

## New Rules For Accident Claims

### Summary:

With effect from the 31<sup>st</sup> July 2013 new rules are being introduced to the way accident claims are to be notified by claimants, and also the process these claims will follow.

The changes have been introduced to counter the definite rise in the cost of insurance claims and premiums seen over the last decade which is representative of the UK's growing "Compensation Culture"

### Background to the changes:

One of the key drivers for the increasing costs of claims was the transition to the contingent fee ("no win, no fee") civil compensation model which was made possible following the implementation of the Access to Justice Act 1999.

The changes allowed for recovery of success fees from the losing party in civil cases. Whilst this was important in terms of accident victims being given access to justice, and the ability to pursue compensation, it also allowed them to do so at no personal risk to themselves whatsoever.

The effect of this legislation led to a proliferation in the number of claims management companies and media advertisements promoting the claims culture, leading to huge rises in litigation costs which ultimately drove up the cost of insurance premiums.

As these costs started to become unsustainable for household budgets and businesses, the Government commissioned Lord Justice Jackson to conduct a review of the industry practices and in 2010 Lord Justice Jackson published his report entitled "Review of Civil Litigation Costs"

Lord Justice Jackson made some key recommendations to reform the UK civil costs model. Significantly, Jackson proposed abolishing "no win, no fee" success fees and after the event (ATE) insurance premium recovery from losing parties. These reforms coupled with reforms implemented by the LASPO Act (The Legal Aid, Sentencing and Punishment of Offenders) which banned referral fees in personal injury cases, another huge factor in pushing up costs, are anticipated to have a cost reducing effect across the industry.

Claimants will now need to pay their legal representatives success fees, as these will no longer be recoverable from the losing party. These success fees will have to be paid from the awarded damages.

In order to compensate for the claimants increased costs in bringing a claim, general damage awards will be increased by 10%.

The other part of the reform package is the extension of the fast-track claims portal which is currently in place for handling Road Traffic Accidents (RTA) claims up to £10,000.00 and will now be extended to cover claims up to the value of £25,000.00 in personal injury motor claims, and will now also include employer's liability and public liability claims up to a value of £25,000.00.

The Government has advised that these changes will apply to accidents on or after **31<sup>st</sup> July 2013**.

## The New Process

The changes will affect the way claims are reported to insurers and will subject new claims to strict time limits for three key stages involved in processing the claim, with fixed legal fees for each stage.

The three key stages are:



In an RTA claim, a Claims Notification Form (CNF) is sent to the defendant or their insurer and must be acknowledged the next working day. A full response must be provided to the claimant within 15 working days admitting or denying liability.

In an Employer or Public Liability claim where the accident occurs on or after the 31<sup>st</sup> July 2013, when the claimant sends the CNF (Claim Notification Form) through to the defendants insurer, the insurer must acknowledge receipt on the next working day and must then respond within 30 days (for EL claims) and 40 days (for PL claims) admitting or denying liability.

If liability is denied then the claim falls out of the protocol, and will be dealt with under the normal legal process.

Once a claim moves into stage 2, the claimant must provide the defendant with a settlement pack which sets out full details of the claim and the defendant has 15 days within which to respond to the claimants offer and then there is a period which continues for 20 days from the end of the initial consideration period whereby the defendants insurer can reject the claimants offer and make a counter offer.

If settlement has not been agreed within the stage 2 time limits then the claim moves to stage 3, which is a simplified court damage assessment process.

In most cases claimants solicitors will ascertain a defendants insurers by using the Motor Insurance Database (MID) or via the Employer Liability Tracing Office (ELTO) database for employment liability claims, and report the claim directly to the insurer.

There remains however a possibility that Public Liability claims where no insurer database exists would be notified directly to the insured.

## What Do You Need To Do

**It is imperative that you address any claim notified directly to you as a matter of urgency, and that you respond to the issuing claimants solicitor via e-mail with a simple acknowledgement of the claim, that neither denies or accepts liability within 1 working day, and at the same time forward the CNF to your insurer or broker.**

The portal claim system limits the time that insurers have in responding to claims and it is important that insurers are notified as quickly as possible to enable a liability decision to be made within the deadline the Portal allows.

If the time scales are not met, a claim will be removed from the process and significant additional costs could be incurred.

**For further information in connection with the above or any aspect of handling and dealing with insurance claims please contact: [grant.wignall@sentinelrisk.co.uk](mailto:grant.wignall@sentinelrisk.co.uk)**

## Quick Reference Guide to the 2013 Civil Justice Reforms

### WHAT

The ban on referral fees in Personal injury cases

ATE fees no longer recoverable

Introduction of Damage Based Agreements (DBA's)

A drastic cut in RTA portal costs

Portal used to manage Personal injury claims will be extended

Introduction of "Qualified One Way Cost Shifting (QOWCS) for Personal Injury cases

### WHEN

1st April 2013

1<sup>st</sup> April 2013

1st April 2013

30<sup>th</sup> April 2013

31<sup>st</sup> July 2013

1<sup>st</sup> April 2013

### WHAT DOES IT ACTUALLY MEAN

The Legal Aid, Sentencing & Punishment of Offenders Acts (LASPO) prohibits the payment or receipt of referral fees in claims for damages following personal injury.

ATE (After The Event) Insurance premiums will no longer be recoverable from the defendant in the event that a claim succeeds. The claimant would therefore be responsible for the cost of the policy

Law firms will be able to enter into DBA's with clients, enabling them to take up to 25% of client damages for personal injury related cases and 50% of non-personal injury related cases where there is no BTE (Before The Event) policy in force.

For personal injury cases up to a value of £10,000, law firms will see a reduction in the fixed costs they will receive for managing the case from £1200 to a maximum of £500.

The portal process will be extended to cover cases up to £25,000, and will now include EL and PL claims

Defendant will not be able to recover their costs from a losing Claimant. Exceptions: Fraud / dishonesty, struck out claims, Part 36 consequences – where a Claimant could be liable for the Defendant's costs up to the value of their claim if they fail to beat a Part 36 offer, effectively "wiping out" their damages.