the **Portal** at any time until the **Portal** creates the Court Valuation Form. The **Portal** will warn the parties when this point is reached.

(5) Any acceptance after the point identified under paragraph (4) above must be made by giving notice in writing to the other party, including by electronic means whether by using the

message facility on the **Portal** or otherwise. Such notice is effective at the time it is sent to the other party.

(6) Before the **claimant** starts proceedings, they will be asked to review and update their comments on disputed items of losses. The final version of these comments will be included in the documents for court.

(7) Where the **claimant** wishes to start proceedings under this paragraph, they must—

(a) first follow the procedure set out in section 11 of this Protocol; and

(b) subject to that section, use the procedure set out in Practice Direction 27B.

(8) Nothing in this paragraph prevents a **claimant** from starting court proceedings if they need to do so for limitation purposes, whether under paragraph 5.6 of this Protocol or otherwise.

## **Locking mechanism on the Portal**

### **8.20**

(1) The **Portal** has a locking mechanism, which means that one party cannot go into the **claim** and take a step when the other party is already taking a step in the **claim**. In that situation the **Portal** will display a message saying “Lock information: [your claim] is currently being modified by [name of other party]”.

(2) Where a party receives the “lock information” message on the **Portal** when they wish to accept or withdraw an offer, they must wait to accept or withdraw the offer via the **Portal** when it is unlocked. The party cannot use any other communication to accept or withdraw the offer.

(3) Where the party finds that the offer has been withdrawn after the system has been unlocked, they cannot then accept the offer.

(4) Where the party finds that the offer has been accepted after the system has been unlocked, they cannot then withdraw the offer.

## **INTERIM PAYMENTS**

### **Introduction**

**9.1** This section explains—

- (a) what an interim payment is;
- (b) when and how the **claimant** may ask the **compensator** for an interim payment;
- (c) the steps the **compensator** must take if an interim payment is made; and
- (d) the steps the **claimant** may take if the **compensator** either refuses to make an interim payment or does not respond.

## **Interim payments**

### **9.2**

- (1) Where any of the options in paragraph 6.22 applies, the **claimant** may at any time request an interim payment to cover items of **other protocol damages**.
- (2) At any point following receipt of the **SCNF**, the **compensator** may voluntarily make an interim payment to cover items of **other protocol damages**.
- (3) The **compensator** can make a voluntary interim payment to cover specific items or a general interim payment.
- (4) When making a voluntary interim payment, the **compensator** must notify the **claimant** through the **Portal** of—
  - (a) the payment; and
  - (b) if the payment is for specific items of **other protocol damages**, which items the payment is intended to cover.

### **9.3**

- (1) Where the **claimant** makes a request for interim payment, it must be made through the **Portal** by—
  - (a) stating which items are being claimed for and the amount claimed; and
  - (b) providing the documents needed to support those items by uploading them on the **Portal**, in the same way as set out in paragraph 8.6.
- (2) The **Portal** creates an Interim Request Form following this request, for use where the **claimant** wishes to start proceedings under paragraph 9.6(1) below.

#### 9.4

- (1) The **compensator** must respond to any interim payment request within 15 days.
- (2) The **compensator** can make an interim payment to cover specific items or a general interim payment.
- (3) Where the interim payment is stated to cover specific items in full, those items are regarded as satisfied and are then removed from the **claim**. The court cannot order such an interim payment to be repaid.
- (4) An interim payment intended to cover specific items can only be made for the sums as claimed in full. Any payment agreed or awarded for less than the sum claimed for that item will be treated as a general interim payment under paragraph (5) below.
- (5) Where a general interim payment is made, the **claim** remains as stated and the payment will be taken into account at the conclusion of the **claim**, to be offset, first, against **other protocol damages**. The court can order a general interim payment to be repaid, see paragraph (7) below.
- (6) Unless otherwise stated, the making of a general interim payment does not represent an admission either of liability or of any specific item of damages.
- (7) If the court is asked to decide on the **other protocol damages** that should be paid to the **claimant**, the court can order a general interim payment made under paragraph (4) above to be repaid.
- (8) An agreement under paragraph 6.8 in which the **claimant** accepts any proposal for a percentage of liability in part means that any interim payment will have to be reduced to take this percentage into account.
- (9) When making an interim payment the **compensator** must deduct any recoverable benefits from relevant damages. An explanation of the benefits position is at paragraphs 10.10 and 10.11.

#### 9.5

(1) Unless paragraph (2) applies, where the **compensator** has agreed to make an interim payment, this must be paid within 10 days of the date of such agreement.

(2) Where the **compensator** agrees to make an interim payment, but does not yet have a certificate of recoverable benefits (which is defined in paragraph 10.10(1)(b)) or does not have one that will remain in force for at least 10 days, the **compensator** must—

(a) apply for a certificate of recoverable benefits as soon as possible;

(b) notify the **claimant** that they have done so; and

(c) make the interim payment no more than 30 days from the date of agreement.

(3) **Other protocol damages** can include items caused by the **claimant's** injury and other items such as **protocol vehicle costs** or other damage to property. In this Protocol, these are called **other damages – injury related** and **other damages – property**. Where the interim payment is for items that are **other damages – property**, the **compensator** does not need to wait for a certificate of recoverable benefits before making a payment in accordance with paragraph (1).

## **Disputes as to interim payments**

### **9.6**

(1) Where the **claimant** has requested an interim payment for **other protocol damages** but the **compensator** has either—

(a) disputed the entitlement to an interim payment; or

(b) failed to agree to pay the sum requested within the period specified in paragraph 9.4(1), the **claimant** has the option to start proceedings and apply to the court for an interim payment in those proceedings.

(2) Where the parties have reached an agreement, recorded on the **Portal**, on an interim payment for **other protocol damages** but the **compensator** has failed to pay within the relevant period specified in paragraph 9.5(1) and (2), the **claimant** has the option to start proceedings and apply to the court for an order for payment.

(3) A **claimant** who wishes to start proceedings in a **claim** to which this Protocol applies for

either—

(a) an interim payment under paragraph (1) above; or

(b) an order for payment of an agreed interim payment under paragraph (2) above,

must use the procedure set out in Practice Direction 27B.

(4) Paragraph 12.12 of this Protocol provides more information about the steps that a **claimant** must take if they wish to start proceedings for either an interim payment or an order for payment as appropriate.

## **9.7**

(1) Where a **claimant** starts proceedings under paragraph 9.6 for either an interim payment or for an order for payment of an agreed interim payment, the **claimant** and the **compensator** must continue to follow the steps under this Protocol.

(2) After determining an application for an interim payment or making an order for payment, the court will stay the proceedings.

## **ACCEPTANCE AND FINAL PAYMENT**

### **Introduction**

#### **10.1**

(1) This section explains—

(a) the steps that the **claimant** and **compensator** should take when an offer is accepted; and

(b) when the **compensator** is required by law to make deductions from the damages payable to the **claimant**, where the **claimant** has been in receipt of certain state benefits between the date of the **accident** and the date of settlement of the **claim**.

(2) Terms underlined in this section (and in paragraph 8.12) relate to the system for reclaiming certain state benefits paid to the **claimant** and are explained in paragraph 10.10.

### **Acceptance by claimant**

#### **10.2**

(1) Subject to paragraph (2) below, where the **claimant** accepts an offer to settle, the **compensator** must pay the sum offered to the **claimant** within 10 days of the date of acceptance of the offer on the **Portal**.

(2) Where the **claimant** accepts an offer to settle, but the **compensator** does not yet have a certificate of recoverable benefits or does not have one that will remain in force for at least 10 days, the **compensator**—

(a) should apply for a certificate of recoverable benefits as soon as possible and notify the **claimant** that they have done so; and

(b) must pay the sum offered to the **claimant** within no more than 30 days of the date of acceptance of the offer on the **Portal**.

(3) The sum paid to the **claimant** by the **compensator** may be reduced to take account of—

(a) any interim payments already made;

(b) any deductible amount repayable to the Compensation Recovery Unit (“CRU”); and

(c) paragraph 10.10 explains what the deductible amount is and when it is repayable.

(4) The **compensator** must tell the **Portal** that the **claim** has been settled.

### **Acceptance by compensator of offer by claimant**

#### **10.3**

(1) Subject to paragraph (2) below, where the **compensator** accepts the **claimant’s** offer to settle, the **compensator** must pay the sum which the **claimant** has offered to accept within 10 days of the date of acceptance of the offer on the **Portal**.

(2) Where the **compensator** accepts the **claimant’s** offer to settle, but does not yet have a certificate of recoverable benefits or does not have one that will remain in force for at least 10 days, the **compensator**—

(a) should apply for a certificate of recoverable benefits as soon as possible and notify the **claimant** that they have done so; and

(b) must pay the sum which the **claimant** has offered to accept within no more than 30 days of the date of acceptance of the offer on the **Portal**.

- (3) The sum paid to the **claimant** by the **compensator** may be reduced to take account of—
- (a) interim payments already made;
  - (b) any deductible amount repayable to the CRU; and
  - (c) paragraph 10.10 explains what the deductible amount is and when it is repayable.
- (4) The **compensator** must tell the **Portal** that the **claim** has been settled.

## **Non-payment by the compensator**

### **10.4**

- (1) Where the parties have reached an agreement, recorded on the **Portal**, on the amount of damages payable at the end of this Protocol, but the **compensator** has failed to pay within the relevant period specified in this section, the **claimant** has the option to start proceedings and apply to the court for an order for payment.
- (2) Where the **claimant** also has a **claim for fees**, the relevant period for the purposes of starting proceedings is the later of-
- (a) the relevant period under paragraph 10.2 or 10.3 above; or
  - (b) the 10 days for payment where agreement is reached on the **claim for fees**, under paragraph 10.7(5) below.
- (3) A **claimant** who wishes to start proceedings for an order for payment in a **claim** to which this Protocol applies must use the procedure set out in Practice Direction 27B.
- (4) Paragraph 12.12 of this Protocol provides more information about the steps that a **claimant** must take if they wish to start proceedings for an order for payment.

## **Medical report fees and other fees**

### **10.5**

- (1) This paragraph summarises who arranges and pays the **fees** for further medical reports.
- (2) Where the **claimant** is **represented**, the **claimant's representative** will be responsible for arranging the provision of and payment for any further medical reports required.
- (3) Where the **claimant** is **unrepresented**, the **compensator** pays for the first medical report.

Paragraph 7.8 provides that the **compensator** must pay for any further medical report requested by the **claimant**, subject to limited rights in that paragraph to object.

## 10.6

(1) This paragraph and paragraph 10.7 explain how the **claimant** can recover any **fees** from the **compensator**, at the settlement of the **claim**.

(2) Where the **compensator** has already paid the **fees** for the medical report or reports as required under paragraph 7.8, nothing in this paragraph permits the **compensator** to recover those payments from the **claimant**.

(3) Where the **claimant** incurs the **fees** for more than one medical report—

(a) the **compensator** may refuse to pay; or

(b) the court may refuse to allow,

the **fees** for any report which was not justified, or the **fees** for any report which are not reasonable or proportionate in amount.

(Paragraphs 7.4 and 7.6 explain the circumstances in which the **fees** for a medical report are justified.)

(4) Where the **claimant** incurs any other **fees** apart from court fees—

(a) the **compensator** may refuse to pay; or

(b) the court may refuse to allow,

any **fee** which is not reasonably incurred or any amount which is not considered reasonable or proportionate.

(5) Where the **compensator** refuses to pay all or part of any item of **fees**, they must explain their reasons for doing so to the **claimant**.

(6) The explanation provided under paragraph (5) above will be included in the Court Valuation Form created on the **Portal** as the **compensator's** formal response in the event that court proceedings are started.

(Paragraphs 11.3(2) and 11.9(1) provide further information on creation of the Court Valuation Form.)

(7) Where the **claimant** pays court fees, the **compensator** must pay any court fee incurred at the end of the **claim**, unless the court has ordered otherwise.

## 10.7

(1) Where the **claim** has settled under paragraph 10.2 or 10.3 above and there is a **claim for fees**, the **claimant** will first be asked to add any further **fees** incurred since the original **claim for fees**.

(2) The process in paragraph (1) above will apply even if the **claimant** did not include any **claim for fees** under paragraph 8.2(5).

(3) After the step in paragraph (1), the **claimant** may choose one of the following options:

(a) conclude the **claim**, if there is no **claim for fees**;

(b) accept the offer, if no **fees** have been added under paragraph (1) and the **compensator** has either—

(i) already offered to pay the original **claim for fees** in full; or

(ii) offered to pay part of the **claim for fees** and the **claimant** wishes to accept the offer;

(c) Make a counter offer to the **compensator** if either—

(i) the **claimant** has added **fees** under paragraph (1); or

(ii) the **compensator** has offered to pay part of the **claim for fees**; or

(d) reject any offer to pay part of the **claim for fees**.

(4) Where the **compensator** receives a counter offer or a claim for further **fees** incurred, they must consider whether to accept the counter offer or claim, or to make a further offer for **fees**.

(5) Where agreement is reached on the **claim for fees**, the **compensator** must pay the agreed sum within 10 days.

(6) Where the compensator has failed to pay the agreed sum within 10 days, the claimant has the option to start proceedings using the procedure set out in paragraph 10.4 above.

(7) After choosing any option apart from paragraphs (3)(a) or (b), the **claimant** may at any point start court proceedings.

(8) A **claimant** who wishes to start court proceedings to recover any disputed **fees** in a **claim**

to which this Protocol applies must use the procedure set out in Practice Direction 27B.

(9) Paragraph 12.12 of this Protocol provides more information about the steps that a **claimant** must take if they wish to start proceedings to recover any disputed **fees**.

(10) The **claimant** should also consider seeking advice in these circumstances.

## **Method of payment**

### **10.8**

(1) The method of payment is to be agreed between the **claimant** and the **compensator**.

(2) Where the **claim for fees** includes **fees** paid or payable by the **claimant's representative**, the **fees** should be paid in any event to the **representative**.

## **The effect of settling the claim**

**10.9** Settlement of the **claim** under paragraph 10.2 or 10.3 represents final settlement of all claims for **damages for injury** and for **other protocol damages** but does not prevent the **claimant** from pursuing any claim for **non-protocol vehicle costs** arising from the same **accident** outside this Protocol.

## **Recoverable benefits and CRU**

### **10.10**

(1) In this Protocol—

(a) "CRU" means the Compensation Recovery Unit, which is part of the Department for Work and Pensions and is responsible for recovering social security benefits in claims for personal injury;

(b) "Certificate of recoverable benefits" means the certificate issued by the CRU to specify the benefits to be deducted from any damages and repaid under social security legislation;  
and

(c) “deductible amount” means any benefits or lump sum payment shown in the certificate of recoverable benefits, which the **compensator** is entitled to deduct in accordance with social security legislation.

(2) The **compensator** is required by law to notify an injury claim to the CRU and to obtain a certificate of recoverable benefits before making a payment.

(3) Certain benefits shown in the certificate of recoverable benefits must be deducted from certain types of payment for damages. Together, those benefits are known as the deductible amount.

(4) The certificate of recoverable benefits has to be valid at the time of payment and is valid only for a limited period, after which it needs to be renewed. The CRU is entitled to take up to 4 weeks from receiving a request to issue a certificate of recoverable benefits.

(5) The **compensator** should notify the **claim** to the CRU as soon as practicable after the **claim** is notified to the **compensator**.

(6) Where the **compensator** has obtained a certificate of recoverable benefits by the time an offer is made under paragraph 8.11, the offer must state the amount of any deductible amount, the name of the benefit and the item of damages from which it is deducted.

(7) Where the **compensator** does not have a valid certificate of recoverable benefits at the time an offer is due, they must—

(a) make an offer which is expressly subject to obtaining a valid certificate of recoverable benefits; and

(b) not more than 5 days after receiving a valid certificate of recoverable benefits, disclose that to the **claimant** and explain whether any deductions are needed from the sum offered.

(8) Paragraph (9) applies where, at the date settlement is agreed, the **compensator** does not have a certificate of recoverable benefits that will remain in force for at least 10 days.

(9) The **compensator** should apply for a fresh certificate of recoverable benefits as soon as possible, notify the **claimant** that they have done so and must pay the amounts set out in paragraph 10.2 or 10.3 as appropriate within 30 days of the date of agreement.

**10.11** The deductible amount may only be deducted from the appropriate items of **other protocol damages** and the **compensator** must tell the **claimant**—

(a) the gross amount of the offer, that is the amount of damages offered less any deduction for contributory fault but before any other deductions;

(b) the amount in each case of benefits deducted from each item of damages;

(c) whether (in the case of an offer for **other protocol damages** alone under paragraph 8.9(3) only) the deduction reduces the damages offered to nil.

## **CLAIMS FOR NON-PROTOCOL VEHICLE COSTS**

### **Introduction**

#### **11.1**

(1) Claims for **non-protocol vehicle costs** are handled outside the previous sections of this Protocol.

(2) However, where the parties have been unable to settle the portal claim (see paragraph 11.2 below) under section 8 and the **claimant** wishes to start court proceedings to ask the court to assess the value of the portal claim, the court must be informed about all claims brought in the **claimant's** name that are still in dispute. This includes any claim for **non-protocol vehicle costs** which has not been settled.

(3) This section sets out the procedure that must be followed to ensure that the court has the information it needs about all parts of the **claim**, before proceedings are started.

(4) The procedure must be completed before the **claimant** can generate the Court Pack under section 12 of this Protocol. Failure to provide information under this section may mean that any claim for **non-protocol vehicle costs** is not considered by the court and the **claimant's** right to bring any such claim may be affected.

### **Including the claim for non-protocol vehicle costs**

**11.2** In this section, the term "portal claim" means the **claim for damages for injury and other protocol damages** under this Protocol.

### 11.3

(1) Subject to paragraphs (2) and (3), where—

(a) the parties have been unable to agree settlement of the portal claim;

(b) the **claimant** wishes to start court proceedings to assess the value of the portal claim; and

(c) there is a claim for **non-protocol vehicle costs** being dealt with by another business or organisation separately from the portal claim,

the **claimant** must first follow the procedure set out in this section.

(2) Where the **claimant** is not the driver or owner of the vehicle in which they were injured, the **claimant** will have no claim for **non-protocol vehicle costs** and the rest of section 11 of this Protocol will not apply. The **Portal** will create the Court Valuation Form used in proceedings once the **claimant** selects the “go to court” button.

(3) Nothing in this section prevents a **claimant** from starting court proceedings if they need to do so for limitation purposes.

(4) Paragraph 6.7 of this Protocol provides that where the **claimant** starts proceedings to assess the value of their portal claim, any admission made in the Protocol is binding to the extent of all claims made in the proceedings. For the avoidance of doubt this will include any claim for **non-protocol vehicle costs** added under this section.

**11.4** The steps required under this section must be taken before the Court Pack is prepared under section 12.

### 11.5

(1) The **claimant** must first set out on the **Portal** whether there is any claim for **non-protocol vehicle costs**.

(2) The questions on the **Portal** relating to **non-protocol vehicle costs** are intended to help the **claimant** to make the necessary enquiries, to obtain the information needed in paragraph (1).

(3) It is the **claimant's** responsibility to obtain the information and to satisfy themselves that the information provided is accurate.

(4) Support for **unrepresented claimants** who are unable to use the **Portal** can be obtained from the **Portal Support Centre**.

## **11.6**

(1) Where—

(a) the claim for **non-protocol vehicle costs** is added to the portal claim under paragraph 11.5 above; and

(b) following the step in (a), the **claimant** reasonably believes as a result that the overall value of the **claim** is more than £10,000,

the **claimant** may notify the **compensator** that this Protocol no longer applies to the **claim**.

(2) The **Guide to Making a Claim** provides further information on valuing the portal claim.

(3) The **claimant** should also consider obtaining advice in these circumstances.

## **Non-protocol vehicle costs (“NVC”) claim document**

### **11.7**

(1) Unless paragraph 11.6 applies, the **claimant** must also complete the non-protocol vehicle costs claim document (referred to in this paragraph as “the NVC claim document”), which sets out the information and documents which the court and the **compensator** are likely to need in respect of the claim for **non-protocol vehicle costs**.

(2) Annex C to this Protocol contains the standard form of NVC claim document which the **claimant** must use.

(3) The NVC claim document must be signed by the **claimant** with a **statement of truth**.

(4) The **claimant** must upload the signed NVC claim document onto the **Portal**, together with the documents required in support of the claim for **non-protocol vehicle costs**.

(5) The uploaded NVC claim document and the documents in support are sent to the **compensator** via the **Portal**.

(6) Support for **unrepresented claimants** who are unable to use the **Portal** can be obtained via the **Portal Support Centre**.

## **NVC response document**

### **11.8**

(1) Within 15 days of receipt of the NVC claim document, the **compensator** must complete the response document (known as “the NVC response document”) and upload the signed response document onto the **Portal**, together with any documents required in support.

(2) Annex D to this Protocol contains the standard form of NVC response document which the **compensator** must use.

(3) The NVC response document must be signed by the **compensator** with a **statement of truth**.

(4) The NVC response document enables the **compensator** to set out the information and documents which the court and the **claimant** are likely to need in respect of the Compensator’s Response to the claim for **non-protocol vehicle costs**.

(5) The uploaded NVC response document and any documents in support are sent to the **claimant** via the **Portal**.

### **11.9**

(1) Once the **compensator** has complied with paragraph 11.8 or the 15 day period in paragraph 11.8 has expired, whichever happens first—

(a) the **Portal** will create the Court Valuation Form used in proceedings;

(b) the **claimant** may produce and send the relevant Court Pack list under section 12 of this Protocol.

(2) Where the 15 day period has expired and the **claimant** has produced and sent the Court Pack list, the **compensator** may still upload the NVC response document at any time before the relevant period for review of the Court Pack list set out in paragraph 12.6(1) has expired.

(3) Failure to upload the NVC response document as required by paragraph 11.8 or this

paragraph may mean that the court will not consider the **compensator's** arguments about the claim for **non-protocol vehicle costs**.

## **DISPUTES – PROCEDURE TO START COURT PROCEEDINGS**

### **Introduction**

#### **12.1**

(1) The Protocol permits the **claimant** to start court proceedings in certain circumstances.

This will involve different types of proceedings for each of those circumstances. This section explains what is needed for each of those types of court proceedings.

(2) Documents must be prepared for the court to use. These are put into what is known as the Court Pack. All those documents can be downloaded from the **Portal** and this section explains what is needed.

(3) Paragraph 12.2 directs the **claimant** to the paragraphs in this section which deal with each type of proceedings. Each of these has a table which shows the documents to be included in the Court Pack for that type of proceedings.

(4) Paragraphs 12.3 and 12.4 explain the steps the **claimant** needs to take with the Court Pack, before starting court proceedings.

(5) The relevant court form must be prepared on the **Portal**, using information already captured from the **claim** to date and additional answers provided by the **claimant**. This is explained further in paragraph 12.7.

(6) The **Guide to Making a Claim** gives more information about the steps that a **claimant** must take before starting court proceedings.

#### **12.2**

(1) The **claimant** may start proceedings under Practice Direction 27B, which is divided into section 1 covering general points and sections 2 to 11 setting out different procedures.

(2) Depending on the type of proceedings required, the **claimant** should use one of sections 2 to 11 in Practice Direction 27B. Table 1 below explains where to find the procedure for each

type of proceedings and how to follow the requirements of this Protocol.

(3) The term **non-protocol vehicle costs** is abbreviated to “NVC” in the names given for the types of proceedings in the tables in this section and in the court forms.

Table 1

<b>Type of case</b>	<b>Section of Practice Direction which applies</b>	<b>Paragraph of this Protocol</b>	<b>Table for documents</b>	<b>Court form</b>
Liability dispute only – liability denied in full	Section 2	12.9	A	RTASC L
<b>Claim</b> value dispute: no liability dispute, no NVC claim or <b>uplift</b> request	Section 3	12.11	C	RTASC Q
<b>Claim</b> value dispute: liability part disputed; may include NVC claim or <b>uplift</b> request	Section 4	12.10	A, B (1) and B (2) where applicable	RTASC D
<b>Claim</b> value dispute: liability not disputed; NVC claim; may include <b>uplift</b> request	Section 5	12.10	B (1) and B (2)	RTASC D
<b>Claim</b> value dispute: liability not disputed; no NVC claim; includes <b>uplift</b> request	Section 6	12.10	B (1)	RTASC D
Application for interim payment	Section 7	12.12	E	RTASC O
Non-payment of agreed interim payment	Section 8	12.12	G (1)	RTASC O
Starting due to limitation	Section 9	12.12	D	RTASC O
Dispute over <b>fees</b>	Section 10	12.12	F	RTASC O
Non-payment of agreed settlement sum	Section 11	12.12	G (2)	RTASC O

### **“The Court Pack” and notice of intention to start proceedings**

#### **12.3**

(1) Before starting court proceedings, the **claimant** must prepare a Court Pack from documents held on the **Portal** as set out in Tables A to G, below.

(2) When the **claimant** confirms their intention to start court proceedings, the **Portal** will automatically generate a notice to the **compensator** that the **claimant** intends to start

proceedings, for the purposes of section 152 of the Road Traffic Act 1988.

(3) The **Portal** will determine the reason for starting proceedings from the steps taken in the **claim**. Where there are options provided for the reason, the **claimant** will first be asked to select the reason for starting court proceedings. This will enable the **Portal** to show the Court Pack contents from the relevant table.

(4) The **claimant** selects the documents to be included in the Court Pack from those shown on the **Portal**. Once all the documents have been selected, the **Portal** will then generate a list (“the Court Pack list”) showing the documents selected.

(5) The Court Pack list is generated on the **Portal** for sending to the **compensator** under paragraph 12.4.

(6) Support for **unrepresented claimants** who are unable to prepare the Court Pack on the **Portal** can be obtained from the **Portal Support Centre**.

### **Sending the Court Pack list**

#### **12.4**

(1) The **claimant** must send the Court Pack list to the **compensator** via the **Portal**—

(a) no later than starting court proceedings due to limitation only;

(b) in any other case at least 5 working days before starting court proceedings.

(2) The **Portal** will show the **compensator** which type of proceedings the **claimant** intends to start.

(3) Where the **claimant** wishes to start proceedings for failure to pay an agreed interim payment or an agreed settlement within the time specified in this Protocol (the procedure in paragraph 12.12 and Table G (1) or G (2)), they must not do so if, before the end of the period specified in paragraph (1)(b) above, the **compensator** pays the agreed amount.

### **Other linked claims**

#### **12.5**

(1) Paragraph 5.8 explains the process by which the **Portal** runs a search for claims which are linked and automatically notifies the parties in each of these claims that there are linked claims.

(2) Where liability remains in dispute at the Court Pack stage, the **claimant** will be asked when completing the steps needed under paragraph 12.4 above if they are aware of any claims by other persons arising out of the same **accident**. These may be claims being made under this Protocol or under other protocols or procedures.

(3) This is so that the court form provides information to enable the court to consider whether directions are needed to link such claims together.

### **Responding to the Court Pack list**

#### **12.6**

(1) The **compensator** has 5 working days to review the contents of the Court Pack list on the **Portal**. The reason for the **claimant** starting proceedings will be shown when the **compensator** is reviewing the Court Pack list.

(2) The **compensator** may add documents to the Court Pack list but may not remove any documents selected by the **claimant**. Where the **compensator** amends the contents of the Court Pack list, they must follow the procedure outlined in paragraph 12.9 to 12.12 below as applicable and send a corrected Court Pack list to the **claimant**.

(3) The **claimant** must then use the corrected Court Pack list to start court proceedings.

(4) Where the **compensator** fails to respond within the period stated in paragraph (1), the Court Pack list is treated as agreed and the **claimant** may start proceedings.

(5) Where the **compensator** intends to nominate a legal **representative** to accept service, the name and address and contact details of the legal **representative** should be provided to the **claimant** within the relevant period specified in paragraph (1) above. That address will then appear as the address for service in the court form.

(6) Where there is no address for the **defendant** on the Portal, the **compensator** will be asked at this point whether they—

- (a) can provide an address for the **defendant**; or
  - (b) wish to nominate a legal **representative** under paragraph (5) above,
- failing which the **compensator** will in this instance only be named in the court proceedings as the defendant.

## **Papers to be sent to court**

### **12.7**

- (1) Where the **compensator** has either responded under Paragraph 12.6 or failed to respond within the period stated, the **claimant** will be prompted on the **Portal** to complete the steps needed to generate the papers to be sent to court.
- (2) The **claimant** will first be asked the necessary questions to complete the relevant court form as set out in Table 1 at paragraph 12.2 above.
- (3) The **Portal** will create the court form and the List of Documents for Court, which shows the documents to be included in the Court Pack and must be added to the front of the Court Pack when created.
- (4) The **claimant** must—
  - (a) print off the court form and sign the **statement of truth**;
  - (b) print off the List of Documents for Court and the documents to be included in the Court Pack;
  - (c) put together the Court Pack, with the List of Documents for Court at the front and the other documents in the same order as listed.
- (5) The signed court form and the Court Pack must be sent to the court with the relevant court fee to start proceedings.

## **MIB or RTA Insurer as second defendant**

### **12.8**

Where the **MIB** or an **RTA insurer** has responded to the **claim** under this Protocol as **compensator** and has consented to be named in the proceedings as a second defendant,

this section will apply and the process under paragraph 12.7 above will create a court form showing the **MIB** or **RTA insurer** (whichever applies) as second defendant.

**Court Pack contents (cases for determination of liability under section 2 of Practice Direction 27B)**

**12.9**

(1) Where liability has been denied in full and the court is asked to determine liability, the Court Pack to be prepared by the **claimant** must contain the documents and evidence set out in Table A.

(2) The court form generated is Form RTASC L.

**Table A (liability dispute, liability denied in full)**

<b>Documents and Evidence</b>	<b>Notes</b>
The <b>Small Claim Notification Form</b> including the <b>claimant's</b> version of events	
Any witness statements uploaded to the <b>Portal</b>	
Any police report uploaded to the <b>Portal</b>	
Any photographs uploaded to the <b>Portal</b>	
Any sketch plans uploaded to the <b>Portal</b>	
Any dashcam, or video clips uploaded to the <b>Portal</b>	The <b>claimant</b> must tick the appropriate box on the court form to indicate that such footage will be made available to the court at the hearing, but need not be sent to the court with the Court Pack
Any other documents or data uploaded to the <b>Portal</b> in support of the <b>claimant's claim</b>	
The Compensator's Response	including summary of facts or witness summary if applicable
The <b>defendant's</b> version of events supported by a <b>statement of truth</b>	
Any other documents uploaded to the <b>Portal</b> by the <b>compensator</b> , including witness statements, photos, sketch plan, dashcam or	

video clips	
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**Court Pack contents (cases for trial under sections 4, 5 or 6 of Practice Direction 27B)**

**12.10**

(1) This paragraph applies where the parties have been unable to agree settlement and either—

- (a) liability has been admitted by the **compensator** in part but remains in dispute;
- (b) the **claim** includes a claim for **non-protocol vehicle costs**; or
- (c) the **claimant** applies for an **uplift** in exceptional circumstances.

(2) Where the Court is asked to assess the value of the **claim** in a case to which paragraph (1) applies, the Court Pack to be prepared by the **claimant** must contain the documents and evidence set out in Table B (1) and—

- (a) where liability remains in dispute, the documents and evidence in Table A;
- (b) where the **claim** includes a claim for **non-protocol vehicle costs**, the documents and evidence in Table B (2).

(3) The court form generated is Form RTASC D.

**Table B (value dispute, liability disputed, may include NVC or uplift)**

<b>Documents and evidence</b>	<b>Notes</b>
<b>B (1) (value dispute, general)</b>	
The <b>Small Claim Notification Form</b>	
The Compensator's Response	
The Court Valuation Form	
The <b>claimant's</b> List of Losses	
All documents in support of the List of Losses uploaded to the <b>Portal</b>	
The <b>fixed cost medical report</b> uploaded to the <b>Portal</b>	

Any other medical report uploaded to the <b>Portal</b>	
Any medical records or photographs of the injury uploaded to the <b>Portal</b>	
Details of any challenge to a medical report and the response	
Invoices for any medical report and for any other disbursement, which the <b>compensator</b> has not already paid for	
Record of Offer and Acceptance Interim Payment	
	<u><b>DO NOT</b> include details of any offers made by the <b>compensator</b> or the <b>claimant</b> that have not been accepted</u>
<b>B (2) (non-protocol vehicle costs)</b>	
<ul style="list-style-type: none"> <li>• Any <b>non-protocol vehicle costs claim</b> document</li> <li>• Any evidence uploaded to the <b>Portal</b> in support of the <b>claim</b> for <b>non-protocol vehicle costs</b></li> <li>• Any <b>non-protocol vehicle costs</b> response document</li> </ul>	

**Court Pack contents (cases for assessment under section 3 of Practice Direction 27B)**

**12.11**

(1) Where the parties have been unable to agree settlement under the RTA Small Claim Protocol and—

- (a) liability is not in dispute;
- (b) there is no claim brought for **non-protocol vehicle costs**; and
- (c) there is no application for **uplift** in exceptional circumstances,

the Court Pack to be prepared by the **claimant** must contain the documents and evidence set out in Table C below.

(2) The court form generated is Form RTASC Q.

**Table C (value dispute, no liability dispute, no claim for NVC or uplift)**

Documents and evidence	Notes
The <b>Small Claim Notification Form</b>	
The Compensator's Response	including summary of facts or witness summary if applicable
The <b>defendant's</b> version of events (if provided) supported by a <b>statement of truth</b>	
The Court Valuation Form	
The <b>claimant's</b> List of Losses	
All documents in support of the List of Losses uploaded to the <b>Portal</b>	
Any <b>fixed cost medical report</b> uploaded to the <b>Portal</b>	
Any other medical report uploaded to the <b>Portal</b>	
Any medical records or photographs of the injury uploaded to the <b>Portal</b>	
Details of any challenge to a medical report and the response	
Invoices for any medical report and for any other disbursement, which the <b>compensator</b> has not already paid for	
Record of Offer and Acceptance Interim Payment	
	<b><u>DO NOT</u></b> include details of any offers made by <b><u>the compensator</u></b> or <b><u>the claimant</u></b> that have not <b><u>been accepted</u></b>

**Court Pack contents (cases for determination under sections 7 to 11 of Practice Direction 27B)**

**12.12**

(1) Where proceedings are started—

(a) due to limitation, the Court Pack to be prepared by the **claimant** must contain the documents and evidence set out in Table D;

(b) to make an application for an interim payment previously requested, the Court Pack to be prepared by the **claimant** must contain the documents and evidence set out in Table E;

(c) in respect of non-payment of an agreed interim payment, the Court Pack to be prepared by the **claimant** must contain the documents and evidence set out in Table G (1);

(d) in respect of a dispute over **fees**, the Court Pack to be prepared by the **claimant** must contain the documents and evidence set out in Table F;

(e) in respect of non-payment of an agreed settlement, the Court Pack to be prepared by the **claimant** must contain the documents and evidence set out in Table G (2).

(2) The court form generated is Form RTASC O.

**Table D (limitation)**

Documents and Evidence	Notes
The <b>Small Claim Notification Form</b>	The <b>SCNF</b>

**Table E (interim payment request)**

Documents and Evidence	Notes
The <b>Small Claim Notification Form</b>	
The Compensator's Response	
The date stamped Interim Request Form	
Details of the items of <b>other protocol damages</b> claimed to date	
All documents uploaded to the <b>Portal</b> in support of the <b>other protocol damages</b>	
Medical report if relevant	The medical report would only be relevant where it demonstrates that treatment has been recommended and/or sets out the cost and those costs form part of the interim payment request.

**Table F (dispute over fees)**

<b>Documents and Evidence</b>	<b>Notes</b>
The <b>Small Claim Notification Form</b>	
The Compensator's Response	
The Court Valuation Form	
The <b>claimant's</b> List of Losses	
All documents in support of the List of Losses uploaded to the <b>Portal</b>	
Any <b>fixed cost medical report</b> uploaded to the <b>Portal</b>	
Any other medical report uploaded to the <b>Portal</b>	
Any medical records or photographs of the injury uploaded to the <b>Portal</b>	
Invoices for any medical report and for any other disbursement, which the <b>compensator</b> has not already paid for	
The <b>compensator's</b> reasons for not paying any item of <b>fees</b>	

**Table G (failure to pay agreed sums)**

<b>Documents and Evidence</b>	<b>Notes</b>
<b>G (1) failure to pay agreed interim</b>	
The <b>Small Claim Notification Form</b>	
Date stamped Record of Offer and Acceptance Interim Payment	
<b>G (2) failure to pay agreed settlement</b>	
The <b>Small Claim Notification Form</b>	
Date stamped Record of Offer and Acceptance.	

**ANNEX A**

**Defendant's Version of Events**

This document must be signed by the defendant driver:

My version of events is:

Version of events
-------------------

The version of events stated in this form must be the same as that provided in the compensator's response where it has been confirmed that the compensator has the defendant's version of events.

Statement of Truth:

I believe that the facts stated in this Defendant's Version of Events are true

I understand that proceedings for contempt of court may be brought against me if I make, or cause to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed.....

Name.....

Dated.....

## ANNEX B

### Standard instructions for use by compensator requesting further report on claimant's behalf

We send these instructions on behalf of the claimant [NAME and ADDRESS], who has consented to this request. Please note that we are not acting as the claimant's representative in this matter and the claimant is unrepresented and brings this claim via the RTA Small Claims Protocol.

You should contact the claimant direct to arrange an appointment. Your report **must** be sent direct to the claimant for consideration. **No copy should be sent to us.**

We can confirm that we will meet your reasonable fees for preparation of the report.

The claimant's injuries follow a road traffic accident on [date]. [Liability/ Fault] has been [admitted], [admitted in part].

#### Reason for instruction:

The claimant has advised that they need a further report from a [type of expert] because:

*[delete as appropriate]*

- it is recommended in the first expert's report; or
- the first medical report recommends that further time is required before a prognosis of the claimant's injuries can be determined; or
- the claimant is receiving continuing treatment; or
- the claimant has not recovered as expected in the original prognosis.

#### Previous medical report

*[Delete as appropriate]*

The claimant has provided a copy of the first medical report which is attached to these instructions:

or

The claimant has not provided a copy of the first medical report to us but will bring a copy of it to their appointment.

#### Further information [if applicable]

The claimant has provided further information about their request for a further report as follows: *details*

It is not expected that you will need to review any medical records. If you consider that they are required before you can express a final opinion please contact the claimant to arrange obtaining the relevant records.

#### Instruction

Please would you arrange to examine the claimant and provide a report on their injuries arising from the accident. You should make clear when expressing a prognosis for recovery as to when the period of recovery starts from and ends respectively.

## ANNEX C

### Non-Protocol Vehicle Costs

#### Claim Document

##### Guidance:

1. This document should be completed and signed by you, the claimant, once you have completed all of the relevant screens on the portal and obtained all of the relevant supporting evidence from the organisations handling these losses.
2. If you do not know the answer to any of the questions you should contact the company that provided the relevant service.
3. Once this document is completed and signed it must be uploaded to the portal. The compensator will then have 15 days to upload the response document.

**I have the following non-protocol vehicle costs to be added to my claim (you must complete each one that applies to you):**

##### **A. Costs of Repairs or Write off value of the vehicle**

- The company which handled this loss on my behalf is (*e.g. your insurer / another company etc*):

Company name:

- I have attached the following documents in support of my claim for these losses (*e.g. Engineers report, repair Invoice or estimate, photographs of the damage*)

Documents:

1. ...
2. ...
3. ...
4. ...

##### **B. Recovery Costs**

- The company which handled this loss on my behalf is: (*e.g. your insurer / another company etc*):

Company name:

- I have attached the following documents in support of my claim for these losses (e.g. *Recovery invoice, engineers report, repair Invoice*):

Documents:

1. ...
2. ...
3. ...

### C. Storage costs

- The company which handled this loss on my behalf is (e.g. *your insurer / another company etc*):

Company name:

- I have attached the following documents in support of my claim for these losses (e.g. *Storage invoice, engineers report, repair Invoice*)

Documents:

1. ...
2. ...
3. ...
4. ...

### D. Temporary vehicle

- The company which arranged the hire of the temporary vehicle on my behalf is (e.g. *your insurer / another company etc*)

Company name:

- Hire charge invoice(s): I have attached the following documents in support of my claim (e.g. *rental agreement / hire agreement*)

Documents:

1. ...
2. ...
- 3.

- Hire period: the period(s) of hire I am claiming for is/are:

Hire start date:

Hire end date:

- My need to hire a replacement vehicle: *(you must state all facts relied up to explain why you needed to hire a replacement vehicle for the duration of the hire period.)*

I needed the vehicle because:

- The daily rate(s) of hire I am claiming is/are:

Daily hire rate as shown on rental agreement: £

- The rate of hire is reasonable for the following reasons *(you must state all facts relied up by you to explain why the rate of hire was reasonable):*

Reasons:

- The period of hire is reasonable for the following reasons *(you must state all facts relied up by you to explain why the period of hire was reasonable):*

Reasons:

- My claim for hire is a claim for “credit hire”. I was unable to afford to pay for the hire myself (this is known as “impecuniosity”) for the following reasons: *(you must state all facts relied up by you to explain why you were not able to afford to pay for the hire of the replacement vehicle.)*

I was unable to meet the cost of the hire because:

- I understand that I will be directed by the Court to disclose financial and other documents supporting my response on impecuniosity after proceedings have been

issued.

**Statement of Truth:**

I believe/The Claimant believes that the facts stated in this Non-Protocol Vehicle Costs Claim Document are true

I/The Claimant understand(s) that proceedings for contempt of court may be brought against me/them if I/they make, or cause to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

**Signed**.....

**Name**.....

**Dated**.....

If signing on behalf of a firm or company give position or office held

[text box]

[Date field]

## ANNEX D

### Non-Protocol Vehicle Costs

#### Response Document

Guidance: this document must be completed by the compensator and uploaded onto the portal within 15 days of the claimant uploading a Non-Protocol Vehicle Costs Claim Document.

The following losses are disputed (complete each relevant section)

#### Costs of Repairs / Write off value of the vehicle

This loss is disputed for the following reasons:

The compensator attaches the following relevant documents (if any):

1. ...
2. ...
3. ...

#### Recovery Costs

This loss is disputed for the following reasons:

The compensator attaches the following relevant documents (if any):

1. ...
2. ...
3. ...
- 4.

**Storage Costs**

This loss is disputed for the following reasons:

The compensator attaches the following relevant documents (if any):

1. ...
2. ...
3. ...

**Temporary Vehicle**

This loss is disputed for the following reasons:

The compensator attaches the following relevant documents (if any):

1. ...
2. ...
3. ...

The court is requested to make the following modified directions in respect of the claim for non-protocol vehicle costs if not the standard directions in Appendix B to PD 27:

Alternate / additional directions required:

1. ...
2. ...
3. ...
- 4.
- 5.

**Statement of Truth**

The compensator believes that the facts stated in this Non-Protocol Vehicle Costs Response Document are true.

I understand that proceedings for contempt of court may be brought against me if I make, or cause to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised to sign on behalf of the compensator.

Signature.....

Name.....

Position.....

Date.....