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The new road traffic accident claims process

Introduction

On 30 April 2010, the way in which personal injury claims arising from road traffic accidents changed. The aim of the new procedure is to deliver fair compensation to the injured person as quickly as possible.

For road traffic accidents taking place after this date, the process will apply to cases in which there is a reasonable expectation that the value is greater than £1,000 but no more than £10,000.

The process is divided into 3 separate stages, each of which carries its own fixed costs. The new process is unlikely to be profitable to those claimant firms which do not carry out a great deal of personal injury work, and in particular those without fee earners of Grade D level to have day to day running of the case.

The new process is supported by a new Protocol, as well as amendments to the Civil Procedure Rules 1998 and its Practice Directions.

Information Technology

The new process requires the relevant forms and information to be sent through secure electronic exchange. The Association of British Insurers (ABI) has funded the development and management of a system which will be available for use by anyone using the new process. This portal is accessible to registered practitioners only. To register, please visit: http://www.rtapiclaimsprocess.org.uk/how_to_sign_up.html

There are two methods to interact with the portal:

1. Web user access; or
2. Application to application access.

The difference between these two options is that application to application access involves practitioners' case management systems to interact with the portal directly. Otherwise, as with web user access, it takes an individual practitioner to sign in to the portal to obtain any updated posts because in itself the portal does not communicate with external programs.

The Stages of the Process

Stage 1 involves the Claimant representatives gathering the information, notifying the Defendant and his/her insurer of the intention to make a claim, and the Defendant's insurer making a decision on liability.

The Letter of Claim has been replaced with a Claim Notification Form which is completed on the portal.

The Defendant's insurer has just 15 business days to make a decision on liability. Where liability is admitted, Stage 1 fixed costs become payable to the Claimant immediately.

Where the Defendant does not comply with this timescale, the matter may 'exit' the process and is thereafter managed under the current Pre-Action Protocol for Personal Injury Matters. Practitioners will find that there is also opportunity for the claim to revert to the old process at various other stages; usually when a deadline has not been complied with.

Stage 2 is for details on quantum to be exchanged, offers to be made, and the claim potentially settles.

A medical report is obtained by the Claimant, to comply with the new Medical Template, and the Schedule of Special Damages is prepared with full supporting documentation. The Claimant's

representative will then complete the Stage 2 Settlement Pack, to be uploaded to the portal for the Defendant's insurer to review and negotiations to take place.

At the end of Stage 2, the Claimant is entitled to a further amount of fixed costs, in addition to payment of disbursements. A success fee is only paid at the end of Stage 2 where damages have been agreed.

If damages have not been agreed within the timescales provided in Stage 2, the claim will enter Stage 3.

Where proceedings are issued in Stage 3 for the court to consider quantum, it will usually be resolved by way of a paper hearing on the basis of documents already passed between the parties.

Again, fixed costs are available to the Claimant at the end of Stage 3, as is the success fee.

Implications for Practitioners

The initial announcement that a new process was being implemented came in September 2009. Broadly speaking the idea behind the process was welcomed by claimant practitioner associations, such as APIL and MASS, on the basis that it was preferable to increasing the small claims track limit – an issue which had been rumbling on for two years previously.

However, it is estimated that the new process will bring a reduction in profit costs that claimant practitioners will receive of 53%. Having said this, for those claims worth less than £2,000 overall, the new process will actually bring in more costs than would be expected under the old regime.

Over time, the streamlined nature of the new process is likely to reduce the actual work done on each case, which is hoped will balance out the lower fee income on each matter. This in itself may bring risk of redundancy to claims handlers and fee earners who predominantly deal in such cases who end up surplus to requirement.

At the time of writing, the new process has been in force for almost 3 months. The main issue arising after the implementation date was that there was a significant backlog in claimant representatives receiving log-in details for the portal. However, by 9 June 2010 this backlog was cleared. At that time, more than 1,750 claimant firms and 230 insurers/other compensators were successfully registered. By 05 July 2010, 52,800 Claim Notification Forms had been submitted to the portal.

Highway Insurance reported their first claim settling under the new process on 13 May 2010. Zurich Insurance Company have reported finding the portal highly beneficial in speeding up the claims process, with one claim reaching settlement at the end of Stage 2 within 21 days from the Claim Notification Form being submitted.

Only time will tell how successful the new process will actually be, but for the compensators at least, early experiences are positive.

If you would like to talk to us about the issues raised by this note, please contact:

Laura Thompson

Telephone 01895 207230

Email laura.thompson@ibblaw.co.uk

IBB Solicitors

Capital Court

30 Windsor Street

Uxbridge UB8 1AB

Tel: 08456 381 381

Fax: 08456 381 351

www.ibblaw.co.uk

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