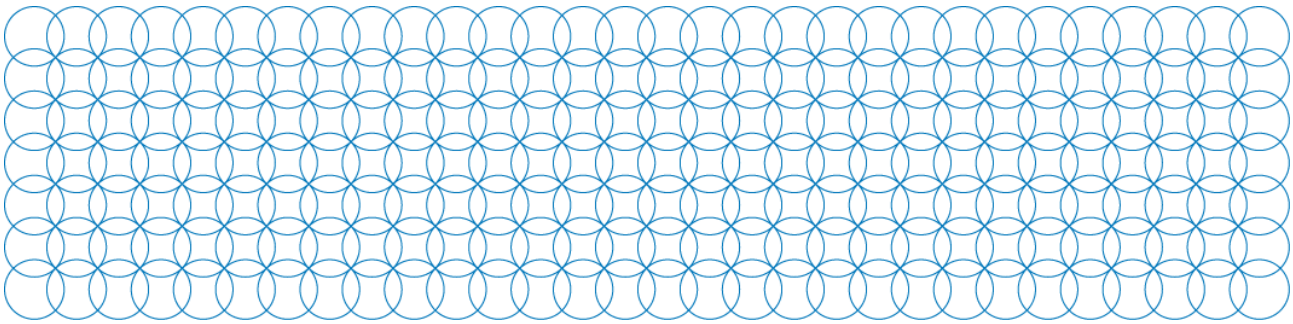
Ministry of Justice

Whiplash reform programme:
Consultation on independence in medical reporting and expert accreditation

This consultation begins on Thursday 4 September 2014
This consultation ends on Wednesday 1 October 2014



Ministry of Justice

Whiplash reform programme:

Consultation on independence in medical reporting and expert accreditation

A consultation produced by the Ministry of Justice. It is also available on the Ministry of Justice website at www.justice.gov.uk

About this consultation

To:	All stakeholders with an interest in improving the quality of medical examinations and reporting used to support low value soft tissue personal injury (whiplash) claims arising from road traffic accidents.
Duration:	From 04/09/14 to 1/10/14
Enquiries (including requests for the paper in an alternative format) to:	Scott Tubbritt Ministry of Justice 4.37, 102 Petty France London SW1H 9AJ Tel: 020 3334 3157 Fax: 0870 739 4268 Email: whiplashcondoc@justice.gsi.gov.uk
How to respond:	Please send your response by Friday 26 September 2014 to: Scott Tubbritt 4.37, Ministry of Justice 102 Petty France London SW1H 9AJ Tel: 020 3334 3157 Fax: 0870 739 4268 Email: whiplashcondoc@justice.gsi.gov.uk
Additional ways to feed in your views:	Open stakeholder meetings will also taking place during this period. If you wish to attend one of these sessions please confirm by Thursday 11 September by sending an email to: whiplashcondoc@justice.gsi.gov.uk
Response paper:	A response to this consultation exercise is due to be published by 28/11/14 at http://www.justice.gov.uk

Contents

Foreword

Earlier this year I wrote to interested stakeholders to announce the implementation of the first tranche of the Government's whiplash reform programme. These reforms will be implemented on 1 October and they build on our previous much needed reforms to civil litigation funding and costs, introduced through provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Fixing the costs for medical reports in whiplash cases was an integral step in controlling the costs of civil litigation, and the first tranche of measures will provide certainty as to the cost of obtaining medical reports and the experts who can be used to provide them.

These changes are part of a continuing programme of work, and this consultation document introduces the Government's second tranche of reforms to improve the system for dealing with low-value whiplash claims. Taken together, these reforms will create an improved system which will deter unnecessary or speculative claims and ensure the genuinely injured can get the help they need.

This second phase of the programme focuses on the quality of the medical evidence produced in support of whiplash claims. We plan to introduce measures which will tackle the commissioning of medical reports to ensure any conflicts of interest are removed from the system and which will also provide for the accreditation of experts.

My officials and their supporting cross-industry groups of stakeholders have been working together to develop the measures outlined in this document. I look forward to receiving the input of the wider stakeholder community on the draft rules included in this document through which the measures will be implemented. The procedural changes following this consultation will be put to the Civil Procedure Rule Committee at its October meeting, and the intention is for these rules to come into force early next year.

Reforming a system is often a difficult process. The input of those with experience of the different parts of the system to exercises such as this can be extremely useful in clarifying the challenges and identifying solutions. So I encourage you to respond to the questions asked as fully as you can.

In addition, my officials will be hosting a number of open meetings to discuss the issues raised by the consultation during the week commencing 15 September. Places are likely to be limited so please send an email to whiplashcondoc@justice.gsi.gov.uk confirming your interest in attending one of these sessions by close on Thursday 11 September.

EDWARD FAULKS QC
MINSTER OF STATE FOR JUSTICE

Executive summary

1. On 1 April 2013 the Government introduced a number of reforms to the area of civil litigation funding and costs through provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. These reforms were aimed at removing unnecessary costs from the system, and we have already seen a fall in premiums paid by motorists - the latest ABI comprehensive premium survey (August 2014) shows a 13% drop in actual premiums[1] paid over the past two years.

2. The whiplash reform programme published on 23 October 2013 complements and builds on these earlier reforms. Action to reduce the number of speculative or fraudulent claims made each year will lower the costs for insurers, and the Government fully expects insurers to continue to meet their commitment to pass on these savings to consumers.

3. The Government has recently published details relating to the implementation of the first tranche of whiplash reforms published in last October's reform programme. The key reforms are:

    - fixed costs for medical reports;
    - limiting medical evidence to a single report in most cases;
    - prohibiting the reporting expert from also being the treating physician;
    - discouraging pre-medical offers to settle; and
    - allowing defendants to give their account of the accident to the medical expert where appropriate.

4. These reforms have been implemented via changes to the Civil Procedure Rules (CPR) and the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (the Pre-Action Protocol). The statutory instrument making these changes was laid on 1 August and will come into force on 1 October 2014.

5. Work has continued on the next phase of reform and phase two will cover further measures to ensure independence in the commissioning process for whiplash claims. The Government is committed to ensuring there is proper independence in the system and that firms who commission reports should not have a financial interest in the medical reporting organisation used to provide the medical report.

6. Measures to introduce higher standards through the accreditation of experts will go some way to addressing this issue, but more needs to be done. The Government has decided to tackle the problem through the introduction of a new central independent IT hub through which suitable medical experts or medical reporting organisations can be sourced.

[1] ABI average comprehensive motor insurance premium tracker - Figures relate to Quarter 1 2012 and Quarter 1 2014. Figures are not verified by Government. https://www.abi.org.uk/News/Industry-data-updates/2014/08/ABI-average-motor-insurance-premium-tracker-Q2-2014-data

7. The second tranche of whiplash reforms will introduce a new accreditation scheme for experts the scheme will not be limited to doctors; experts from other disciplines who meet the required criteria will also be able to gain accreditation. The accreditation (and re-accreditation) requirements will include a peer review and accredited experts who do not continue to meet appropriate standards will face sanctions such as the removal of, or restrictions applied to, their accreditation.

8. These schemes must be owned and established by those operating in the personal injury sector. The Association of British Insurers has been approached by the Government - and has agreed - to meet the required start-up costs. Once it is established, we expect the new system to become self funding through receipt of accreditation/re-accreditation fees from experts.

9. The third element of this phase of reforms is the Government's support for the recent industry data sharing agreement relating to data on claimants patterns of behaviour. Representatives will be required to undertake a search on potential claimants' recent claims history, making them better placed to make a judgement on whether to proceed. This is an important step which will enable claimant representatives to tackle the issue of fraudulent or unnecessary claims at source.

10. Amendments to the Pre-Action Protocol and related CPR will be necessary to implement these reforms. This consultation seeks stakeholder views on those proposed amendments.

Introduction

This paper sets out for consultation proposed changes to the CPR and the Pre-Action Protocol. These changes will implement the second tranche of the Government's whiplash reform programme.

The consultation is aimed at all stakeholders with an interest in the pursuit and resolution of low value soft tissue (whiplash) personal injury claims. This will include (but is not restricted to) claimant lawyers, defendant lawyers, insurers and medical experts in England and Wales.

A Welsh language summary of the consultation paper will be available on request following the publication of this document.

Copies of the consultation paper are being sent to:

Academy of Medical Royal Colleges

Access to Justice Action Group

Association of British Insurers

Association of Her Majesty's District Judges

Association of Medical Reporting Organisations

Association of Personal Injury Lawyers

Association of Professional Claims Managers

Association of Regulated Claims Management Companies

British Chambers of Commerce

British Insurance Brokers Association

British Medical Association

British Orthopaedic Association

British Osteopathic Association

British Society for Rheumatology

Chartered Society of Physiotherapy

City of London Police - Insurance Fraud Enforcement Division

Civil Court Users Association

Civil Justice Council

Civil Procedure Rule Committee

Claims Standards Council

Confederation of British Industry

Council of Her Majesty's Circuit Judges

Disability Rights UK

Equality and Human Rights Commission

Federation of Small Businesses

Forum of Complex Injury Solicitors

Forum of Insurance Lawyers

General Medical Council

Insurance Fraud Bureau

The Law Society

Motor Insurers Bureau

Motor Accident Solicitors Society

Personal Injuries Bar Association

Royal College of General Practitioners

Royal College of Physicians of London

Royal College of Surgeons

RTA Portal Company

Thatcham - Motor Insurance Repair Research Centre

Trades Unions Congress

Transport for London

Welsh Government

This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Proposal 1: Independence in the commissioning of reports

Introducing independence:

The Government is firmly committed to upholding the independence of medical evidence relied upon in support of whiplash claims. That means that medical experts, or any intermediary organisation through which a medical report is provided, should not have a real or perceived financial interest in the outcome of the claim other than proper payment for the examination/report. However, the Government is also keen to allow the market to continue to evolve within any new system.

Commissioning reports:

The Government has decided to introduce a new system of allocating medical experts to claims which breaks any direct links between those commissioning medical reports and the medical experts themselves, removing potential conflicts of interest from the system. This will be delivered via a new independent IT hub, the working title for which is 'MedCo'. Anyone commissioning a medical report will go to MedCo and will receive a list of appropriate experts and/or medical reporting organisations ('MROs') from which they may obtain the required medical report. This system will apply to the allocation of an accredited expert to produce the initial medical report used in a claim.

Following feedback from stakeholders on independence, we have revised our approach to this issue. There will be filters applied to the MedCo search results to ensure the medical expert or reporting organisation does not have a direct financial link with the commissioning organisation. This will not preclude such organisations from owning medical reporting organisations, which would be available to source work from elsewhere.

As previously stated, there is no Government funding available to cover the start up costs for this system. The Association of British Insurers (ABI) have agreed to fund and build the IT system required to support this new service and are working closely with the Motor Insurance Bureau to develop a suitable IT solution.

The Government is continuing to work with stakeholders across the personal injury industry - including the legal, medical and insurance sectors - to develop the system, and practitioners will be invited to participate in a significant programme of user testing prior to its launch. We are also working with representatives from all interested sectors of the industry to develop an independent governance system to oversee both this new medical report commissioning system and a new accreditation system for medical experts.

Rule Changes:

In order to implement this new commissioning system, amendments will need to be made to the CPR and the Pre-Action Protocol. These amendments will require anyone wishing to obtain a medical report in support of a whiplash claim to do so via this new system.

We are grateful to members of the Civil Procedure Rule Committee for their comments of the proposed drafting. These amendments can be found in **annexes A, B and C** of this document and we would appreciate stakeholder feedback on these proposed changes.

Question 1: **Do you agree that the proposed amendments to paragraphs 7.1A(1) and 7.32A of the Pre-Action Protocol and miscellaneous amendments to the CPR in annex C are sufficient to ensure that claimant representatives comply with the requirement to commission an initial fixed costs medical report from an accredited expert via the MedCo Portal?**

Question 2: **It is anticipated that access to the MedCo portal will be available to litigants in person. Do you have any views on whether use of the MedCo portal should be mandatory for litigants in person?**

Question 3: **The results of a search in the MedCo portal can be displayed in different ways. Do you have any views on whether the MedCo search results should offer commissioning practitioners a choice of named medical experts and/or medical reporting organisations?**

Proposal 2: Accreditation for experts writing reports

Introducing accreditation

The Government is also firmly committed to ensuring that all medical reports commissioned under the new process meet minimum quality standards. For that reason, the new system will introduce an accreditation requirement for all experts wishing to continue to produce medical reports for low value soft tissue injuries arising from road traffic accidents. This decision follows strong support from a wide range of stakeholders to the 'Reducing the number and costs of whiplash claims' consultation for a system of accreditation to be introduced in this area.

Accreditation criteria:

The Government is working closely with stakeholders to develop appropriate accreditation criteria and processes, including the level of fee for accreditation and the timescale for the scheme to be rolled out. We propose that the scheme will be operated by MedCo in addition to its function of overseeing the commissioning of reports. The level of accreditation/re-accreditation fees will be set to ensure that the scheme is self funding and a system of audit/peer review will be integrated into the process.

Registering with MedCo:

It is expected that the new commissioning system for medical reports will go live prior to the majority of experts being able to achieve accreditation. To mitigate any potential adverse impacts on the availability of experts to produce medical reports, we plan to allow all current experts to register with MedCo initially. They will then be given a period of time (yet to be determined) in which to gain their accreditation. Any experts who are unable or unwilling to attain accreditation by the deadline will have their details removed from the MedCo system. They will only be able to re-register once accreditation is attained. The proposed amendments to the pre-action protocol have been drafted to take account of this – see paragraph 1.1(A1).

Audit/Peer Review process:

In order to ensure that objective standards are maintained, many stakeholders suggested building an element of 'peer review' or 'audit' into the accreditation system. The IT system currently being developed will be able to generate management information that can be used to focus the initial use of peer review. This will be supplemented by a random selection of report reviews and feedback from users of the system. Sanctions for a failure to meet the required standards may include restrictions or conditions applied to an individual's registration or removal from the list of accredited experts.

Rule Changes:

We have drafted amendments to the CPR and the Pre-Action Protocol to ensure that all those who prepare medical reports are accredited and registered on the MedCo system.

These amendments can be seen in **annexes A, B and C** of this document and we would appreciate stakeholder feedback on these proposed changes.

Question 4: Do you agree that the proposed amendments to paragraphs 1.1(A1), and 1.1(10A) of the pre action protocol, rules 45.19, 45.29I of Part 45 and miscellaneous amendments to the CPR in annex C are sufficient to ensure that only accredited medical experts are instructed to provide fixed cost medical reports in whiplash cases? Do you agree that the transitional provisions in paragraph 4.7 are appropriate?

Question 5: The Government is working closely with stakeholder representatives to develop a proportionate accreditation process; we would welcome any views or suggestions relating to standards, criteria or training.

Proposal 3: Data sharing to fight fraudulent claims

The need to share data:

Tackling fraudulent and unnecessary claims at source to stop such claims being brought in the first place is vital in tackling the high cost of insurance premiums. This was identified by the Government in the whiplash reform proposals published last October and was strongly supported by the House of Commons Transport Committee in its report 'Driving premiums down: fraud and the cost of motor insurance'[2].

The Government is pleased to support an agreement on the sharing of claims data reached between defendant and claimant representatives in April 2014. Following detailed discussions on how to implement this agreement, representatives from the Association of Personal Injury Lawyers, the Association of British Insurers, the Motor Accident Solicitors Society and the Law Society have recently written to the Government to request an amendment to the CPR requiring claimant representatives to undertake a 'previous claims' check on potential clients before accepting the claim.

The solution:

The solution proposed by the industry would make it mandatory for claimant representatives to check the claims history of potential clients before sending the Claim Notification Form to the defendant's insurer in accordance with the Pre-Action Protocol. The proposal also recommends that the system collects management information related to the searches undertaken. This will help to prevent fraudulent and unnecessary whiplash claims at source. The model would work along the following lines to prevent fraud both by individual claimants and on a larger scale:

- An IT interface will enable claimant representatives to obtain data on the number of previous personal injury claims made by potential clients within the previous five years, putting them in a better position to make a judgement as to whether they wish to accept the potential client's instructions.
- Additionally, the system will record the searches undertaken, including data on (multiple) searches undertaken by different legal representatives on individual potential claimants. Data on patterns of behaviour may be of use to the Insurance Fraud Bureau in detecting wider scale fraud.

A mandatory system will prevent a whiplash claim from being started under the Pre-Action Protocol unless a search has been carried out. For those claimants who choose to settle their claim for compensation directly with an insurer, the mandatory search will be carried out by the insurer as is currently the case.

[2] http://www.publications.parliament.uk/pa/cm201415/cmselect/cmtran/285/285.pdf

Rule changes:

The Government supports this solution and has drafted amendments to the Pre-Action Protocol. These amendments would require claimant representative to input a unique reference number generated by the search into the Claims Notification Form. The amendments can be seen in **annex A** of this document and we would appreciate stakeholder feedback on these proposed changes.

Question 6: Do you agree that the proposed new paragraph 6.3A in the Pre-Action Protocol is sufficient to ensure that claimant representatives undertake a 'previous claims' data search prior to accepting new claims?

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1: **Do you agree that the proposed amendments to paragraphs 7.1A(1) and 7.32A of the Pre-Action Protocol and miscellaneous amendments to the CPR in annex C are sufficient to ensure that claimant representatives comply with the requirement to commission an initial fixed costs medical report from an accredited expert via the MedCo Portal?**

Yes ☐ **No** ☐

Comments:

Question 2: **It is anticipated that access to the MedCo portal will be available to litigants in person. Do you have any views on whether use of the MedCo portal should be mandatory for litigants in person?**

Yes ☐ **No** ☐

Comments:

Question 3: **The results of a search in the MedCo portal can be displayed in different ways. Do you have any views on whether the MedCo search results should offer commissioning practitioners a choice of named medical experts and/or medical reporting organisations?**

Yes ☐ **No** ☐

Comments:

Question 4: **Do you agree that the proposed amendments to paragraphs 1.1(A1), and 1.1(10A) of the pre action protocol, rules 45.19, 45.29I of Part 45 and miscellaneous amendments to the CPR in annex C are sufficient to ensure that only accredited medical experts are instructed to provide fixed cost medical reports in whiplash cases? Do you agree that the transitional provisions in paragraph 4.7 are appropriate?**

Yes ☐ **No** ☐

Comments:

Question 5: The Government is working closely with stakeholder representatives to develop a proportionate accreditation process; we would welcome any views or suggestions relating to standards, criteria or training.

Comments:

Question 6: Do you agree that the proposed new paragraph 6.3A in the Pre-Action Protocol is sufficient to ensure that claimant representatives undertake a 'previous claims' data search prior to accepting new claims?

Yes ☐ **No** ☐

Comments:

Question 7: Do you consider that the amendments contained in this consultation will impact on people with protected equality characteristics? If so, please give details.

Yes ☐ **No** ☐

Comments:

Question 8: We would welcome any further comments you may have in relation to the amendments covered by this consultation

Comments:

Thank you for participating in this consultation exercise.

ANNEX A

WHIPLASH – FURTHER AMENDMENTS TO THE RTA PAP

Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents from 31 July 2013

Contents

Stage 1	
Completion of the Claim Notification Form	Para 6.1
Rehabilitation	Para 6.7
Failure to complete the Claim Notification Form	Para 6.8
Response from insurer	Para 6.10
Application for a certificate of recoverable benefits	Para 6.12
Motor Insurers' Bureau	Para 6.13
Contributory negligence, liability not admitted or failure to respond	Para 6.15
Stage 1 fixed costs	Para 6.18
Defendant's account in soft tissue injury claims	Para. 6.19A
Stage 2	
Medical reports	Para 7.1
Subsequent medical reports	Para 7.8
Non-medical expert reports	Para 7.9
Specialist legal advice	Para 7.10
Witness statements	Para 7.11
Stay of process	Para 7.12
Request for an interim payment	Para 7.13
Interim payment of £1,000	Para 7.18

Interim payment of more than £1,000	Para 7.19
Vehicle related damages - interim payments	Para 7.23
Application for a certificate of recoverable benefits	Para 7.24
Request for an interim payment where the claimant is a child	Para 7.26
Interim payment – supplementary provisions	Para 7.28
Costs of expert medical and non-medical reports and specialist legal advice obtained	Para 7.31
Submitting the Stage 2 Settlement Pack to defendant	Para 7.32
Consideration of claim	Para 7.35
Defendant accepts offer or makes counter-offer	Para 7.38
Withdrawal of offer after the consideration period	Para 7.46
Settlement	Para 7.47
Application for certificate of recoverable benefits	Para 7.49
Vehicle related damages - additional damages	Para 7.51
Original damages and additional damages are agreed	Para 7.55
Original damages are not agreed, additional damages are agreed	Para 7.57
Original damages are agreed, additional damages are not agreed	Para 7.59
Original damages and additional damages are not agreed	Para 7.61
Settlement after claim for additional damages	Para 7.62
Application for certificate of recoverable benefits	Para 7.63

Failure to reach agreement - general	Para 7.64
Non-settlement payment by the defendant at the end of Stage 2	Para 7.70
General provisions	Para 7.76
Stage 3	
Stage 3 Procedure	Para 8.1

SECTION I – INTRODUCTION

Definitions

1.1 In this Protocol—

(A1) 'accredited medical expert' means a medical expert who—

(a) before [date], is registered with MedCo as a provider of reports for soft tissue injury claims; or

(b) on or after [date], is accredited to provide reports for soft tissue injury claims under the accreditation process approved by MedCo,

in one of the following disciplines—

(i) Consultant Orthopaedic Surgeon;

(ii) Consultant in Accident and Emergency Medicine;

(iii) General Practitioner registered with the General Medical Council;

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

(1) ‘admission of liability’ means the defendant admits that—

(a) the accident occurred;

(b) the accident was caused by the defendant’s breach of duty;

(c) the defendant caused some loss to the claimant, the nature and extent of which is not admitted; and

(d) the defendant has no accrued defence to the claim under the Limitation Act 1980;

(1A) ‘associate’ means, in respect of a medical expert, any person whose business is linked to that expert or to any intermediary who commissions either the expert's report or any proposed medical treatment and 'associated with' has the equivalent meaning;

(2) ‘bank holiday’ means a bank holiday under the Banking and Financial Dealings Act 1971;

(3) ‘business day’ means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;

(4) ‘certificate of recoverable benefits’ has the same meaning as in rule 36.15(1)(e)(i) of the Civil Procedure Rules 1998.

(5)‘child’ means a person under 18;

(6) ‘claim’ means a claim, prior to the start of proceedings, for payment of damages under the process set out in this Protocol;

(7) ‘claimant’ means a person starting a claim under this Protocol unless the context indicates that it means the claimant’s legal representative;

(8) ‘CNF’ means a Claim Notification Form;

(9) ‘deductible amount’ has the same meaning as in rule 36.15(1)(d) of the Civil Procedure Rules 1998;

(10) ‘defendant’ means the insurer of the person who is subject to the claim under this Protocol, unless the context indicates that it means—

(a) the person who is subject to the claim;

(b) the defendant’s legal representative;

(c) the Motor Insurers’ Bureau (‘MIB’); or

(d) a person falling within the exceptions in section 144 of the Road Traffic Act 1988 (a “self-insurer”);

(10A) 'fixed cost medical report' means a report in a soft tissue injury claim which is from an accredited medical expert who, save in 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 that they or an associate provide treatment;

(11) ‘legal representative’ has the same meaning as in rule 2.3(1) of the Civil Procedure Rules 1998;

(12) ‘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 and Care Professions Council;

(13) ‘motor vehicle’ means a mechanically propelled vehicle intended for use on roads;

(14) ‘pecuniary losses’ means past and future expenses and losses;

(15) ‘road’ means any highway and any other road to which the public has access and includes bridges over which a road passes;

(16) ‘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[1] as defined by section 53 of the Health and Safety at Work etc Act 1974;

(16A) 'soft tissue injury claim' means a claim brought by an occupant of a motor vehicle where the significant physical injury caused is a soft tissue injury and includes claims where there is a minor psychological injury secondary in significance to the physical injury;

(17) ‘Type C fixed costs’ has the same meaning as in rule 45.18(2) of the Civil Procedure Rules 1998; and

(18) ‘vehicle related damages’ means damages for—

(a) the pre-accident value of the vehicle;

(b) vehicle repair;

(c) vehicle insurance excess; and

(d) vehicle hire.

1.2

(1) The ‘Protocol upper limit’ is—

(a) £25,000 where the accident occurred on or after 31 July 2013; or

(b) £10,000 where the accident occurred on or after 30 April 2010 and before 31July 2013,

on a full liability basis including pecuniary losses but excluding interest.

(2) Any reference in this Protocol to a claim which is, or damages which are, valued at no more than the Protocol upper limit, or between £1,000 and the Protocol upper limit, is to be read in accordance with subparagraph (1).

1.3 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.

1.4 Subject to paragraph 1.5 the standard forms used in the process set out in this Protocol are available from Her Majesty’s Courts and Tribunals Service (‘HMCTS’) website at www.justice.gov.uk/forms/hmcts —

(1) Claim Notification Form (‘Form RTA 1’ – referred to in this Protocol as ‘the CNF’);

(2) Defendant Only Claim Notification Form (‘Form RTA 2’);

(3) Medical Report Form ('Form RTA 3');

(4) Interim Settlement Pack Form ('Form RTA 4');

(5) Stage 2 Settlement Pack Form ('Form RTA 5');

(6) Court Proceedings Pack (Part A) Form ('Form RTA 6'); and

(7) Court Proceedings Pack (Part B) Form ('Form RTA 7').

1.5 The information required in Form RTA 3 may be provided in a different format to that set out in that Form.

Preamble

2.1 This Protocol describes the behaviour the court expects of the parties prior to the start of proceedings where a claimant claims damages valued at no more than the Protocol upper limit as a result of a personal injury sustained by that person in a road traffic accident. The Civil Procedure Rules 1998 enable the court to impose costs sanctions where it is not followed.

Aims

3.1 The aim of this Protocol is to ensure that—

(1) the defendant pays damages and costs using the process set out in the Protocol without the need for the claimant to start proceedings;

(2) damages are paid within a reasonable time; and

(3) the claimant's legal representative receives the fixed costs at each appropriate stage.

3.2 In soft tissue injury claims, the additional aim of this Protocol is 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 medical expert is normally independent of any medical treatment; and

(4) offers are made only after a fixed cost medical report has been obtained and disclosed.

Scope

4.1 This Protocol applies where—

(1) a claim for damages arises from a road traffic accident where the CNF is submitted on or after 31st July 2013;

(2) the claim includes damages in respect of personal injury;

(3) the claimant values the claim at no more than the Protocol upper limit; and

(4) if proceedings were started the small claims track would not be the normal track for that claim.

(Paragraphs 1.1(18) and 4.4 state the damages that are excluded for the purposes of valuing the claim under paragraph 4.1.)

(Rule 26.6 provides that the small claims track is not the normal track where the value of any claim for damages for personal injuries (defined as compensation for pain, suffering and loss of amenity) is more than £1,000.)

4.2 The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents which commenced on 30th April 2010 will continue to apply (as it stood immediately before 31 July 2013) to all claims where the CNF was submitted before 31 July 2013.

4.3 This Protocol ceases to apply to a claim where, at any stage, the claimant notifies the defendant that the claim has now been revalued at more than the Protocol upper limit.

4.4 A claim may include vehicle related damages but these are excluded for the purposes of valuing the claim under paragraph 4.1.

4.5 This Protocol does not apply to a claim—

(1) in respect of a breach of duty owed to a road user by a person who is not a road user;

(2) made to the MIB pursuant to the Untraced Drivers' Agreement 2003 or any subsequent or supplementary Untraced Drivers' Agreements;

(3) where the claimant or defendant acts as personal representative of a deceased person;

(4) where the claimant or defendant is a protected party as defined in rule 21.1(2);

(5) where the claimant is bankrupt; or

(6) where the defendant's vehicle is registered outside the United Kingdom.

4.6 The fixed costs in rule 45.18 apply in relation to a claimant only where a claimant has a legal representative.

4.7 ~~The~~

(1) Subject to subparagraph (2), provisions for soft tissue injury claims apply to any such claim for damages which arises from a road traffic accident where the CNF is submitted on or after 1 October 2014.

(2)

(a) Subject to paragraph (b), provisions for accredited medical experts apply to any soft tissue injury claim for damages which arises from a road traffic accident where the CNF is submitted on or after [date]; and

(b) provisions in paragraph 1.1(A1)(b), apply to any soft tissue injury claim for damages which arises from a road traffic accident where the CNF is submitted on or after [date].

SECTION II – GENERAL PROVISIONS

Communication between the parties

5.1 Subject to paragraph 6.1(2), where the Protocol requires information to be sent to a party it must be sent via www.claimsportal.org.uk (or any other Portal address that may be prescribed from time to time). The claimant will give an e-mail address for contact in the Claim Notification Form ('CNF'). All written communications not required by the Protocol must be sent by e-mail.

5.2 Where the claimant has sent the CNF to the wrong defendant, the claimant may, in this circumstance only, send the CNF to the correct defendant. The period in paragraph 6.11 or 6.13 starts from the date the CNF was sent to the correct defendant.

Time periods

5.3 A reference to a fixed number of days is a reference to business days as defined in paragraph 1.1(3).

5.4 Where a party should respond within a fixed number of days, the period for response starts the first business day after the information was sent to that party.

5.5 All time periods, except those stated in—

(1) paragraph 6.11 (the insurer's response);

(2) paragraph 6.13 (MIB's response); and

(3) paragraph 7.37 (the further consideration period),

may be varied by agreement between the parties.

5.6 Where this Protocol requires the defendant to pay an amount within a fixed number of days the claimant must receive the cheque or the transfer of the amount from the defendant before the end of the period specified in the relevant provision.

Limitation period

5.7 Where compliance with this Protocol is not possible before the expiry of the limitation period the claimant may start proceedings and apply to the court for an order to stay (i.e. suspend) the proceedings while the parties take steps to follow this Protocol. Where proceedings are started in a case to which this paragraph applies the claimant should use the procedure set out under Part 8 in accordance with Practice Direction 8B ("the Stage 3 Procedure").

5.8 Where the parties are then unable to reach a settlement at the end of Stage 2 of this Protocol the claimant must, in order to proceed to Stage 3, apply to lift the stay and request directions in the existing proceedings.

Claimant's reasonable belief of the value of the claim

5.9 Where the claimant reasonably believes that the claim is valued at between £1,000 and the Protocol upper limit, but it subsequently becomes apparent that the value of the claim is less than £1,000, the claimant is entitled to the Stage 1 and (where relevant) the Stage 2 fixed costs.

Claimants without a legal representative

5.10 Where the claimant does not have a legal representative, on receipt of the CNF the defendant must explain—

(1) the period within which a response is required; and

(2) that the claimant may obtain independent legal advice.

Discontinuing the Protocol process

5.11 Claims which no longer continue under this Protocol cannot subsequently re-enter the process.

SECTION III – THE STAGES OF THE PROCESS

Stage 1

Completion of the Claim Notification Form

6.1 The claimant must complete and send—

(1) the CNF to the defendant's insurer; and

(2) the 'Defendant Only CNF' to the defendant by first class post, except where the defendant is a self-insurer in which case the CNF must be sent to the defendant as insurer and no 'Defendant Only CNF' is required.

6.2 The 'Defendant Only CNF' must be sent at the same time or as soon as practicable after the CNF is sent.

6.3 All boxes in the CNF that are marked as mandatory must be completed before it is sent. The claimant must make a reasonable attempt to complete those boxes that are not marked as mandatory.

6.3A

Before the CNF is sent to the defendant's insurer, the claimant's legal representative must undertake a search of askCUEPI (website at: www. askCUEPI.org) and must enter in the relevant mandatory box in the CNF the unique reference number generated by that search.

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

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

(2)

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

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

6.5 Where the claimant is a child, this must be noted in the relevant section of the CNF.

6.6 The statement of truth in the CNF must be signed either by the claimant or by the claimant's legal representative where the claimant has authorised the legal representative to do so and the legal representative can produce written evidence of that authorisation. Where the claimant is a child the statement of truth may be signed by the parent or guardian. On the electronically completed CNF the person may enter their name in the signature box to satisfy this requirement.

Rehabilitation

6.7 The claimant must set out details of rehabilitation in the CNF. The parties should at all stages consider the Rehabilitation Code which may be found at: http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/pre-action-protocols

Failure to complete the Claim Notification Form

6.8 Where the defendant considers that inadequate mandatory information has been provided in the CNF, that shall be a valid reason for the defendant to decide that the claim should no longer continue under this Protocol.

6.9 Rule 45.24(2) sets out the sanctions available to the court where it considers that the claimant provided inadequate information in the CNF.

Response from insurer

6.10 The defendant must send to the claimant an electronic acknowledgment the next day after receipt of the CNF.

6.11 The defendant must complete the 'Insurer Response' section of the CNF ("the CNF response") and send it to the claimant within 15 days.

Application for a certificate of recoverable benefits

6.12 The defendant must, before the end of Stage 1, apply to the Compensation Recovery Unit (CRU) for a certificate of recoverable benefits.

Motor Insurers' Bureau

6.13 Where no insurer is identified and the claim falls to be dealt with by the MIB or its agents the CNF response must be completed and sent to the claimant within 30 days.

6.14 Where the MIB passes the claim to an insurer to act on its behalf, that insurer must notify the claimant of that fact. There is no extension to the time period in paragraph 6.13.

Contributory negligence, liability not admitted or failure to respond

6.15 The claim will no longer continue under this Protocol where the defendant, within the period in paragraph 6.11 or 6.13—

(1) makes an admission of liability but alleges contributory negligence (other than in relation to the claimant's admitted failure to wear a seat belt);

(2) does not complete and send the CNF response;

(3) does not admit liability; or

(4) notifies the claimant that the defendant considers that—

(a) there is inadequate mandatory information in the CNF; or

(b) if proceedings were issued, the small claims track would be the normal track for that claim.

6.16 Where the defendant does not admit liability under paragraph 6.15(3), the defendant must give brief reasons in the CNF response.

6.17 Where paragraph 6.15 applies the claim will proceed under the Pre-Action Protocol for Personal Injury Claims starting at paragraph 3.7 of that Protocol (which allows a

maximum of three months for the defendant to investigate the claim) except that where paragraph 6.15(4)(a) applies the claim will proceed under paragraph 3.1 of that Protocol.

(For admissions made in the course of the process under this Protocol, see rule 14.1B.)

(Paragraph 2.10A of the Pre-Action Protocol on Personal Injury provides that the CNF can be used as the letter of claim except where the claim no longer continues under this Protocol because the CNF contained inadequate information.)

Stage 1 fixed costs

6.18 Except where the claimant is a child, the defendant must pay the Stage 1 fixed costs in rule 45.18 and, in a soft tissue injury claim, the cost of obtaining the fixed cost medical report and any cost for obtaining medical records in rule 45.19(2A) (collectively the "Stage 1 fixed recoverable costs") where—

(1) liability is admitted; or

(2) liability is admitted and contributory negligence is alleged only in relation to the claimant's admitted failure to wear a seat belt,
within 10 days after receiving the Stage 2 Settlement Pack, provided that invoices for the cost of obtaining the medical report and any medical records in a soft tissue injury claim have been included in the Stage 2 Settlement Pack.

6.19 Where the defendant fails to pay the Stage 1 fixed recoverable costs within the period specified in paragraph 6.18 the claimant may give written notice that the claim will no longer continue under this Protocol. Unless the claimant's notice is sent to the defendant within 10 days after the expiry of the period in paragraph 6.18 the claim will continue under this Protocol.

Defendant's account in soft tissue injury claims

6.19A Where liability is admitted in a soft tissue injury claim, it is expected that in most cases the defendant's account will not be relevant to the procedure in Stage 2. In the limited cases where it is considered appropriate, the defendant may send their account to the claimant electronically at the same time as the CNF response. The defendant's insurer must have the defendant's written authority to provide this account and, in sending it, is certifying that it has that authority. For the purposes of this paragraph, the defendant's written authority may be provided electronically.

6.19B The procedure in paragraph 6.19A applies to the MIB, save that the MIB is certifying that the defendant user of the vehicle has provided such authority.

Stage 2

Medical Reports

7.1 The claimant should obtain a medical report, if one has not already been obtained.

7.1A Subject to paragraph 7.8A, in a soft tissue injury claim—

(1) the claimant should obtain a medical report and if the claimant does so, the report must be a fixed cost medical report from an accredited medical expert allocated via the MedCo Portal (website at: www.medco.org);

(2) subject to the restriction on further reports in paragraph 7.8A, any further report must also be a fixed cost medical report; and

(3) where the defendant provides a different account under paragraph 6.19A, the claimant must provide this as part of the instructions to the medical expert for the sole purpose of asking the expert to comment on the impact, if any, on diagnosis and prognosis if—

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

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

7.2 It is expected that most claimants will obtain a medical report from one expert, but additional medical reports may be obtained from other experts where the injuries require reports from more than one medical discipline.

7.3 The claimant must check the factual accuracy of any medical report before it is sent to the defendant. There will be no further opportunity for the claimant to challenge the factual accuracy of a medical report after it has been sent to the defendant.

7.4

(1) 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.

(2) The claimant must disclose with any medical report sent to the defendant any medical records which the expert considers relevant.

7.5 In most claims with a value of no more than £10,000, it is expected that the medical expert will not need to see any medical records.

7.6 Any relevant photograph(s) of the claimant's injuries upon which the claimant intends to rely should also be disclosed with the medical report.

7.7 Where the claimant was not wearing a seat belt the medical report must contain sufficient information to enable the defendant to calculate the appropriate reduction of damages in accordance with principles set out in existing case law.

Subsequent medical reports

7.8 A subsequent medical report from an expert who has already reported must be justified. A report may be justified where—

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

(2) the claimant is receiving continuing treatment; or

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

7.8A In a soft tissue injury claim—

(1) it is expected that only one medical report will be required; and

(2) a further medical 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; and

(b) that report has first been disclosed to the defendant.".

Non-medical expert reports

7.9

(1) In most cases, a report from a non-medical expert will not be required, but a report may be obtained where it is reasonably required to value the claim.

(2) Paragraph 7.3 applies to non-medical expert reports as it applies to expert medical reports.

Specialist legal advice

7.10 In most cases under this Protocol, it is expected that the claimant's legal representative will be able to value the claim. In some cases with a value of more than £10,000 (excluding vehicle related damages), an additional advice from a specialist solicitor or from counsel may be justified where it is reasonably required to value the claim.

Witness statements

7.11 In most cases, witness statements, whether from the claimant or otherwise, will not be, required. One or more statements may, however, be provided where reasonably required to value the claim.

Stay of process

7.12 Where the claimant needs to obtain a subsequent expert medical report or a non-medical report, the parties should agree to stay the process in this Protocol for a suitable period. The claimant may then request an interim payment in accordance with paragraphs 7.13 to 7.16.

Request for an interim payment

7.13 Where the claimant requests an interim payment of £1,000, the defendant should make an interim payment to the claimant in accordance with paragraph 7.18.

7.14 The claimant must send to the defendant the Interim Settlement Pack and initial medical report(s) (including any recommendation that a subsequent medical report is justified) in order to request the interim payment.

7.15 The claimant must also send evidence of pecuniary losses and disbursements. This will assist the defendant in considering whether to make an offer to settle the claim.

7.16 Where an interim payment of more than £1,000 is requested the claimant must specify in the Interim Settlement Pack the amount requested, the heads of damage which are the subject of the request and the reasons for the request.

7.17 Unless the parties agree otherwise—

(a) the interim payment of £1,000 is only in relation to general damages; and

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

Interim payment of £1,000

7.18 Where paragraph 7.13 applies the defendant must pay £1,000 within 10 days of receiving the Interim Settlement Pack.

Interim payment of more than £1,000

7.19 Subject to paragraphs 7.24 and 7.25, where the claimant has requested an interim payment of more than £1,000 the defendant must pay—

(1) the full amount requested less any deductible amount which is payable to the CRU;

(2) the amount of £1,000; or

(3) some other amount of more than £1,000 but less than the amount requested by the claimant,
within 15 days of receiving the Interim Settlement Pack.

7.20 Where a payment is made under paragraphs 7.19(2) or (3) the defendant must briefly explain in the Interim Settlement Pack why the full amount requested by the claimant is not agreed.

7.21 Where the claim is valued at more than £10,000 the claimant may use the procedure at paragraphs 7.13 to 7.20 to request more than one interim payment.

7.22 Nothing in this Protocol is intended to affect the provisions contained in the Rehabilitation Code.

Vehicle related damages – interim payments

7.23 Claims for vehicle related damages will ordinarily be dealt with outside the provisions of this Protocol under industry agreements between relevant organisations and insurers. However, where the claimant has paid for the vehicle related damages, the sum may be included in a request for an interim payment under paragraph 7.16.

Application for a certificate of recoverable benefits

7.24 Paragraph 7.25 applies where the defendant agrees to make a payment in accordance with paragraph 7.19(1) or (3) 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 from the date of receiving the Interim Settlement Pack.

7.25 The defendant should apply for a certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must make the interim payment under paragraph 7.19(1) or (3) no more than 30 days from the date of receiving the Interim Settlement Pack.

Request for an interim payment where the claimant is a child

7.26 The interim payment provisions in this Protocol do not apply where the claimant is a child. Where the claimant is a child and an interim payment is reasonably required proceedings must be started under Part 7 of the CPR and an application for an interim payment can be made within those proceedings.

(Rule 21.10 provides that no payment, which relates to a claim by a child, is valid without the approval of the court.)

7.27 Paragraph 7.26 does not prevent a defendant from making a payment direct to a treatment provider.

Interim payment – supplementary provisions

7.28 Where the defendant does not comply with paragraphs 7.18 or 7.19 the claimant may start proceedings under Part 7 of the CPR and apply to the court for an interim payment in those proceedings.

7.29 Where the defendant does comply with paragraph 7.19(2) or (3) but the claimant is not content with the amount paid, the claimant may still start proceedings. However, the court will order the defendant to pay no more than the Stage 2 fixed costs where the court awards an interim payment of no more than the amount offered by the defendant or the court makes no award.

7.30 Where paragraph 7.28 or 7.29 applies the claimant must give notice to the defendant that the claim will no longer continue under this Protocol. Unless the claimant's notice is sent to the defendant within 10 days after the expiry of the period in paragraphs 7.18, 7.19 or 7.25 as appropriate, the claim will continue under this Protocol.

Costs of expert medical and non-medical reports and specialist legal advice obtained

7.31

(1) Where the claimant obtains more than one expert report or an advice from a specialist solicitor or counsel—

(a) the defendant at the end of Stage 2 may refuse to pay; or

(b) the court at Stage 3 may refuse to allow,

the costs of any report or advice not reasonably required.

(2) Therefore, where the claimant obtains more than one expert report or obtains an advice from a specialist solicitor or counsel—

(a) the claimant should explain in the Stage 2 Settlement Pack why they obtained a further report or such advice; and

(b) if relevant, the defendant should in the Stage 2 Settlement Pack identify the report or reports or advice for which they will not pay and explain why they will not pay for that report or reports or advice.

Submitting the Stage 2 Settlement Pack to the defendant

7.32 The Stage 2 Settlement Pack must comprise—

(1) the Stage 2 Settlement Pack Form;

(2) a medical report or reports;

(3) evidence of pecuniary losses;

(4) evidence of disbursements (for example the cost of any medical report);

(4A) in a soft tissue injury claim, the invoice for the cost of obtaining the fixed cost medical report and any invoice for the cost of obtaining medical records;

(5) any non-medical expert report,

(6) any medical records/photographs served with medical reports; and

(7) any witness statements.

7.32A In a soft tissue injury claim, the Stage 2 Settlement Pack is of no effect unless the medical report is a fixed cost medical report. Where the claimant includes more than one medical report, the first report obtained must be a fixed cost medical report from an accredited medical expert allocated via the MedCo Portal and any further report from an expert in any of the following disciplines must also be a fixed cost medical report—

(1) Consultant Orthopaedic Surgeon;
(2) Consultant in Accident and Emergency Medicine;
(3) General Practitioner registered with the General Medical Council;
(4) Physiotherapist registered with the Health and Care Professions Council.

7.33 The claimant should send the Stage 2 Settlement Pack to the defendant within 15 days of the claimant approving —

(1) the final medical report and agreeing to rely on the prognosis in that report; or

(2) any non-medical expert report,

whichever is later.

7.34 Where the defendant alleges contributory negligence because of the claimant's failure to wear a seat belt, the Stage 2 Settlement Pack Form must also suggest a percentage reduction (which may be 0 per cent) in the amount of damages.

Consideration of claim

7.35 There is a 35 day period for consideration of the Stage 2 Settlement Pack by the defendant ("the total consideration period"). This comprises a period of up to 15 days for the defendant to consider the Stage 2 Settlement Pack ("the initial consideration period") and make an offer. The remainder of the total consideration period ("the negotiation period") is for any further negotiation between the parties.

7.36 The total consideration period can be extended by the parties agreeing to extend either the initial consideration period or the negotiation period or both.

7.37 Where a party makes an offer 5 days or less before the end of the total consideration period (including any extension to this period under paragraph 7.36), there will be a further period of 5 days after the end of the total consideration period for the relevant party to consider that offer. During this period ("the further consideration period") no further offers can be made by either party.

Defendant accepts offer or makes counter-offer

7.38 Within the initial consideration period (or any extension agreed under paragraph 7.36) the defendant must either accept the offer made by the claimant on the Stage 2 Settlement Pack Form or make a counter-offer using that form.

7.39 The claim will no longer continue under this Protocol where the defendant gives notice to the claimant within the initial consideration period (or any extension agreed under paragraph 7.36) that the defendant—

(a) considers that, if proceedings were started, the small claims track would be the normal track for that claim; or

(b) withdraws the admission of causation as defined in paragraph

1.1(1)(c).

7.40 Where the defendant does not respond within the initial consideration period (or any extension agreed under paragraph 7.36), the claim will no longer continue under this Protocol and the claimant may start proceedings under Part 7 of the CPR.

7.41 When making a counter-offer the defendant must propose an amount for each head of damage and may, in addition, make an offer that is higher than the total of the amounts proposed for all heads of damage. The defendant must also explain in the counter-offer why a particular head of damage has been reduced. The explanation will assist the

claimant when negotiating a settlement and will allow both parties to focus on those areas of the claim that remain in dispute.

7.42 Where the defendant has obtained a certificate of recoverable benefits from the CRU the counter-offer must state the name and amount of any deductible amount.

7.43 On receipt of a counter-offer from the defendant the claimant has until the end of the total consideration period or the further consideration period to accept or decline the counter offer.

7.44 Any offer to settle made at any stage by either party will automatically include, and cannot exclude—

(1) the Stage 1 and Stage 2 fixed costs in rule 45.18;

(2) an agreement in principle to pay a sum equal to the Type C fixed costs of an additional advice on quantum of damages where such advice is justified under paragraph 7.10;

(3) an agreement in principle to pay relevant disbursements allowed in accordance with rule 45.19;

(3A) in a soft tissue injury claim, the fixed fee for the cost of obtaining a medical report in rule 45.19(2A)(a); or

(4) where applicable, any success fee in accordance with rule 45.31(1) (as it was in force immediately before 1 April 2013).

7.44A In a soft tissue injury claim, an offer to settle made by either party before a fixed cost medical report has been obtained and disclosed will have no adverse costs consequences until after the report has been disclosed.

7.45 Where there is a dispute about whether an additional advice on quantum of damages is justified or about the amount or validity of any disbursement, the parties may use the procedure set out in rule 45.29.

(Rule 45.29 provides that where the parties to a dispute have a written agreement on all issues but have failed to agree the amount of the costs, they may start proceedings under that rule so that the court can determine the amount of those costs.)

Withdrawal of offer after the consideration period

7.46 Where a party withdraws an offer made in the Stage 2 Settlement Pack Form after the total consideration period or further consideration period, the claim will no longer continue under this Protocol and the claimant may start proceedings under Part 7 of the CPR.

Settlement

7.47 Except where the claimant is a child or paragraphs 7.49 and 7.50 apply, the defendant must pay—

(1) the agreed damages less any—

(a) deductible amount which is payable to the CRU; and

(b) previous interim payment;

(2) any unpaid Stage 1 fixed costs in rule 45.18;

(3) the Stage 2 fixed costs in rule 45.18;

(4) where an additional advice on quantum of damages is justified under paragraph 7.10, a sum equal to the Type C fixed costs to cover the cost of that advice;

(5) the relevant disbursements allowed in accordance with rule 45.19 including any disbursements fixed under rule 45.19(2A); and

(6) where applicable, any success fee in accordance with rule 45.31(1) (as it was in force immediately before 1 April 2013),

within 10 days of the parties agreeing a settlement.

(Rule 21.10 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. The provisions in paragraph 6.1 of Practice Direction 8B set out what must be filed with the court when an application is made to approve a settlement.)

7.48 Except where paragraph 7.51 applies, where the parties agree a settlement for a greater sum than the defendant had offered during the total consideration period or further consideration period and after the Court Proceedings Pack has been sent to the defendant but before proceedings are issued under Stage 3—

(1) paragraph 7.47 applies; and

(2) the defendant must also pay the fixed late settlement costs in rule 45.23A.

Application for certificate of recoverable benefits

7.49 Paragraph 7.50 applies where, at the date of the acceptance of an offer in the Stage 2 Settlement Pack, the defendant does not have a certificate of recoverable benefits that will remain in force for at least 10 days.

7.50 The defendant should apply for a fresh certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.47 within 30 days of the end of the relevant period in paragraphs 7.35 to 7.37.

Vehicle related damages - additional damages

7.51 Paragraph 7.52 applies where at the end of the relevant period in paragraphs 7.35 to 7.37 the claim (“the original damages”) has not settled and there remain vehicle related damages (“the additional damages”) being dealt with by a third party separate from the

claim. The original damages include all elements of the claim in the existing Stage 2 Settlement Pack.

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

(1) notify the defendant that this separate claim is being considered;

(2) obtain all relevant information from the third party; and

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

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

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

Original damages and additional damages are agreed

7.55 Where the original damages and additional damages are agreed within the period in paragraph 7.53 the defendant must pay the claimant in accordance with paragraph 7.62.

7.56 Where the parties agree a settlement for a greater sum than the Defendant had offered during the period in paragraph 7.53 but after the Court Proceedings Pack has been sent to the Defendant and before proceedings are issued under Stage 3,

(1) paragraph 7.55 applies; and

(2) the defendant must also pay the fixed late settlement costs in rule 45.23A.

Original damages are not agreed, additional damages are agreed

7.57 Paragraph 7.58 applies where—

(1) the original damages are not agreed; but

(2) the additional damages are agreed.

7.58 Where paragraph 7.57 applies—

(1) the defendant must pay the agreed amount of the additional damages within 10 days of agreeing those damages, and

(2) the claimant must continue with the provisions in paragraphs 7.64 to 7.75 of this Protocol.

Original damages are agreed, additional damages are not agreed

7.59 Paragraph 7.60 applies where—

(1) the original damages are agreed; but

(2) the additional damages are not agreed.

7.60 Where paragraph 7.59 applies—

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

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

Original damages and additional damages are not agreed

7.61 Paragraphs 7.70 to 7.75 apply where the original and additional damages are not agreed.

Settlement after claim for additional damages

7.62 Except where the claimant is a child or paragraph 7.64 applies, the defendant must pay—

(1) the agreed damages less any—

(a) deductible amount which is payable to the CRU; and

(b) previous interim payment;

(2) any unpaid Stage 1 fixed costs in rule 45.18;

(3) the Stage 2 fixed costs in rule 45.18;

(4) where an additional advice on quantum of damages is justified under paragraph 7.10, a sum equal to the Type C fixed costs to cover the costs of that advice;

(5) the relevant disbursements allowed in accordance with rule 45.19 including any disbursements which are fixed under rule 45.19(2A) ; and

(6) where applicable, any success fee in accordance with rule 45.31 (as it was in force immediately before 1 April 2013) for Stage 1 and Stage 2 fixed costs,
within 10 days of agreeing to pay the damages.

(Rule 21.10 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. The provisions in paragraph 6.1 of Practice Direction 8B set out what must be filed with the court when an application is made to approve a settlement.)

Application for certificate of recoverable benefits

7.63 Where at the date on which damages are agreed the defendant does not have a certificate of recoverable benefits that remains in force for at least 10 days the defendant should apply for a fresh certificate as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.62 within 30 days of the date on which damages are agreed.

Failure to reach agreement - general

7.64 Where the parties do not reach an agreement on

(1) the original damages within the periods specified in paragraphs 7.35 to 7.37; or

(2) the original damages and, where relevant, the additional damages under paragraph 7.51, the claimant must send to the defendant the Court Proceedings Pack (Part A and Part B) Form which must contain—

(a) in Part A, the final schedule of the claimant's losses and the defendant's responses comprising only the figures specified in subparagraphs (1) and (2) above, together with supporting comments and evidence from both parties on any disputed heads of damage; and

(b) in Part B, the final offer and counter offer from the Stage 2 Settlement Pack Form and, where relevant, the offer and any final counter offer made under paragraph 7.53.

7.65 The deductible amount should only be deducted from the personal injury damages.

7.66 Comments in the Court Proceedings Pack (Part A) Form must not raise anything that has not been raised in the Stage 2 Settlement Pack Form.

7.67 The defendant should then check that the Court Proceedings Pack (Part A and Part B) Form complies with paragraphs 7.64 to 7.66. If the defendant considers that the Court Proceedings Pack (Part A and Part B) Form does not comply it must be returned to the claimant within 5 days with an explanation as to why it does not comply.

7.68 Where the defendant intends to nominate a legal representative to accept service the name and address of the legal representative should be provided in the Court Proceedings Pack (Part A) Form.

7.69 Where the defendant fails to return the Court Proceedings Pack (Part A and Part B) Form within the period in paragraph 7.67, the claimant should assume that the defendant has no further comment to make.

Non-settlement payment by the defendant at the end of Stage 2

7.70 Except where the claimant is a child the defendant must pay to the claimant—

(1) the final offer of damages made by the defendant in the Court Proceedings Pack (Part A and Part B) Form less any—

(a) deductible amount which is payable to the CRU; and

(b) previous interim payment;

(2) any unpaid Stage 1 fixed costs in rule 45.18;

(3) the Stage 2 fixed costs in rule 45.18; and

(4) the disbursements in rule 45.19(2) that have been agreed including any disbursements which are fixed under rule 45.19(2A).

7.71 Where the amount of a disbursement is not agreed the defendant must pay such amount for the disbursement as the defendant considers reasonable.

7.72 Subject to paragraphs 7.73 and 7.74 the defendant must pay the amounts in paragraph 7.70 and 7.71 within 15 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.

7.73 Paragraph 7.74 applies where the defendant is required to make the payments in paragraph 7.70 but does not have a certificate of recoverable benefits that remains in force for at least 10 days.

7.74 The defendant should apply for a fresh certificate of recoverable benefits as soon as possible, notify the claimant that it has done so and must pay the amounts set out in paragraph 7.70 within 30 days of receiving the Court Proceedings Pack (Part A and Part B) Form from the claimant.

7.75 Where the defendant does not comply with paragraphs 7.72 or 7.74 the claimant may give written notice that the claim will no longer continue under this Protocol and start proceedings under Part 7 of the CPR.

General provisions

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

Stage 3

Stage 3 Procedure

8.1 The Stage 3 Procedure is set out in Practice Direction 8B.

Footnotes

1. 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)

ANNEX B

WHIPLASH – FURTHER AMENDMENTS TO PART 45 CPR

PART 45 - FIXED COSTS
Contents of this Part

Where the parties have settled after proceedings have started	Rule 45.25
Where the claimant obtains judgment for an amount equal to or less than the defendant's RTA Protocol offer	Rule 45.26
Adjournment	Rule 45.27
Account of payment of Stage 1 fixed costs	Rule 45.28
Costs-only application after a claim is started under Part 8 in accordance with Practice Direction 8B	Rule 45.29
IIIA CLAIMS WHICH NO LONGER CONTINUE UNDER THE RTA AND EL/PL PRE-ACTION PROTOCOLS – FIXED RECOVERABLE COSTS	
Scope and interpretation	Rule 45.29A
Application of fixed costs and disbursements – RTA Protocol	Rule 45.29B
Amount of fixed costs – RTA Protocol	Rule 45.29C
Application of fixed costs and disbursements – EL/PL Protocol	Rule 45.29D
Amount of fixed costs – EL/PL Protocol	Rule 45.29E
Defendants' costs	Rule 45.29F
Counterclaims under the RTA Protocol	Rule 45.29G
Interim applications	Rule 45.29H
Disbursements	Rule 45.29I

III THE PRE-ACTION PROTOCOLS FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS AND LOW VALUE PERSONAL INJURY (EMPLOYERS' LIABILITY AND PUBLIC LIABILITY) CLAIMS

Scope and interpretation
45.16

(1) This Section applies to claims that have been or should have been started under Part 8 in accordance with Practice Direction 8B ('the Stage 3 Procedure').

(2) Where a party has not complied with the relevant Protocol rule 45.24 will apply.

'The relevant Protocol' means

(a) the Pre-Action Protocol for Personal Injury Claims in Road Traffic Accidents ("the RTA Protocol"); or

(b) the Pre-action Protocol for Low Value Personal Injury Claims (Employers' Liability and Public Liability) Claims ('the EL/PL Protocol').

(3) A reference to 'Claim Notification Form' or Court Proceedings Pack is a reference to the form used in the relevant Protocol.

Application of fixed costs, and disbursements
45.17 The only costs allowed are –

(a) fixed costs in rule 45.18; and

(b) disbursements in accordance with rule 45.19; and

(c) where applicable, fixed costs in accordance with rule 45.23A or 45.23B.

Amount of fixed costs
45.18

(1) Subject to paragraph (4), the amount of fixed costs is set out in Tables 6 and 6A.

(2) In Tables 6 and 6A –

'Type A fixed costs' means the legal representative's costs;

'Type B fixed costs' means the advocate's costs; and

'Type C fixed costs' means the costs for the advice on the amount of damages where the claimant is a child.

(3) ‘Advocate’ has the same meaning as in rule 45.37(2)(a).

(4) Subject to rule 45.24(2) the court will not award more or less than the amounts shown in Tables 6 or 6A.

(5) Where the claimant –

(a) lives or works in an area set out in Practice Direction 45; and

(b) instructs a legal representative who practises in that area,

the fixed costs will include, in addition to the costs set out in Tables 6 or 6A, an amount equal to 12.5% of the Stage 1 and 2 and Stage 3 Type A fixed costs.

(6) Where appropriate, VAT may be recovered in addition to the amount of fixed costs and any reference in this Section to fixed costs is a reference to those costs net of any such VAT.

TABLE 6

Fixed costs in relation to the RTA Protocol			
Where the value of the claim for damages is not more than £10,000		**Where the value of the claim for damages is more than £10,000, but not more than £25,000**	
Stage 1 fixed costs	£200	Stage 1 fixed costs	£200
Stage 2 fixed costs	£300	Stage 2 fixed costs	£600
Stage 3 - Type A fixed costs	£250	Stage 3 - Type A fixed costs	£250
Stage 3 - Type B fixed costs	£250	Stage 3 - Type B fixed costs	£250
Stage 3 - Type C fixed costs	£150	Stage 3 - Type C fixed costs	£150

TABLE 6A

Fixed costs in relation to the EL/PL Protocol	
Where the value of the claim for	**Where the value of the claim for damages is**

damages is not more than £10,000		**more than £10,000, but not more than £25,000**	
Stage 1 fixed costs	£300	Stage 1 fixed costs	£300
Stage 2 fixed costs	£600	Stage 2 fixed costs	£1300
Stage 3 - Type A fixed costs	£250	Stage 3 - Type A fixed costs	£250
Stage 3 - Type B fixed costs	£250	Stage 3 - Type B fixed costs	£250
Stage 3 - Type C fixed costs	£150	Stage 3 - Type C fixed costs	£150

Disbursements
45.19

(1) Subject to paragraphs (2A) to (2E), the court –

(a) may allow a claim for a disbursement of a type mentioned in paragraphs (2) or (3); but

(b) will not allow a claim for any other type of disbursement.

(2) In a claim to which either the RTA Protocol or EL/PL Protocol applies, the disbursements referred to in paragraph (1) are –

(a) the cost of obtaining –

(i) medical records;

(ii) a medical report or reports or non-medical expert reports as provided for in the relevant Protocol;

(aa) Driver Vehicle Licensing Authority;

(bb) Motor Insurance Database;

(b) court fees as a result of Part 21 being applicable;

(c) court fees payable where proceedings are started as a result of a limitation period that is about to expire;

(d) court fees in respect of the Stage 3 Procedure; and

(e) any other disbursement that has arisen due to a particular feature of the dispute.

(2A) In a soft tissue injury claim to which the RTA Protocol applies, the only sums (exclusive of VAT) that are recoverable in respect of the cost of obtaining a fixed cost medical report or medical records are as follows—

(a) obtaining the first report from any expert permitted under 1.1(~~12~~A1) of the RTA Protocol: £180;

(b) obtaining a further report where justified from an accredited medical expert from one of the following disciplines—

(i) Consultant Orthopaedic Surgeon (inclusive of a review of medical records where applicable): £420;

(ii) Consultant in Accident and Emergency Medicine: £360;

(iii) General Practitioner registered with the General Medical Council: £180; or

(iv) Physiotherapist registered with the Health and Care Professions Council: £180;

(c) obtaining medical records: no more than £30 plus the direct cost from the holder of the records, and limited to £80 in total for each set of records required. Where relevant records are required from more than one holder of records, the fixed fee applies to each set of records required;

(d) addendum report on medical records (except by Consultant Orthopaedic Surgeon): £50; and

(e) answer to questions under Part 35: £80.

(2B) Save in exceptional circumstances, no fee may be allowed for the cost of obtaining a report from a medical expert who—

(a) has provided treatment to the claimant;

(b) is associated with any person who has provided treatment; or

(c) proposes or recommends that they or an associate provide treatment.

(2C) The cost of obtaining a further report from an expert not listed in (2A)(b) is not fixed, but the use of that expert and the cost must be justified.

(2D) Where appropriate, VAT may be recovered in addition to the cost of obtaining a fixed cost medical report or medical records.

(2E) In this rule, 'accredited medical expert', 'associate', 'associated with', 'fixed cost medical report' and 'soft tissue injury claim' have the same meaning as in paragraph 1.1(A1) (1A), (10A) and (16A), respectively, of the RTA Protocol.

(3) In a claim to which the RTA Protocol applies, the disbursements referred to in paragraph (1) are also the cost of—

(a) an engineer's report; and

(b) a search of the records of the—

(i) Driver Vehicle Licensing Authority; and

(ii) Motor Insurance Database.

SECTION IIIA CLAIMS WHICH NO LONGER CONTINUE UNDER THE RTA OR EL/PL PRE-ACTION PROTOCOLS – FIXED RECOVERABLE COSTS

Scope and interpretation

45.29A

(1) Subject to paragraph (3), this section applies where a claim is started under—

(a) the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol'); or

(b)the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ('the EL/PL Protocol'),

but no longer continues under the relevant Protocol or the Stage 3 Procedure in Practice Direction 8B.

(2) This section does not apply to a disease claim which is started under the EL/PL Protocol.

(3) Nothing in this section shall prevent the court making an order under rule 45.24.

Application of fixed costs and disbursements – RTA Protocol

45.29B

Subject to rules 45.29F, 45.29G, 45.29H and 45.29J, if, in a claim started under the RTA Protocol, the Claim Notification Form is submitted on or after 31st July 2013, the only costs allowed are—

(a) the fixed costs in rule 45.29C;

(b) disbursements in accordance with rule 45.29I.

Amount of fixed costs – RTA Protocol

45.29C

(1) Subject to paragraph (2), the amount of fixed costs is set out in Table 6B.

(2) Where the claimant—

(a) lives or works in an area set out in Practice Direction 45; and

(b) instructs a legal representative who practises in that area,
the fixed costs will include, in addition to the costs set out in Table 6B, an amount equal to 12.5% of the costs allowable under paragraph (1) and set out in Table 6B.

(3) Where appropriate, VAT may be recovered in addition to the amount of fixed recoverable costs and any reference in this Section to fixed costs is a reference to those costs net of VAT.

(4) In Table 6B—

(a) in Part B, 'on or after' means the period beginning on the date on which the court respectively—

(i) issues the claim;

(ii) allocates the claim under Part 26; or

(iii) lists the claim for trial; and

(b) unless stated otherwise, a reference to 'damages' means agreed damages; and

(c) a reference to 'trial' is a reference to the final contested hearing.

TABLE 6B

Fixed costs where a claim no longer continues under the RTA Protocol				
A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7				
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000, but not more than £25,000	
Fixed costs	The greater of— (a) £550; or (b) the total of— (i) £100; and (ii) 20% of the damages	The total of— (a) £1,100; and (b) 15% of damages over £5,000	The total of— (a) £1,930; and (b) 10% of damages over £10,000	
B. If proceedings are issued under Part 7, but the case settles before trial				
Stage at which case is settled	On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior the date of trial	
Fixed costs	The total of— (a) £1,160; and	The total of— (a) £1,880; and	The total of— (a) £2,655; and	

	(b) 20% of the damages	(b) 20% of the damages	(b) 20% of the damages	
C. If the claim is disposed of at trial				
Fixed costs	The total of— (a) £2,655; and (b) 20% of the damages agreed or awarded; and (c) the relevant trial advocacy fee			
D. Trial advocacy fees				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

Application of fixed costs and disbursements – EL/PL Protocol
45.29D Subject to rules 45.29F, 45.29H and 45.29J, in a claim started under the EL/PL Protocol the only costs allowed are—

(a) fixed costs in rule 45.29E; and

(b) disbursements in accordance with rule 45.29I.

Amount of fixed costs – EL/PL Protocol
45.29E

(1) Subject to paragraph (2), the amount of fixed costs is set out—

(a) in respect of employers' liability claims, in Table 6C; and

(b) in respect of public liability claims, in Table 6D.

(2) Where the claimant—

(a) lives or works in an area set out in Practice Direction 45; and

(b) instructs a legal representative who practises in that area,

the fixed costs will include, in addition to the costs set out in Tables 6C and 6D, an amount equal to 12.5% of the costs allowable under paragraph (1) and set out in table 6C and 6D.

(3) Where appropriate, VAT may be recovered in addition to the amount of fixed recoverable costs and any reference in this Section to fixed costs is a reference to those costs net of VAT.

(4) In Tables 6C and 6D—

(a) in Part B, 'on or after' means the period beginning on the date on which the court respectively—

(i) issues the claim;

(ii) allocates the claim under Part 26; or

(iii) lists the claim for trial; and

(b) unless stated otherwise, a reference to 'damages' means agreed damages; and

(c) a reference to 'trial' is a reference to the final contested hearing.

TABLE 6C

Fixed costs where a claim no longer continues under the EL/PL Protocol – employers' liability claims				
A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7				
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000, but not more than £25,000	
Fixed costs	The total of— (a) £950; and (b) 17.5% of the damages	The total of— (a) £1,855; and (b) 12.5% of damages over £5,000	The total of— (a) £2,500; and (b) 10% of damages over £10,000	
B. If proceedings are issued under Part 7, but the case settles before trial				
Stage at which case	On or after the date of issue, but prior to	On or after the date of allocation under	On or after the date of listing but	

is settled	the date of allocation under Part 26	Part 26, but prior to the date of listing	prior the date of trial	
Fixed costs	The total of— (a) £2,630; and (b) 20% of the damages	The total of— (a) £3,350; and (b) 25% of the damages	The total of— (a) £4,280; and (b) 30% of the damages	
C. If the claim is disposed of at trial				
Fixed costs	The total of— (a) £4,280; (b) 30% of the damages agreed or awarded; and (c) the relevant trial advocacy fee			
D. Trial advocacy fees				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

TABLE 6D

Fixed costs where a claim no longer continues under the EL/PL Protocol – public liability claims				
A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7				
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000, but not more than £25,000	
Fixed costs	The total of— (a) £950; and	The total of— (a) £1,855; and	The total of— (a) £2,370; and	

	(b) 17.5% of the damages	(b) 10% of damages over £5,000	(b) 10% of damages over £10,000	
B. If proceedings are issued under Part 7, but the case settles before trial				
Stage at which case is settled	On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior the date of trial	
Fixed costs damages	The total of— (a) £2,450; and (b) 17.5% of the damages	The total of— (a) £3,065; and (b) 22.5% of the damages	The total of— (a) £3,790; and (b) 27.5% of the damages	
C. If the claim is disposed of at trial				
Fixed costs	The total of— (a) £3,790; (b) 27.5% of the damages agreed or awarded; and (c) the relevant trial advocacy fee			
D. Trial advocacy fees				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

Defendants' costs
45.29F

(1) In this rule—

(a) paragraphs (8) and (9) apply to assessments of defendants' costs under Part 36;

(b) paragraph (10) applies to assessments to which the exclusions from qualified one way costs shifting in rules 44.15 and 44.16 apply; and

(c) paragraphs (2) to (7) apply to all other cases under this Section in which a defendant's costs are assessed.

(2) If, in any case to which this Section applies, the court makes an order for costs in favour of the defendant—

(a) the court will have regard to; and

(b) the amount of costs order to be paid shall not exceed,

the amount which would have been payable by the defendant if an order for costs had been made in favour of the claimant at the same stage of the proceedings.

(3) For the purpose of assessing the costs payable to the defendant by reference to the fixed costs in Table 6, Table 6A, Table 6B, Table 6C and Table 6D, "value of the claim for damages" and "damages" shall be treated as references to the value of the claim.

(4) For the purposes of paragraph (3), "the value of the claim" is—

(a) the amount specified in the claim form, excluding—

(i) any amount not in dispute;

(ii) in a claim started under the RTA Protocol, any claim for vehicle related damages;

(iii) interest;

(iv) costs; and

(v) any contributory negligence;

(b) if no amount is specified in the claim form, the maximum amount which the claimant reasonably expected to recover according to the statement of value included in the claim form under rule 16.3; or

(c) £25,000, if the claim form states that the claimant cannot reasonably say how much is likely to be recovered.

(5) Where the defendant—

(a) lives, works or carries on business in an area set out in Practice Direction 45; and

(b) instructs a legal representative who practises in that area,
the costs will include, in addition to the costs allowable under paragraph (2), an amount equal to 12.5% of those costs.

(6) Where an order for costs is made pursuant to this rule, the defendant is entitled to disbursements in accordance with rule 45.29I

(7) Where appropriate, VAT may be recovered in addition to the amount of any costs allowable under this rule.

(8) Where, in a case to which this Section applies, a Part 36 offer is accepted, rule 36.10A will apply instead of this rule.

(9) Where, in a case to which this Section applies, upon judgment being entered, the claimant fails to obtain a judgment more advantageous than the claimant's Part 36 offer, rule 36.14A will apply instead of this rule.

(10) Where, in a case to which this Section applies, any of the exceptions to qualified one way costs shifting in rules 44.15 and 44.16 is established, the court will assess the defendant's costs without reference to this rule.

Counterclaims under the RTA Protocol
45.29G

(1) If in any case to which this Section applies—

(a) the defendant brings a counterclaim which includes a claim for personal injuries to which the RTA Protocol applies;

(b) the counterclaim succeeds; and

(c) the court makes an order for the costs of the counterclaim,

rules 45.29B, 45.29C, 45.29I, 45.29J, 45.29K and 45.29L shall apply.

(2) Where a successful counterclaim does not include a claim for personal injuries—

(a) the order for costs of the counterclaim shall be for a sum equivalent to one half of the applicable Type A and Type B costs in Table 6;

(b) where the defendant—

(i) lives, works, or carries on business in an area set out in Practice Direction 45; and

(ii) instructs a legal representative who practises in that area,

the costs will include, in addition to the costs allowable under paragraph (a), an amount equal to 12.5% of those costs;

(c) if an order for costs is made pursuant to this rule, the defendant is entitled to disbursements in accordance with rule 45.29I; and

(d) where appropriate, VAT may be recovered in addition to the amount of any costs allowable under this rule.

Interim applications
45.29H

(1) Where the court makes an order for costs of an interim application to be paid by one party in a case to which this Section applies, the order shall be for a sum equivalent to one half of the applicable Type A and Type B costs in Table 6 or 6A.

(2) Where the party in whose favour the order for costs is made—

(a) lives, works or carries on business in an area set out in Practice Direction 45; and

(b) instructs a legal representative who practises in that area,
the costs will include, in addition to the costs allowable under paragraph (1), an amount equal to 12.5% of those costs.

(3) If an order for costs is made pursuant to this rule, the party in whose favour the order is made is entitled to disbursements in accordance with rule 45.29I.

(4) Where appropriate, VAT may be recovered in addition to the amount of any costs allowable under this rule.

Disbursements

45.29I

(1) Subject to paragraphs (2A) to (2E), the court—

(a) may allow a claim for a disbursement of a type mentioned in paragraphs (2) or (3); but

(b) will not allow a claim for any other type of disbursement.

(2) In a claim started under either the RTA Protocol or the EL/PL Protocol, the disbursements referred to in paragraph (1) are—

(a) the cost of obtaining medical records and expert medical reports as provided for in the relevant Protocol;

(b) the cost of any non-medical expert reports as provided for in the relevant Protocol;

(c) the cost of any advice from a specialist solicitor or counsel as provided for in the relevant Protocol;

(d) court fees;

(e) any expert's fee for attending the trial where the court has given permission for the expert to attend;

(f) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;

(g) a sum not exceeding the amount specified in Practice Direction 45 for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying away from home for the purpose of attending a hearing; and

(h) any other disbursement reasonably incurred due to a particular feature of the dispute.

(2A) In a soft tissue injury claim started under the RTA Protocol, the only sums (exclusive of VAT) that are recoverable in respect of the cost of obtaining a fixed cost medical report or medical records are as follows—

(a) obtaining the first report from any expert permitted under 1.1(~~12~~A1) of the RTA Protocol: £180;

(b) obtaining a further report where justified from an accredited medical expert from one of the following disciplines—

(i) Consultant Orthopaedic Surgeon (inclusive of a review of medical records where applicable): £420;

(ii) Consultant in Accident and Emergency Medicine: £360;

(iii) General Practitioner registered with the General Medical Council: £180; or

(iv) Physiotherapist registered with the Health and Care Professions Council: £180;

(c) obtaining medical records: no more than £30 plus the direct cost from the holder of the records, and limited to £80 in total for each set of records required. Where relevant records are required from more than one holder of records, the fixed fee applies to each set of records required;

(d) addendum report on medical records (except by Consultant Orthopaedic Surgeon): £50; and

(e) answer to questions under Part 35: £80.

(2B) Save in exceptional circumstances, no fee may be allowed for the cost of obtaining a report from a medical expert who—

(a) has provided treatment to the claimant;

(b) is associated with any person who has provided treatment; or

(c) proposes or recommends that they or an associate provide treatment.

(2C) The cost of obtaining a further report from an expert not listed in (2A)(b) is not fixed, but the use of that expert and the cost must be justified.

(2D) Where appropriate, VAT may be recovered in addition to the cost of obtaining a fixed cost medical report or medical records.

(2E) In this rule, 'accredited medical expert', 'associate', 'associated with', 'fixed cost medical report' and 'soft tissue injury claim' have the same meaning as in paragraph 1.1(A1), (1A), (10A) and (16A), respectively, of the RTA Protocol.

(3) In a claim started under the RTA Protocol only, the disbursements referred to in paragraph (1) are also the cost of—

(a) an engineer's report; and

(b) a search of the records of the—

(i) Driver Vehicle Licensing Authority; and

(ii) Motor Insurance Database.

ANNEX C

WHIPLASH: FURTHER MISCELLANEOUS AMENDMENTS – PD8B, P16 AND PART 35 and PD35

PART 8 – PRACTICE DIRECTION 8B

Definitions

3.1 References to 'the Court Proceedings Pack (Part A) Form', 'the Court Proceedings Pack (Part B) Form' and 'the CNF Response Form' are references to the forms used in the Protocols.

3.2 'Protocol offer' has the meaning given by rule 36.17.

3.3 'Settlement hearing' means a hearing where the court considers a settlement agreed between the parties (whether before or after proceedings have started) and the claimant is a child.

3.4 'Stage 3 hearing' means a final hearing to determine the amount of damages that remain in dispute between the parties.

3.5 'Accredited medical expert', 'fixed cost medical report' and 'soft tissue injury claim' have the same meaning as in paragraph 1.1 (A1), (10A) and (16A), respectively, of the RTA Protocol.

Filing and serving written evidence

6.1 The claimant must file with the claim form –

(1) the Court Proceedings Pack (Part A) Form;

(2) the Court Proceedings Pack (Part B) Form (the claimant and defendant's final offers) in a sealed envelope. (This provision does not apply where the claimant is a child and the application is for a settlement hearing);

(3) copies of medical reports;

(4) evidence of special damages; and

(5) evidence of disbursements (for example the cost of any medical report) in accordance with rule 45.19(2).

6.1A

In a soft tissue injury claim, the claimant may not proceed unless the medical report is a fixed cost medical report. Where the claimant includes more than one medical report, the first report obtained must be a fixed cost medical report from an accredited medical expert allocated via the MedCo Portal (website at: www.medco.org) and any further report from an expert in any of the following disciplines must also be a fixed cost medical report—

(a) Consultant Orthopaedic Surgeon;

(b) Consultant in Accident and Emergency Medicine;

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

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

6.2 The filing of the claim form and documents set out in paragraph 6.1 represent the start of Stage 3 for the purposes of fixed costs.

6.3 Subject to paragraph 6.5 the claimant must only file those documents in paragraph 6.1 where they have already been sent to the defendant under the relevant Protocol.

PART 16 STATEMENTS OF CASE – PD16

Personal injury claims

4.1 The particulars of claim must contain:

(1) the claimant's date of birth, and

(2) brief details of the claimant's personal injuries.

4.2 The claimant must attach to his particulars of claim a schedule of details of any past and future expenses and losses which he claims.

4.3 Where the claimant is relying on the evidence of a medical practitioner the claimant must attach to or serve with his particulars of claim a report from a medical practitioner about the personal injuries which he alleges in his claim.

4.3A

(1) In a soft tissue injury claim, the claimant may not proceed unless the medical report is a fixed cost medical report. Where the claimant files more than one medical report, the first report obtained must be a fixed cost medical report from an accredited medical expert allocated via the MedCo Portal (website at: www.medco.org) and any further report from an expert in any of the following disciplines must also be a fixed cost medical report—

(a) Consultant Orthopaedic Surgeon;

(b) Consultant in Accident and Emergency Medicine;

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

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

(2) In this paragraph, ‘accredited medical expert’, 'fixed cost medical report' and 'soft tissue injury claim' have the same meaning as in paragraph 1.1 (A1), (10A) and (16A), respectively, of the RTA Protocol

PART 35 – EXPERT EVIDENCE

35.4

(1) No party may call an expert or put in evidence an expert’s report without the court’s permission.

(2) When parties apply for permission they must provide an estimate of the costs of the proposed expert evidence and identify–

(a) the field in which expert evidence is required and the issues which the expert evidence will address; and

(b) where practicable, the name of the proposed expert.

(3) If permission is granted it shall be in relation only to the expert named or the field identified under paragraph (2). The order granting permission may specify the issues which the expert evidence should address.

(3A) Where a claim has been allocated to the small claims track or the fast track, if permission is given for expert evidence, it will normally be given for evidence from only one expert on a particular issue.

(3B) In a soft tissue injury claim, permission—

(a) may normally only be given for one expert medical report; and

(b) may not be given initially unless the medical report is a fixed cost medical report from an accredited medical expert.

(3C) Where the claimant seeks permission to obtain a further medical report, if the report is from a medical expert in any of the following disciplines—

(a) Consultant Orthopaedic Surgeon;

(b) Consultant in Accident and Emergency Medicine;

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

(d) Physiotherapist registered with the Health and Care Professions Council, the report must be a fixed cost medical report.

(3D) In this rule, 'accredited medical expert', 'fixed cost medical report' and 'soft tissue injury claim' have the same meaning as in paragraph 1.1 (A1), (10A) and (16A), respectively, of the RTA Protocol

(Paragraph 7 of Practice Direction 35 sets out some of the circumstances the court will consider when deciding whether expert evidence should be given by a single joint expert.)

(4) The court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.

PRACTICE DIRECTION 35 – EXPERTS AND ASSESSORS

Expert Evidence – General Requirements

2.1

Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

2.2

Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

2.3

Experts should consider all material facts, including those which might detract from their opinions.

2.4

Experts should make it clear –

(a) when a question or issue falls outside their expertise; and

(b) when they are not able to reach a definite opinion, for example because they have insufficient information.

2.5

If, after producing a report, an expert's view changes on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court.

2.6

In a soft tissue injury claim, where permission is given for fixed cost medical report, the first report must be obtained from an accredited medical expert allocated via the MedCo Portal (website at: www.medco.org)

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	☐ (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by Wednesday 1 October 2014 to:

Scott Tubbritt
Ministry of Justice
4.37, 102 Petty France
London SW1H 9AJ

Tel: 020 3334 3157
Fax: 0870 739 4268
Email: whiplashcondoc@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at http://www.justice.gov.uk/index.htm.

Publication of response

A paper summarising the responses to this consultation will be published in November 2014. The response paper will be available on-line at http://www.justice.gov.uk/index.htm.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In

view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential.

If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf