Low Value Personal Injury Claims in England and Wales

The Pre Action Protocol for low value personal injury (Employers’ Liability and Public Liability) claims came into effect on 31 July 2013 and with it brought a radical overhaul to how certain injury claims are resolved in England and Wales. This article examines those changes and provides guidance to defendant companies and their insurers on how to deal with them.

What is it?

The Pre Action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims (“the Protocol”) applies to any employer’s liability or public liability claim which is between £1,000 and £25,000 in value and arose from an accident within the English jurisdiction after 31 July 2013 (or is a employers’ liability disease cases where no letter of claim has been sent to the defendant prior to 31 July 2013).

The Protocol is designed to expedite and cut the costs of low value personal injury claims.

A key component of the Protocol is the Ministry of Justice claims portal (“the Portal”). This is an online facility provided by Claims Portal Ltd that enables secure communication and claims processing facility for certain claims falling within the Protocol.

There is a number of claims that are excluded from this system and in certain situations claims will exit the online Portal.

Once a claim has exited, it cannot re-enter the Portal but it will continue under the Pre-Action Protocol for Personal Injury Claims with the Claims Notification Form (“CNF”) standing as the Letter of Claim (unless insufficient information has been given). The defendant will then have three months from the date the CNF was acknowledged to investigate and provide a substantive response on liability.

A Portal claim can proceed through a number of different stages before it is resolved, the most relevant of which are:

Stage 1

The claimant commences a formal claim by completing the CNF. This replaces the Letter of Claim for cases governed by the Protocol.

If the defendant company or its insurer is already registered on the online Portal the CNF is sent to the defendant or the defendant’s insurer through the Portal system. This does mean that the Portal needs to be checked everyday to ensure that any new claims are identified because no separate notification is sent. This is important because there is a requirement for the defendant (or insurer) to send an electronic acknowledgement to the claimant within one day.

It is not clear what the outcome is if a defendant fails to send an electronic acknowledgement within one day. It is unlikely that the claim will exit the Portal, but the Portal itself does not give any guidance and to date there have been no court decisions on the issue either.

Where either the defendant company or its insurer is not registered on the Portal then the CNF must be sent to its registered office or principle place of business.

The defendant then has 30 or 40 days (depending on whether the claim is an employers’ or public liability one respectively) to complete and send to the claimant the CNF response. Failure to do this will result in the claim exiting the Portal.

To remain within the Portal, liability must be admitted. If it is, the claim moves to Stage 2.

Stage 2

This stage is concerned with assessment of damages and negotiations between the parties. Again, it is all conducted through the online Portal.

There are provisions that entitle a claimant to request an interim payment and the Protocol sets out what information must be provided by the claimant to the defendant and what the timescales are for paying over the funds.

The Protocol stipulates the steps that the claimant and defendant need to take, and the time for doing so, in order to try to settle the claim through an exchange of offers and counter-offers.

If settlement is reached within the required period, the defendant has 10 days to pay the agreed damages and Stage 2 costs.

If no settlement is reached, the claim moves to Stage 3.

Stage 3

Where the case has not settled, the claimant must send the defendant a court proceedings pack.

It is important to note that within 15 days of receiving the court proceedings pack, the defendant must pay to the claimant the amount of the defendant’s final offer (less any CRU – Compensation Recovery Unit) together with Stage 2 costs and any disbursements.

Thereafter the claimant files the court proceedings pack with the court and applies for an assessment of damages hearing which can be a paper or oral hearing.

Protocol Portal Costs

The significant benefit conferred upon defendants and their insurers by the Protocol is the fixed recoverable costs regime that applies to claimants who are legally represented.

These costs (exclusive of VAT) are set out below.

<table>
<thead>
<tr>
<th>Claim Value</th>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 1 + 2 Total</th>
<th>Stage 3 Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>£1,000 - £10,000</td>
<td>£300</td>
<td>£800</td>
<td>£1,100</td>
<td>£250</td>
</tr>
<tr>
<td>£10,001 - £25,000</td>
<td>£300</td>
<td>£1,300</td>
<td>£1,600</td>
<td>£250</td>
</tr>
</tbody>
</table>
These fixed costs are substantially lower than claimant solicitors were able to recover under the previous regime. Claims that leave the Protocol will still be governed by a fixed costs regime, albeit a different one.

**Tactics**

The Protocol/Portal poses a number of challenges for companies and Insurers.

Some claimants are trying to inflate the damages aspect of claims beyond £25,000 to take them outside of the Protocol and Portal regime and thereby avoid the fixed costs system. Therefore defendant companies and their insurers need to be vigilant when considering the quantum of claims. However, it is the claimant who has the final say on the claim valuation. If this causes the claim to be conducted outside of the Portal any dispute about the true and proper valuation of the claim will be dealt with at the conclusion of the case and claimants risk being penalised on costs if they have acted unreasonably.

On the other hand, CNF's are being submitted for claims which are clearly multi track in value presumably in the hope of securing liability admissions and then exiting the Portal due to value but still seeking to rely on the admission of liability. Anyone dealing with the Stage 1 process should remain vigilant when receiving a CNF as to whether the claim could be multi track in value. Also, consideration needs to be given to admitting liability on the merits rather than on the assumption that the value is less than £25,000.

Some claimants provide insufficient information in the CNF. In such cases, further information should be requested immediately with a warning that should the information not be forthcoming and the claim exits the Portal (due to inadequate information in the CNF), representations will be made to limit the opponent to "in portal" fixed costs.

Injuries arising from accidents on board ships will not be appropriate for the Portal if the ship was, at the time of the accident, outside of the applicable territorial waters. Such cases will be regarded as being outside of England & Wales for the purposes of the Protocol.

**Comment**

Portal claims confer a significant benefit to defendants because of a fixed costs regime that applies to it. In many cases it will therefore be to the defendant's advantage to keep a claim in the Portal but potential defendants should be alive to those claims that should properly exit the Protocol and Portal. There will be cases where, even taking into account the potential costs benefits, liability should be denied or contributory negligence pursued.

Defendant companies and their insurers should therefore review internal claims handling procedures to take account of the Protocol requirements and specifically the requirement for the initial prompt notification and subsequent time limits.

We are grateful to Scott Yates, Director/Solicitor Myton Law, for this article.