

Frequently asked questions

Low Value Personal Injury Claims in Road Traffic Accidents

Stage 3

Q72. Will paper hearings be allowed for child claims?

A72. No. All child claims will require an oral hearing. The Association of Her Majesty's District Judges were very clear that due to the sensitivities and complexities involved in child claims the judge will always require an oral hearing whether to approve a settlement in pre-proceedings or where there is no settlement and the claim proceeds to a Stage 3 hearing. This is in line with the current Civil Procedure Rule 21.10 which provides that the approval of the court is required where, before proceedings are started, a claim is made by a child and a settlement is reached.

Q73. What happens if a child settlement is not approved at the settlement hearing?

A73. There are two options either the court can order that the claim is not suitable to be determined under the Stage 3 Procedure and should therefore exit or order a second settlement hearing. The fixed costs payable are set out in the child costs table attached at Annex A.

Q74. What will be the court fees payable under the new process?

A74. There will be no changes to the court fees that currently apply. It is expected that for these types of claims the fee that will be payable will be that under Schedule 1.1 of the Civil Proceedings Fees (Amendment) Order 2008. For child settlement hearings the fee will be as at Schedule 1.5.

Q75. What happens if the judge requests further evidence?

A75. Although the parties involved in the process are only able to submit the documents set out in the process, the court will have discretion to request further evidence if it considers it necessary. If the claim proves more complex then it will exit and Stage 3 fixed costs will not be payable.

Q76. What provisions will there be for additional witness statements, schedules of case law etc to be provided to the court?

A76. The rules will not provide for witness statements. The decision will be made on the Court Proceedings Pack and supporting evidence for disbursements etc. There is a box against each head of damage in the Stage 2 Settlement Pack for each party to add comments explaining why an offer has not been accepted and their valuation. The parties are not expected to provide an in depth discussion of quantum etc. But the boxes are expandable so the parties can provide whatever additional information they wish in the Stage 2 Settlement Pack form. This is the opportunity for each part to set out their arguments against each disputed head of damage. Where settlement is not reached this information will be transferred by the claimant solicitor to the Court Proceedings Pack in preparation for Stage 3. The documentation required is the same whether there is to be an oral hearing or a decision on the papers.

Q77. Are Part 18 questions covered under the new process?

A77. This is a streamlined process and the papers to be submitted to court are agreed by the parties at the end of Stage 2 as part of the process for submission of the Court Proceedings Pack. Therefore there is no provision for Part 18 questions in this process.

Q78. Will the process provide for issue in the claimant's home court?

A78. The current Civil Procedure Rules will apply for the venue at which the claim is issued. This is normally at the discretion of the claimant and can if he chooses to be at their home court.

Q79. What disbursements will be recoverable under the new process?

A79. The process will provide for the following disbursements to be recoverable:

- medical records (this will only be where the medical expert has requested medical records);
- medical report(s) (these will only be from those that are allowed under the process. Any obtained outside the process will be at the discretion of the defendant if settlement occurs in pre-proceedings and the court if the claim proceeds to a hearing.);
- an engineer's report;
- a search of the records of the: Driver Vehicle Licensing Authority and the Motor Insurance Database;
- The amount of the insurance premium or where a membership organisation undertakes to meet liabilities incurred to pay the costs of other parties to proceedings, a sum not exceeding such additional amount of costs as would be allowed under section 30 of the Access to Justice Act 1999 in respect of provision made against the risk of having to meet such liabilities;
- Court fee in relation to child claims;
- Court fee payable where proceedings are started as a result of a limitation period that is about to expire;

- Court fee in respect of the Stage 3 Procedure; and
- Any other disbursement that has arisen due to a particular feature of the dispute.

Q80. Are the costs of a translator/interpreter a permitted disbursement in the new process?

A80. This is not provided for specifically as is the case currently. This will be recoverable as parties do at the moment.

Q81. Will ATE premiums be recoverable?

A81. The amount of the insurance premium as appropriate under section 30 of the Access to Justice Act 1999 will be recoverable as a disbursement.

Q82. Why not fixed amount rather than reasonable amount towards disbursements.

A82. The Ministry have not consulted on fixing disbursements in this process. It was agreed that the process will allow for a reasonable amount to be payable so that cash flow for claimant solicitor would be maintained.

Q83. Will there be a requirement for insurers to nominate a solicitor to accept service or must service of the Stage 3 proceedings be on the defendant as now?

A83. The Court Proceedings Pack provides the facility for the defendant to name a legal representative to accept service of legal proceedings on the defendant's behalf. The defendant must also state who the legal representative is.

Q84. How much detail will be given on the reasons for the decision at a paper hearing?

A84. There should be sufficient information for the parties to decide on whether to appeal. The sub-committee of the Civil Procedure Rule Committee has developed a Form of Judgment Order template for use at the discretion of each Judge.

Q85. How long will hearings last and can the claimant attend?

A85. It is quite normal at the moment for these types of hearing to vary from 10–30 minutes at the maximum. There is no reason why the claimant cannot attend but they will not be expected to give evidence and there is no reason for them to do so, except in child hearings where it is the court's usual practice for the child to attend alongside the litigation friend.

Q86. Is there a right of appeal?

A86. Both the defendant and the claimant will have the same right of appeal.

Q87. What happens if insurers do not respond to an acknowledgment of service?

A87. This will not be specified as part of the process rules and therefore parties will be expected to follow the current process.

Q88. Will the claimant be able to keep Stage 1 and Stage 2 fixed costs if at stage 3 the defendant wins in accordance with Part 36?

A88. Yes as they are paid at the end of each stage. However, the 12.5% success fee will not be payable.

Q89. Is VAT payable in addition to fixed costs, disbursements and an appropriate success fee and ATE premium?

A89. The process rules will provide that VAT will be payable in addition to fixed costs only. The process does not fix disbursements, ATE premium and therefore this will be payable as agreed between the claimant solicitor and the relevant third party.

Q90. Where the claimant beats the offer who determines the amount of interest/uplift?

A90. As is the case currently with Part 36, this will be at discretion of the court.

Q91. Will the new Part 36 be set out in the Rules?

A91. The costs consequences for the new process will be set out in a separate section of Civil Procedure Rule Part 36.

Annex A

The costs for **child claims** would apply as follows:

a. Stage 1	£400	
b. Stage 2	£800	Stage 1 and 2 costs payable at the end of approval hearing whether settlement approved or not. 12.5% success fee payable when claim settled at end of Stage 2 on 'a' and 'b'.
c. Stage 2 Advice on Quantum	£150	This will be payable on top of the £800 at the end of stage 2 whether the claim goes to an approval hearing (uncontested) or a Stage 3 (contested hearing).
Settlement at Stage 2		
d. Stage 3- First settlement hearing (uncontested) and court approves settlement*	£500 [^]	<ul style="list-style-type: none"> ▪ £500 – Always payable whether or not the settlement is approved. Plus ▪ 12.5% success fee if court approves settlement on 'a-d' above.
di. Stage 3 – Court orders second settlement hearing and approves settlement		<ul style="list-style-type: none"> ▪ At first settlement hearing – Stage 1 and 2 fixed costs are payable. ▪ At second settlement hearing – £250 legal representative costs and £150 advice on quantum; £250 advocate costs for one of the hearings; Plus 12.5% success fee on all fixed costs. ▪ Courts discretion – Legal representative (£250) and/or advocate costs (£250) and 12.5% success fee on these costs only
Settlement in Stage 3		
e. Stage 3 (application for stage 3 contested hearing but settlement occurs before trial commences therefore approval hearing only needed) and court approves settlement	£500 [^]	<ul style="list-style-type: none"> ▪ £500 – Always payable whether or not the settlement is approved. Plus ▪ 12.5% success fee if court approves settlement on 'a-d' above.
ei. Court orders second settlement hearing and approves settlement		<ul style="list-style-type: none"> ▪ At first settlement hearing Stage 1 and 2 fixed costs payable; ▪ At second settlement hearing – £250 legal representative costs and £150 for advice on quantum; £250 for advocate costs for one of the hearings Plus 12.5% success fee on all fixed costs ▪ Courts discretion – Legal representative (£250) and/or advocate costs (£250) and 12.5% success fee on these costs only
f. Stage 3 (contested hearing)	£500 [^]	<ul style="list-style-type: none"> ▪ £500 continues to be payable even if judge directs cases out of the process, subject to costs being payable (under Part 36). Plus ▪ 100% success fee on stage 3 costs only where the claimant wins in accordance with Part 36. Plus ▪ 12.5% success fee on 'a - c' above.

Key

*for the court to decide on the settlement reached by the parties at the end of Stage 2.

[^]This is split equally between solicitors costs and advocates costs.

Annex B

The following costs apply for **non child** claims

a. Stage 1	£400	Payable at the end of Stage 1.
b. Stage 2	£800	12.5% success fee payable on 'a' and 'b' where case settles
a. Stage 3 Issue and settlement before trial commences	£250	12.5% success fee on 'a - c'. (£250 plus success fee will only be payable where the offer accepted by the claimant is higher than the final offer by the defendant, at the end of stage 2, as contained in the Stage 3 settlement pack)
d. Stage 3 Paper hearing	£250	100% success fee on Stage 3 paper hearing cost only, where costs are payable (under PART 36). Plus 12.5% success fee on 'a' and 'b'.
e. Stage 3 Oral Hearing	£500 [^]	100% success fee: <ul style="list-style-type: none"> ▪ on stage 3 oral hearing costs only ▪ and where the claimant wins in accordance with Part 36. Plus 12.5% success fee on 'a' and 'b'
f. Defendants costs fixed at same level for Stage 3 Only i) paper hearing ii) Oral hearing	i) £250 ii) £500	100% success fee (only payable if the defendant operates a CFA) <ul style="list-style-type: none"> ▪ on stage 3 oral/paper hearing costs) only ▪ and where the defendant wins in accordance with Part 36.

Key

[^]This is split equally between solicitors costs and advocates costs.