



Personal Injury case track limits

The proposed changes

Since 2007 the Ministry of Justice have consulted on reforms to the Personal Injury Claims process to achieve a quicker process where appropriate and more proportionate costs. The outcome of the consultation was published on Monday 21st July 2008.

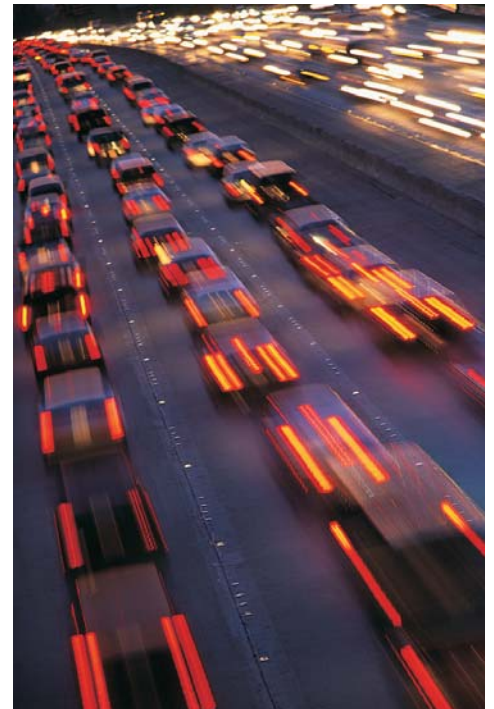
Several changes are proposed, aimed at speeding up the process and several options considered have been discontinued due to the force of representation. The key changes that may affect the client pursuing or resisting a personal injury claim are as follows:

- The small claims track limit for personal injury claims which has been set at £1,000 for the value of the injury claim for some time will not increase.
- The limit on fast track claims currently set at £15,000 will be increased to £25,000.
- There will be a new claims process for road traffic accident claims where the value of the claim is £10,000 or less and there is no dispute on liability, the cause of the injury or allegations of contributory negligence. This process will be accompanied by a fixed recoverable cost system to regulate the level of costs that can be recovered.

Commenting upon the changes, Mark Hambling, a Partner in the firm's Personal Injury Department indicated that he welcomes the Ministry of Justices' decision to maintain the small claims limit for personal injury claims at £1,000.

"This is important in ensuring that those that unfortunately suffer personal injury claims have the ability to pursue their claim with the advice and representation of a qualified lawyer without their claim being at risk of falling into the small claims track. The initial proposals considered increasing the small claims limit for personal injury claims to £5,000 which would have prevented many cases being dealt with by solicitors and this would have significantly curtailed the access to justice for those suffering injury."

Whilst it was perhaps inevitable that the fast track limit was going to increase, it is hoped that this will improve the speed in which relatively straightforward personal injury claims can be resolved. It is however of some concern that under the proposed reforms there is no procedure whereby complex claims which may have a value less than £25,000 but which are complex on the issues and more suited to the multi track procedure can be moved from the fast track to the multi track. This may lead to further litigation before the Court in arguing whether a case should



be transferred even though the value falls within the new fast track claims limit. It will be interesting to see how Judges react to such applications.

THE NEW ROAD TRAFFIC CLAIMS PROCEDURE

This new procedure will create a system where the solicitor representing the Claimant will need to send a notification of claim to the Defendant within 5 days of obtaining all of the information required. The insurer then has only 15 days in which to respond with an indication on liability and no extensions of time are likely to be allowed. In effect in a relatively short period of time in a road traffic accident case where the value will not exceed £10,000 the insurer will have a very short period of time in which to consider liability and confirm whether this is admitted. There will then be processes whereby the solicitor would put together the medical evidence and prepare a settlement pack to send to the insurer who will then have a further 15 working days upon receipt of the pack to accept or reject an offer to settle. It is quite clear that this new process could significantly speed up the claims process however there will be a need for caution to be exercised by the solicitor to ensure that all of the medical evidence is accurate and the prognosis clear before advising a client on a full and final settlement.

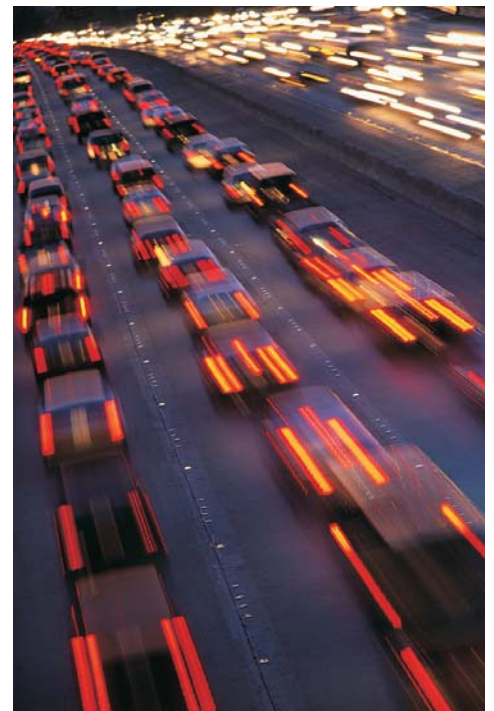
It must also be noted that under this procedure, if the insurer denies liability, argues to any degree that the person bringing the claim was responsible or denies that the injuries were caused by the accident, the claim will fall out of this new procedure and proceed in line with the current process, more likely than not within the fast track limit.

CONCLUSIONS

It should be welcomed that the Ministry of Justice have maintained the small claims track limit and it is hoped that the new road traffic accident claims process will be a success. However there must be some concern that in relation to both this new process and the new fast track limit that this will include claims that are complex and perhaps not completely suited for a streamlined process. It is therefore hoped that there will be some provisions for claims that are unsuitable for the process on the issues to be moved into the multi track where appropriate.

It is however disappointing that in relation to the reforms the Ministry of Justice have not considered whether provision could be made for the better implementation of the Rehabilitation Code of Best Practice. It is as important that a Claimant receives early treatment and management of an injury at an early stage as it is that they are suitably compensated at the conclusion of the claim. It is therefore disappointing that the Code of Best Practice on Rehabilitation, which is at the moment part of the Personal Injury claims Protocol was not mentioned in the proposed reforms. It is also disappointing that the reforms do not further emphasise the need for early interim payments in suitable cases and in particular in larger claims. In the absence of any mention of this in the reforms it is likely that in the event of an insurer not voluntarily agreeing to an early payment on account, Court proceedings to seek an interim payment will have to be issued.

Finally there is no timescale in terms of the implementation of these proposals and it is therefore necessary to "watch this space" as to when the proposals are implemented and what, if any, changes are made between now and the implementation".



For further information on the proposed changes or to discuss any specific case that you may wish to advance or defend please contact:



Mark Hambling

01603 675637

mbh@rogers-norton.co.uk