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Consultation

Case track limits and the claims process for personal injury claims

CP 8/07

Response of Browne Jacobson LLP
13 July 2007

Contents

Introduction

Browne Jacobson LLP

Browne Jacobson is a leading firm of Solicitors in the Midlands, with offices in Nottingham, Birmingham and London. Amongst the firm's clients are a number of national insurers, loss adjusters, local authorities, charities, companies and the NHSLA. The firm covers a broad range of commercial sectors and legal specialisms.

Contact details: Sarah White
Or: Bridget Tatham

Browne Jacobson LLP
Victoria Square House
Victoria Square
Birmingham
B2 4BU

Tel: Sarah White: 0121 237 3925
Bridget Tatham: 0121 237 3916

Email: swhite@brownejcaobson.com
btatham@brownejacobson.com

Interest in the Consultation

Many of Browne Jacobson's clients instruct the firm to deal with claims on their behalf, either at a pre action stage or following issue of a claim in the courts. These claims cover a broad spread of Road Traffic Accidents (RTAs), Employers' and Public Liability, disease and clinical negligence. Many of these claims fall within the current small claims track or fast track. Browne Jacobson and its people therefore have extensive experience of working under the current claims process and of the strengths and weaknesses of this.

Browne Jacobson recognise the crucial importance to its clients of a claims process which is timely, proportionate and cost-effective. We are keen to participate in the development of such a process.

The Response

This response is based upon experience of lawyers at Browne Jacobson and upon feedback from a number of the firm’s clients.

Summary

The Small Claims Track

We consider this track provides an efficient means of dealing with lower value claims. It provides appropriate access to justice for claimants, including litigants in person, while maintaining a proportionate and cost effective process. It will retain a role notwithstanding the proposed procedure for fast track claims.

We believe, the small claims track limit for personal injury (PI) claims should be increased to £2,500. This is in line with the increase in damages in lower value claims since 1991.

We see no reason to prevent the small claims procedure being applied to PI claims valued at up to £5,000 but agree that appropriate information and guidance must first be made available to a claimant. Key to this is our proposal that the Judicial Studies Board should be invited to provide more detailed guidelines for claims valued at up to £5,000.

We have proposed an increase in the track limit for housing disrepair claims to £5,000.

Intellectual Property Claims

We consider there is scope to make the procedure by which certain intellectual property claims are handled more timely and proportionate. We set out key proposals below. We would welcome the opportunity to be involved development of appropriate procedures

The Fast Track

We agree that the fast track limit should be raised to £25,000.

The Procedure

We believe the proposed procedure for fast track claims strikes a good balance between access to justice and the need to deal with claims in a timely and cost effective manner. We welcome proposals in relation to fixed costs and to the limitation of the availability of ATE premiums to those cases where there is a real risk.

Certain cases, for example disease claims, are of such complexity that they cannot be dealt with under current fast track procedure, but instead are allocated to the multi track. These cases should continue to be dealt with as multi track claims.

We have some concerns at the potential for claims to fall out of the proposed procedure as a result of minor breaches of the procedure. Recent research published by the Civil Justice Counsel[1] indicates that claimants will attempt to move a claim outside of a fixed costs regime in order to obtain enhanced costs. The proposed procedure should not be open to abuse in that way.

For the avoidance of doubt, we consider that the current pre action protocols and costs provisions, including the predictive fee regime under section II of CPR 45 should be maintained for claims falling outside the procedure. We understand that to be the intended outcome.

We suggest increased flexibility in relation to time limits in order that claims are more likely to continue within the procedure. We make proposals as to how costs can be used to ensure claims are dealt with expeditiously.

[1] Monitoring the Fixed Recoverable Costs Scheme (Paul Fenn and Neil Rickman) Part I dated 4 February 2007, Part 2 dated 27 February 2007

We welcome the introduction of 'settlement packs' which we believe will be a useful tool to all parties and to the courts.

We consider the proposed process for assessment of damages will be an effective means of resolving claims and believe it can be applied to all claims within the fast track. We consider that in most cases this exercise can be conducted on the papers alone.

We propose that a modified assessment procedure, with attendance, should be adopted when claim involves a patient or infant. This procedure could also be used to secure approval of agreed settlements in such cases

Costs

The level of fixed costs will be key to determining the success or failure of the proposals. We believe that fixed costs should apply at each stage of the procedure. We have not considered at this stage the level at which costs should be set. This will depend upon the structure of the cost regime to be adopted. When that has been decided, we would welcome the opportunity to provide further input.

Rules as to when and to what extent costs are recoverable should also be included within the procedure. Further clarification is, we believe needed, as to the impact of the proposals on Part 36 of the CPR. We have set out our proposals in this regard in response to question 18.

We have proposed that parties should be treated as matching an assessment of damages when their offer is within 10% of the assessed figure. This should ensure that any reasonable offer establishes costs protection.

The Motor Insurers Bureau

The Motor Insurers Bureau (MIB) provides compensation to the victims of negligent, uninsured motorists. The MIB is not an insurer and so does not have the benefit of ready access to policyholders involved in accidents in order to determine liability quickly. For this reason, the MIB will have specific requirements as to the evidence it requires from claimants and as to investigation times.

Response to Consultation Questions

Question 1 – Should the small claims limit for personal injuries remain at £1000?

The small claims limit for personal injury claims should be raised to £2,500 at this stage

We believe it will be appropriate to increase the limit to £5,000 in time, when appropriate guidance as to quantum is available in relation to injuries within the bracket.

The JSB guidelines place few injury claims within the small claims track. Where the guidelines indicate an injury might be suited to the small claims track, it will often be found that a range extending far above the current £1,000 limit of that track is given. For example, one of the most common injuries, whiplash, has a lower bracket of £750 for symptoms lasting 'a few weeks' to £2550 for 1 year.

As a result, there is scope in the vast majority of minor claims for a claimant to seek allocation to the fast track, given the more favourable costs rules under that track at present. Such issues themselves generate unnecessary costs and detract from the objective of quick and fair compensation.

While we believe the proposed fast track procedure will reduce the disparity between the small claims and fast track, it will not eliminate it.

Comparing the 1st and 8th edition JSB guideline figures set out in the consultation paper we calculate an average increase in awards of 250% (table 1). That would appear to support an increase in the small claims limit to £2,500.

Table 1: Increase in JSB Guideline brackets

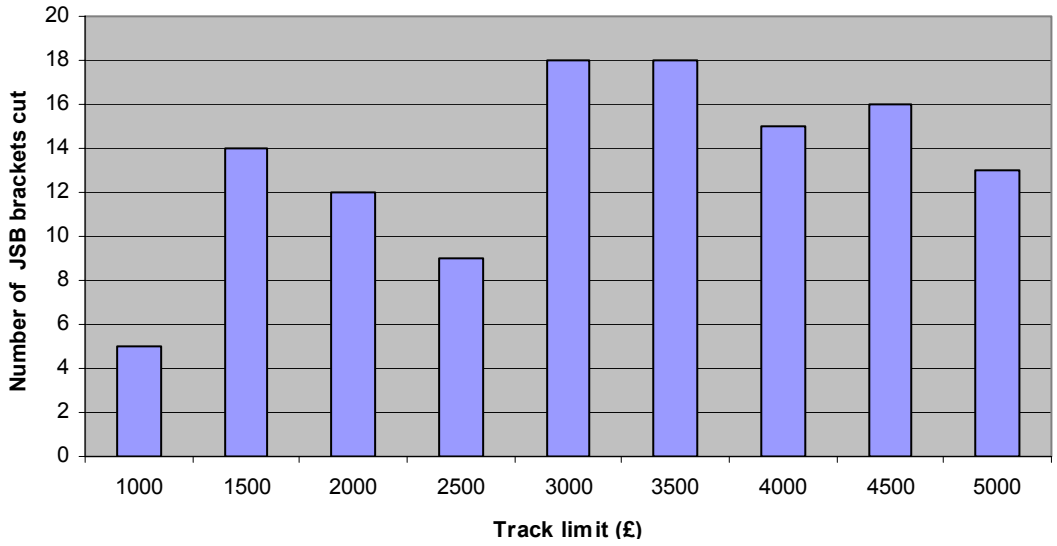
		1st Edition	4th Edition	8th Edition	Increase - 1st to 8th	Increase - 4th to 8th
Trivial thumb		£750.00	£1,000.00	£1,250.00	166.67%	125.00%
Minor Psychiatric	from	£200.00	£500.00	£840.00	420.00%	168.00%
	to	£1,000.00	£2,250.00	£3,450.00	345.00%	153.33%
Vibration Whitefinger	from	£800.00		£1,775.00	221.88%	
	to	£800.00	£2,500.00	£5,100.00	637.50%	204.00%
Nose	from	£750.00	£750.00	£1,000.00	133.33%	133.33%
	to	£750.00	£1,000.00	£1,400.00	186.67%	140.00%
Single Finger Fracture	from	£740.00	£1,000.00	£1,000.00	135.14%	100.00%
	to	£1,000.00	£1,750.00	£2,800.00	280.00%	160.00%
Damage to 1 back tooth	from	£350.00	£500.00	£630.00	180.00%	126.00%
	to	£600.00	£850.00	£1,000.00	166.67%	117.65%
Average increase					**261.17%**	**142.73%**

The track limit should also correspond with the boundaries between the brackets of the JSB guidelines. This will achieve certainty in allocation of claims to tracks. Our analysis shows that a track limit of £2,500 best achieves this.

We refer to the graph at appendix 1 which shows the brackets given in the 8th edition JSB guidelines. That demonstrates the way in which brackets fall above and below the £2,500 limit proposed.

Graph 1, below, summarises the number of injuries which cannot be allocated to a track simply by use of the 8th Edition JSB guidelines. The graph includes results calculated on the basis of various small claims track limits.

Graph 1: Number of JSB brackets which significantly overlap small claims limits
(a significant overlap is taken as one of more than 10%).



The low figure for a £1,000 track limit is obtained because that limit falls well below the majority of awards. On the basis of a £1,000 limit there would be significant uncertainty in relation to allocation of claims arising in 5 of 6 types of injury potentially falling within the small claims track.

A £2,500 small claims track limit will therefore give optimal certainty in allocation of relevant claims.

We do not consider an increase in the small claims limit will prejudice claimants. Dealing briefly with some of the points raised in the consultation paper:

1. Personal injury claims at this level are not unusually complex. Indeed, liability in relation to injury is probably more familiar to the majority of the public than, for example, in contract law. In most cases, it is also more straightforward. Expert evidence is required in many areas of law subject to the £5,000 small claims track limit.

2. Solicitors acting for defendants have a duty to act fairly towards a litigant in person. Insurers have similar requirements imposed on their third party dealings by the Financial Services Authority.

3. In the interest of a rapid and cost effective resolution to a claim brought by a litigant in person, defendants and their representatives will generally wish to ensure that a litigant in person provides all relevant evidence, compiles with court directions and procedural requirements and is aware of his duties to the court. The judge dealing with a claim may well criticise a defendants representative if this is not done

4. The concern that claimants may have difficulty valuing their claims can be resolved by a clear tariff for general damages within the small claims track. Up to the limit of £2,500 adequate guidance is already available.

We are of the view that it will, in time, be appropriate to raise the small claims limit to £5,000. The most significant difficulty in doing so at present is in relation to a claimant's ability to value his or her claim. We believe that can be addressed by the Judicial Studies Board producing more detailed guidelines for general damages up to the value of £5,000. We discuss this further in response to question 16.

Question 2 – Should the small claims limit for housing disrepair remain at £1000 for disrepair and £1000 for damages?

We consider the limit should be increased to £5,000.

The small claims track is an established means of dealing with many claims valued at up to £5,000. The track is widely considered to provide a well balanced and proportionate means of dealing with those claims.

An argument that has been put forward in favour of retaining the track limit for housing disrepair at £1,000 is that claimants bringing such claims may be vulnerable or from a deprived or excluded background. We do not consider this argument holds today.

Housing disrepair is not now such a significant social problem as it once was. Further, the public is increasingly aware of the possibility of recourse to the courts for a remedy in housing disrepair cases. It is an outdated perception that housing disrepair claims typically involve deprived or vulnerable claimants who lack understanding of their entitlement to claim.

Many other areas, including contract, are subject to the £5,000 limit. It is possible to envisage scenarios in which such claims might involve a particularly vulnerable claimant, or one from a deprived or excluded group. For example, these individuals may be more at risk from 'cowboy' traders and workmen than the majority of the population. Any resulting claim would be subject to the £5,000 limit. Such a claim would be typical of those currently dealt with in a fair and proportionate manner under the small claims track.

There is no significant discrepancy between claimants who bring housing disrepair claims and other claims such as would justify a difference in the small claims track limit.

In relation to the protection available to litigants in person proceeding under the small claims track, we refer to our response to question 1. The track does provide adequate protection to litigants in person, including in housing disrepair claims.

A further argument against raising the limit for housing disrepair claims is set out at page 22 of the consultation paper. It is suggested that housing disrepair claims which may include a personal injury aspect are particularly complicated and difficult for claimants to understand. The example of asthma is given as a disorder which may arise through housing disrepair.

We do not accept this argument. The public in general is very familiar with the concept of personal injury claims. In relation to the specific example given, save for mild asthma which resolves within a few months the disorder would warrant general damages above £5,000 and therefore the claim would fall within the fast track.

Question 3 – Can the process for dealing with housing disrepair cases be improved?

We consider that an increase in the track limit for disrepair cases will be the most effective means of ensuring just, rapid and cost effective resolution of lower value housing disrepair claims.

Where such claims have a value above £5,000, current procedure is generally effective in achieving those aims.

Question 4 – Should the small claims limit for other claims remain at £5000?

Yes

Our experience suggests that the £5,000 limit strikes a fair balance between access to justice and legal advice and the need to deal with claims rapidly and cost effectively. As indicated above, we consider the limit is equally appropriate to personal injury and housing disrepair claims.

Question 5 – Do you agree that the fast track limit should be increased to £25,000?

Yes.

However, it should remain possible to remove complex cases to the multi track.

The fast track limit should be set at a level beneath which claims can be dealt with using a standardised procedure. Those claims requiring a bespoke approach should be allocated to the multi track.

Analysis of our own case management data suggests that standardised handling is typically suitable for cases up to around £25,000. Beyond that level, the investigations and evidence required to deal with a claim becomes more variable.

Certain cases below this value will still require more intensive investigation or more detailed consideration fast track is intended to provide. Disease claims, for example, often involve complicated issues of causation, necessitating medical evidence that would not normally be provided for under the fast track. The court should retain its current discretionary powers to allocate such claims to the multi track.

Question 6 – Measures that would make the handling of intellectual property claims more efficient and effective.

We consider that many lower value IP claims can be dealt with through a fast track procedure. Patents claims should be excluded from this.

Where liability has been agreed, we consider that a procedure for a pre-action application to a Patents County Court judge for assessment of damages might assist parties in resolving claims. We would welcome the opportunity to contribute to the development of such a procedure.

Intellectual Property (IP) claims can be dealt with in a timely and cost effective manner under the current procedure. The expertise of the Patents County Court is key to the rapid resolution of disputes in this area. The Court has been willing to be flexible in relation to where and when it sits, which assists in achieving cost effectiveness in this field. We believe, however, that there are areas in which further efficiencies can be achieved.

IP claims can involve remedies (whether in damages or other relief) of very substantial financial value. Further, IP law protects essential commercial interests and as such is an important foundation of the economy. Given these factors, it is appropriate that some IP claims should be subject to extensive and detailed scrutiny.

However, the range of IP claims also extends to rights of more limited financial value and importance. The Patents County Court has developed procedures which allow these cases to be dealt with in a proportionate manner. At present, those procedures are applied through directions given under the multi track (the default track for all IP claims) however we consider that such claims ought to be capable of resolution through a fast track procedure.

A fast track procedure should take into account the financial value of a claim, including the value of any injunctive relief sought. Such a procedure should not be applicable to claims involving patents, given the value and importance of the rights involved in such cases. We anticipate that a number of trademark cases will fall outside the fast track procedure for similar reasons.

We have considered whether a procedure such as that proposed in relation to personal injury claims for an application to a Judge for determination of quantum might be applied to IP claims. We believe that a system can be developed whereby the parties, at a pre action stage, having agreed liability and compiled quantum evidence could apply to the court for a determination of damages. However, the Judge should be a Patents Court Judge and attendance of the parties should be allowed. The proposed time limits under the procedure for personal injury claims cannot be applied to IP cases.

Question 7 – If the difficulty of dealing with intellectual property cases is not the court process, what are the difficulties and how could they be resolved?

The Patents County Court should be permitted to develop into a stand alone County Court. IP claims should be capable of being issued in that court directly.

To deal with this change and with the introduction of a fast track procedure, the Patents Court should be given the benefit of additional administrative resource, a court manager and Recorders with the experience to deal with IP claims.

In order to support a fast track process, the Patents County Court should be developed into a stand alone County Court and should receive additional resources.

At present, claims issued in the Patent County Court are administered by the Central London County Court, before being transferred to the Patents Court. This is not conducive to efficient resolution of claims and in particular would negate benefits offered by a fast track procedure. These claims should be capable of being issued in the Patents County Court.

We anticipate that the Court will require additional resource in order to deal with this. Further, the Court would benefit from independent administrative systems. This will allow IP claims to be dealt with in accordance with their particular requirements. We would suggest that a Court Manager should be appointed to the Patents County Court.

The court will also require additional judicial capacity in order to deal with claims rapidly and efficiently. We would suggest the appointment of Recorders to sit as deputies to HHJ Fysh QC. These Recorders should have appropriate IP or technology experience in order to allow them to deal with the issues raised by IP claims.

Question 8 - Would different measures be appropriate for different kinds of IP claim?

Yes. While many claims of limited value might be capable of a fast track procedure this should not extend to patents claims.

It may also be appropriate to exclude other claims, and in particular certain trademark claims, from such a procedure where the rights involved are of significant value or importance.

We have made submissions above in relation to a fast track procedure for IP claims. That should be subject to a financial limit. IP claims present a particular difficulty in this regard, as injunctive relief will often be of greater value to the parties than relief in the form of damages. IP claims can also have significance beyond the value of relief as they can sound in the wider commercial sphere.

While damages and injunctive relief can often be quantified, at least on a general basis, broader commercial importance of a decision is not so easily valued.

The significance of patents is such that claims relating to them should proceed on the multi track as a matter of course.

Trademarks occupy a middle ground, but the court should not be slow to allocate these to the multi track where the parties seek this. In relation to other IP claims, similar considerations may also arise. The courts are already empowered in a broad range of claims to depart from the default track where this is justified by particular facts or issues. The Patents Court has knowledge of the particular considerations applicable to IP claims and will be able to allocate appropriately, taking these into account.

Question 9 – Will the procedure provide fair compensation in a more timely and cost-effective way?

We believe the proposals will significantly improve the way in which personal injury claims are dealt with.

However, too rigid a regime will lead to many cases falling outside of the procedure and to disproportionate costs being incurred as a result. We believe the procedure should be sufficiently flexible to allow for contingencies so that claims stay within it.

Costs should be used to control the claims process.

An outline of the process with our proposed amendments is as follows:

Stage 1 Claimant and solicitor meet to sending of claim form	• Claimant contacts solicitor and is interviewed in relation to claim • Claim form sent to defendant
Stage 2 a Time for admission or denial of liability by defendant	• Defendant receives claim form • Form must be complete for time under section 2 to start • Claimant's investigations suspended • Opportunity for defendant to investigate liability • Defendant gives admission or denial at end of period or procedure moves to stage2b • Defendant may make offer to settle
Stage 2 b Additional period for defendant to consider liability	• Further period for defendant to investigate. • Costs implications if defendant defers response on liability until this time • At end of period defendant must admit or deny liability. Defendant may make an offer to settle • Claimant's investigations remain suspended
Where liability is admitted:	

Stage 3 Expert agreed and instructed	• Claimant will have proposed expert at outset. Parties will seek to agree expert or to agree injuries without expert evidence. • Claimant will have time within this period to consider special damages and obtain relevant documents • Expert report obtained • Defendant able to withdraw admission, with costs consequences
Stage 4 Expert report received to sending of settlement pack	• Claimant has opportunity to consider expert evidence • Claimant compiles evidence into settlement pack • Settlement pack sent to defendant with offer in settlement • Defendant able to withdraw admission, with costs consequences
Stage 5 Period for counter offer of defendant/negotiation	• Defendant can no longer withdraw admission of liability. • Defendant may put counter offer within this period and parties may seek to negotiate a settlement
Where claim worth less than £5,000:	
Stage 6 Claim referred for decision on quantum/approval	• Settlement pack referred to a District Judge for a decision on quantum • Quantum will be considered on the papers, save in exceptional circumstances and with the permission of the Judge. • Parties may agree or submit to Judge that additional evidence) is required.
Where claim worth more than £5,000:	
Stage 6 Claim referred for decision on quantum/approval	• Settlement pack referred to a District Judge • Default position is that assessment should be on the papers. • Attendance permitted where agreed by parties or Ordered by Judge (either of court's own motion or following submission from a party) • Parties may agree or submit to Judge that additional evidence) is required.
Where claim involves an Infant or Patient	
Stage 6 Claim referred for decision on quantum/approval	Applies where claim involves a patient or infant and where an agreed settlement requires approval or where a claim is referred for assessment • Settlement pack referred to District Judge • Assessment /approval will be with attendance of the parties

We believe the procedure should promote early offers in settlement and provide costs protection for parties who make such offers. A 'reasonable' offer based on all the evidence should be sufficient for that purpose. We suggest that an offer which is within 10% of the sum of damages ultimately payable should provide protection.

Where claims fall outside of the procedure, the pre action protocol and current procedural rules, including costs provisions should apply

Where a defendant denies liability or where either party suggests a claim should be removed from the procedure they should be required to make proposals as to how the claim should be resolved. Proposals should include consideration of ADR.

Controlling the Procedure

Early notification, avoidance of 'front loading' and the use of settlement packs are likely to reduce the problem of disproportionate costs incurred in claims of this type. The use of time limits is key to this process. However, short, strict time limits will not always be achievable and that should not result in a claim falling outside of the procedure altogether.

Delay on the part of either party can also be prevented by the use of appropriate costs provisions. Limited fixed costs can prevent inappropriate front loading as expenses incurred will not be recoverable.

We propose a 2 phase investigation period, with costs penalties if a defendant's investigations move into the second phase. This will, in most cases, provide appropriate additional investigation time, where required. Costs penalties will ensure additional investigation time is not used routinely or inappropriately.

By using costs to control claims, strict timescales are less necessary, although we would propose to maintain upper time limits at each stage of the procedure.

Admissions

An admission is significant because, once given, a claimant may rely on it in discontinuing liability investigations and, importantly, incurring costs in relation to quantum. Similarly, a denial of liability can clarify the issues between parties and allow focus of resources on appropriate areas.

We believe that the short time period allowed for a defendant's liability investigations may result in some defendants being unable to admit or deny liability within the specified time. If this automatically brings a claim outside the procedure, this will significantly increase costs.

If an admission is binding in all cases, save for fraud, then this will further discourage defendants from making a clear decision on liability within an appropriate timeframe, in particular where there is the possibility of new evidence coming to light.

As at present, we consider that an admission should be capable of withdrawal by application, but this is a costly procedure. We suggest that an admission should be capable of withdrawal up to the time when a settlement pack is served, subject to the defendant paying appropriate fixed costs representing the claimant's expenditure in obtaining the pack. We include outline costs proposals below.

Medical Expert Evidence

In certain low value claims, it may not be necessary to obtain medical expert evidence in order to consider a claimant's injuries. We believe the procedure should include provision for the parties to agree the nature and duration of injuries (for example through a witness statement of a claimant, treatment documentation etc) and to dispense with expert evidence.

Where expert evidence is required, choice of experts can be determinative of whether a claim is settled or not. Both parties should be able to contribute to selection of an expert. In practice, in claims of this type, this may often take place through an agency in which case agreement should not be difficult to secure.

Witness Evidence

In the majority of cases where medical evidence is obtained, we would not anticipate it being necessary for the claimant to serve a separate witness statement. The expert report should include relevant information and the settlement pack, including that report, should be verified with a statement of truth signed by the claimant.

In relation to special damages, the schedule of damages should include sufficient information for the defendant to understand how a claim is calculated. The schedule should also be verified by a statement of truth. An additional witness statement would provide no benefit as it would merely duplicate information within the schedule and medical report.

Certificate of Recoverable Benefits

A claim will not be capable of settlement until a certificate of recoverable benefits has been secured. As the certificate is a document that relates to quantum, we suggest that under this procedure the claimant should be required to register the claim and to include an up to date certificate within the Settlement Pack.

Settlement Pack

We believe this will be an extremely valuable tool to both parties. It should include:

1. Medical Evidence/ statement of agreed injuries
2. Witness statement of the claimant (where appropriate)
3. Schedule of special damages
4. Receipts/invoices etc in support of schedule (unless the special damages tariff is relied on)
5. Current Certificate of Recoverable Benefits

The whole pack should be verified by a statement of truth signed by the claimant. It should be accompanied by an offer in settlement.

Offers

Given the fixed costs regime proposed for this procedure, the rules of part 36 will generally be inapplicable. We note costs consequences of the claimant's offer have been proposed within the consultation document and comment on these below.

We consider that the defendant should have the opportunity to put an offer in settlement when responding on liability. Many claims will be capable of settlement without expert evidence.

The claimant is to put an offer when a settlement pack is submitted. That will carry costs consequences if not bettered at an assessment of quantum.

Under this regime, there is no benefit to providing for a further offer by the defendant. That would not add further costs consequences if the procedure is followed to conclusion. It will remain open to either party to make an offer in accordance with part 36 which will provide costs protection should the matter move outside the procedure.

Parties cannot be expected to assess quantum precisely and their offers may differ slightly from the sum of damages ultimately deemed payable (whether through settlement or assessment of damages). Any offer that is 'reasonable' when compared with the outcome of a claim should provide a party with costs protection. We therefore propose that any offer within 10% of damages awarded at conclusion of a claim should provide costs protection.

Assessment of quantum

We refer to our response to question 12, below

Claims falling outside the Procedure

Claims may fall outside the procedure where a defendant denies liability or where either party fails to comply with relevant time limits. It is envisaged that in a few cases (including disease claims) the parties may agree to move a claim outside the procedure.

Where a time limit is breached by one party, it should be for the other party to decide whether that breach should bring the claim outside of the procedure. In such cases, it should be open to the courts in dealing with any subsequent proceedings to consider whether that decision was unreasonable and, if so, whether this should be reflected in costs.

Where a claim does fall outside the procedure, the parties should be required to consider whether ADR can be used to resolve the matter. If not, the claim should be handled in accordance with the current procedural rules and pre action protocols. Existing rules as to costs, such as the scheme under section II of CPR 45 should remain applicable. Indeed, we consider that current fixed costs schemes should be extended, given their proven benefits.

Offers made in compliance with the procedure should automatically provide parties with the protection of Part 36 if a claim moves outside of the procedure.

If liability is denied, the defendant should be required to provide with that denial proposals as to how the matter should be resolved. Proposals should include consideration of alternative dispute resolution.

A party should be required to make similar proposals, where they suggest a move away from the procedure (either because of a breach of a time limit by the other part or for another reason).

Interrelationship with Multi Track

There will be some cases which are commenced under the proposed procedure but which later appear more suited to the multi track, either due to their complexity or value.

It will be important to ensure that these tracks are as compatible as possible, in order to ensure excessive costs are not incurred when a claim crosses between them. We have responded to a recent consultation of the Civil Justice Council in relation to a consolidated pre action protocol. We have proposed a form based system very similar to that under the new procedure. We believe that a common set of forms will help reduce costs where matters transfer from the fast to the multi track.

Question 10 - Comments or suggested amendments in relation to the draft forms.

We believe the claim form should include sections dealing with:

- **disclosure of documents**
- **expert evidence**
- **likely value of the claim**

We would suggest that there should be a form for the defendant's response. Where liability is denied this will provide an opportunity to set out reasons. Where it is admitted, it will provide a means of determining how quantum will be approached and an opportunity to make an early offer, if appropriate.

We attach our proposed forms submitted to the Civil Justice Council in response to their consultation on case track limits:

Appendix 2 – Claim form
Appendix 3 – Response form

Any forms adopted must meet the requirements of MIB who have particular evidential requirements in relation to the claims they handle.

We believe the use of forms will bring significant benefits to this procedure. We set out above areas in which additional information may be beneficial.

In many cases, some form of disclosure may be appropriate on both sides. The claimant should provide relevant disclosure which is readily available with the initial notification form. If the defendant admits liability then disclosure in return is unlikely to be necessary, but if liability is denied then appropriate forms will allow for speedy exchange of relevant documents.

As noted above, the proposals do not deal with the manner in which experts should be chosen. We consider that parties should each have a stake in selecting experts and our forms provide a means of doing so.

As indicated in response to the previous question, we consider that the forms under this procedure should correspond with those applicable to the multi track in order that claims may be transferred between tracks with minimal cost.

MIB already utilise forms to collect information which they use in order to investigate a claim. MIB often deal with claims in which evidence cannot be secured from the tortfeasor. They therefore rely upon information collected from the claimant to a greater extent than most defendants. MIB's forms have been developed to meet MIB's specific needs, through research and consultation with claimant representatives. In order to ensure that claims against MIB can be dealt with expeditiously, it will be necessary to ensure that forms adopted under the proposed procedure meet their requirements.

Question 11 - Do you agree with the proposed time periods?

We propose the following time periods:

	Motor (excluding MIB)	EL/PL
Stage 1 Claimant and solicitor meet to sending of claim form	10 days	10 days
Stage 2 a Time for admission or denial of liability by defendant	20 days	45 days
Stage 2 b Additional period for defendant to consider liability	20 days	45 days
Stage 3 Expert agreed and instructed	No time limit – subject to expert's turnaround times	
Stage 4 Expert report received to sending of settlement pack	15 days	15 days
Stage 5 Period for counter offer of defendant/negotiation	20 days	20 days
Stage 6 Claim referred for decision on quantum/approval	No time limit –subject to the Court	

MIB will require time limits reflecting the peculiar nature of the claims they handle. We understand that they have already been involved in discussions in this regard.

The proposed time limits for a response on liability will be workable in many cases. However they provide no contingency for delay, for example through a need to trace a witness, through illness, annual leave etc. The increased time limits set out above will cater for these. In our view, setting workable response times is crucial to the success of the proposed procedure.

It is in the public interest that fraudulent claims are identified and dealt with appropriately. A rapid procedure such as the one proposed will be vulnerable to fraud. The procedure should therefore provide for defendants to undertake investigations in relation to fraud, where appropriate.

Further, a defendant is entitled to seek professional advice if he or she so wishes. The proposed 15 day period for a response on liability may allow inadequate time for the instruction of a solicitor, particularly if a defendant first seeks evidence on liability himself.

The time period proposed for stage 2a will allow for contingencies such as illness and will also assist in identification of fraud claims. Where appropriate, for example where there appears to be a fraud issue to be investigated, a defendant will be able to extend investigations into stage 2b, though there will be costs implications as set out below. These costs implications will prevent stage 2b being used routinely or inappropriately.

We note the proposal that, where an insurer is unable to response within the time period, they should provide an explanation setting out why additional time is required. However this would not be appropriate in fraud claims. Further, notice alone would not prevent the defendant falling outside the response period during which the fixed costs would apply. In the circumstances, we consider that a defendant should progress into stage 2b by passage of time alone, without any notice requirement. Costs penalties would provide an incentive to the defendant to avoid that occurring.

Question 12 - Application for assessment of quantum

We agree referral to a district judge will provide a rapid and cost effective means of resolving issues of quantum.

Assessment on the papers should be appropriate in the majority of claims. In claims valued at up to £5,000 attendance of the parties should occur only in exceptional circumstances and with the permission of the court.

For claims above that value, assessment on the papers should be the default, but attendance should be permissible where it is agreed by the parties or ordered by the court.

Where a claim involves an infant or patient, additional safeguards are appropriate. Any parties should attend assessment in such cases. With this modification, the assessment process will also be capable of being used to secure approval of settlements achieved under the procedure in relation to claimants lacking capacity.

We agree that assessment of quantum can be undertaken via a referral to a District Judge. In our experience, the vast majority of claims under £25,000 are currently resolved on the papers, through negotiation. The experience of a District Judge ought to allow for a similar paper based assessment exercise in the majority of claims falling within the procedure.

<u>Claims of up to £5,000</u>

Claims up to this value will typically involve minor injuries that have already resolved or in relation to which a firm prognosis can be given. There will be little or no ongoing loss.

Evidence on quantum will consist of little more than an expert report, schedule of special damages and supporting documents, and in some cases a witness statement of the claimant.

There would generally be no other witnesses and it is most unlikely that the defendant would rely on witnesses as to quantum. Little disclosure will be required and medical records may not have been obtained at all, the expert report being all the medical evidence required.

In such cases, the papers would consist entirely of evidence obtained and approved by the claimant. The Judge's role would be to review the evidence and to determine quantum based on the facts and opinions therein. There would be no call to decide between conflicting items of evidence.

We recognise the need to maintain access to justice, and we believe that the Judge charged with assessing quantum should have the power to order attendance, either unilaterally or following a request from one or both parties. However this power should be exercised only in exceptional cases where it is necessary for the Judge to reach a decision or in the interests of justice.

Claims over £5,000

Many claims in this category will be no more complicated than those valued up to £5,000. In such cases, assessment on the papers will remain appropriate.

We recognise, however, that these claims may raise quantum issues not found in lower value claims. Injuries may be ongoing at the time of assessment and that may will justify additional scrutiny of the evidence. There may be significant issues of causation or as to the prognosis.

This does not prevent a relatively straightforward assessment of damages through referral to a judge. At present, these claims are generally settled by negotiation between the parties, often on papers alone and a judge should be well placed to take a decision on quantum.

We suggest that the default position should be for assessment on the papers. However, attendance of the parties may be appropriate in some cases and again the Judge should be capable of ordering this, either unilaterally or on the application of one party. Circumstances in which attendance of more than one witness may be appropriate include:

- multiple witnesses
- one party wishing to cross examine another's witnesses
- a substantial bundle of medical records
- issues of causation

Given the need for increased flexibility in claims above £5,000, it will be appropriate to allow attendance where the parties agree to this, without permission of the Judge.

Approval

Settlements of claims relating to infants and patients require the approval of the court. At present, where settlement is reached at a pre action stage that is obtained through Part 8 proceedings and the parties will be expected to attend the approval hearing.

We consider that approval can be dealt with through the same assessment process as applies to other claims under the procedure. However, attendance of the claimant will be required. To ensure equality between the parties, the defendant should be permitted to attend.

At present, it is usual for a judge dealing with approval proceedings to be provided with advice from claimant's counsel as to quantum. We do not consider this necessary under the proposed procedure, as the judge will have the benefit of the settlement pack on the basis of which he will be able to determine the value of the claim.

Assessment where a party lacks capacity

Similarly, to ensure appropriate protection of infants and patients, we recognise that attendance at assessment will be required.

Question 13 - Measures that would improve the process where liability is not admitted, or is denied.

We have proposed above that where liability is disputed, proposals for resolution of the claim should be made. These should include consideration of ADR.

In other cases within the £25,000 limit, we believe a straightforward procedure for assessment by a district judge might be established. This would follow a similar process for assessment of quantum in claims valued above £5,000

Wherever possible determination of liability by a judge should be combined with an assessment of quantum.

Question 14 - Do you agree with the proposals as to fixed special damages?

We agree the figures set out. The figures should be the default position for damages under each head. Either party should be at liberty to adduce evidence in support of different figures.

It is our experience that these heads of damages are routinely agreed in the sums set out, with little evidence. Enquiries would generally be disproportionate to the sums involved. It will be reasonable to create a rebuttable presumption that the figures set out are correct.

However, it should be open to either party to adduce evidence against that presumption.

Where the claimant does so, evidence should be in the form of receipts, invoices, quotes, etc. The claimant should not be encouraged to produce a lengthy witness statement dealing with special damages. This would add nothing to the schedule, which should be verified by a statement of truth in any event. We comment on the circumstances in which witness statements will be appropriate in our response to question 9.

Question 15 - Do you agree that regional hourly rates should be set in relation to care?

We agree hourly rates should be set.

We do not consider these should be varied by region

This procedure is aimed at relatively low value claims in which care will typically form only a small part of damages. It would not be appropriate in such cases to go into the minutiae of regional hourly rates. In our experience that is not done at present.

Question 16 - Development of an assessment tool for general damages.

We agree there would be benefits to an assessment tool for general damages.

As a first step we would suggest a detailed tariff should be produced aimed at claims below £5,000.

In principle, the type of assessment tool proposed could increase certainty and assist parties in resolving claims rapidly and at minimal cost. However, the numerous factors which can

contribute to an assessment of general damages render the production of such a tool a challenging task.

The greatest benefits of an assessment tool can be achieved where injuries are relatively straightforward and where litigants in person are involved. We would therefore suggest that, as an initial step a tool should be produced for general damages valued at up to £5,000.

We have proposed above that the small claims track limit should be raised to this level. With an appropriate assessment tool, litigants in person under that track will be much better placed to value their injuries.

We would suggest that such a tool should have the following features:

- It should have brackets for damages which correspond with track limits.
- It should have a facility to cater for overlap between heads of damages. (Where multiple injuries are suffered it is not appropriate to simply add together the value of each – a reduction must be applied to take into account overlapping symptoms. This can be confusing to claimants and should be clarified)
- It should be detailed enough that settlement figures can be drawn from it

As a first step, we would suggest the Judicial Studies Board be asked to prepare a detailed tariff of injuries valued below £5,000, incorporating the above features. This might be treated as a pilot for a broader tariff of general damages.

Question 17 – Is there scope for standardising contributory negligence?

No

Contributory negligence is assessed by considering the relative blameworthiness of the parties to a claim and also the impact of the claimant's negligence upon his or her injury and loss. Multiple types of contributory negligence might arise in a single claim. We do not anticipate that all of these elements can practicably be brought together into a single, straightforward tariff.

Further, it is our experience that contributory negligence is rarely a stumbling block to settlement of claims. Issues as to quantum can be far more troublesome.

Question 18 - Do you agree with the proposals in relation to costs?

We are in broad agreement with the proposals as to costs, subject to modification in line with our proposals above.

We believe there are two areas which require consideration:

1. **What are the costs incurred at each stage**
2. **When are those costs recoverable**

<u>Costs incurred</u>

We consider that costs at each stage of proceedings should be fixed. There are different ways of calculating fixed costs. For the purpose of our proposal we have adopted the following definitions:

- **Fixed costs** – a set lump sum which does not vary from one case to another
- **Predictive costs** – costs are calculated according to a formula based on the value of the claim
- **Fixed assessment costs** – costs of dealing with an assessment of quantum involving attendance at court. We would anticipate this being calculated in accordance with a tariff divided up according to the value of the claim.

We propose the following costs for each stage of the procedure:

	Claimant	Defendant
Stage 1 Claimant and solicitor meet to sending of claim form	Fixed costs, incorporating success fee as proposed	No costs incurred
Stage 2 a Time for admission or denial of liability by defendant	No costs incurred	Predictive costs
Stage 2 b Additional period for defendant to consider liability	No costs incurred	Predictive costs
Stage 3 Expert agreed and instructed	Predictive costs, incorporating success fee. Expert fee (disbursement)	Predictive costs
Stage 4 Expert report received to sending of settlement pack	Predictive costs, incorporating success fee.	No costs incurred
Stage 5 Period for counter offer of defendant/negotiation	Predictive costs, incorporating success fee.	Predictive costs
Stage 6 Claim referred for decision on quantum/approval	Court fee (disbursement) Fixed assessment costs (where attendance on assessment)	Fixed assessment costs (where attendance on assessment)

We would welcome the opportunity to participate in determining appropriate fixed costs at each stage

Recovery of Costs

The extent to which the costs incurred in a claim are recoverable should depend upon the parties' conduct of a claim. There should be costs penalties for delaying settlement unnecessarily and costs advantages to dealing with a claim expeditiously.

As we have proposed above, there should be an opportunity for insurers to extend investigation time in appropriate cases. There should be costs implications if this is done so that it does not become a matter of routine. We have proposed that the claimant's costs of stage 1 should be enhanced by 10% in these cases.

We set out below a table summarising the events that might trigger a costs order at each stage of proceedings. In relation to each event, we have identified the costs that each party should bear (drawing on the staged costs structure proposed above).

In some cases the defendant will bear the claimant's costs or a portion of those costs, in others the parties will bear their own costs with the defendant paying disbursements. In no cases under the procedure will the claimant have to bear disbursements or the defendant's costs. This approach is taken on the basis that ATE premiums incurred at any stage of the procedure will not be recoverable.

	Event	Paying party	Costs borne
Stage 1 Claimant and solicitor meet to sending of claim form			
Stage 2 a Time for admission or denial of liability by defendant	Claim discontinued	Parties bear own costs	
	Liability admitted	Defendant	Stage 1
Stage 2 b Additional period for defendant to consider liability	Claim discontinued	Parties bear own costs	Stage 1 and 2
	Liability admitted	Defendant	Stage 1
	If investigations continue into stage 2b and the claimant recovers costs of stage 1, then stage 1 costs will be uplifted by 10%.		
Stage 3 Expert agreed and instructed	Claim discontinued	Parties bear own costs Defendant	Stage 1, 2 and 3 Expert fee
	Defendant withdraws admission	Defendant	Expert fee Stage 1 and 3

	Claimant accepts offer of defendant made in stage 2	Defendant	Expert fee Stage 1 50% stage 3
Stage 4 Expert report received to sending of settlement pack	Claim discontinued	Parties bear own costs Defendant	Stage 1, 2,3, 4 Expert fee
	Defendant withdraws admission	Defendant	Expert fee Stages 1, 3, 4
	Claimant accepts offer of defendant made in stage 2	Defendant	Expert fee Stage 1 50% stage 3 and 4
Stage 5 Period for counter offer of defendant/negotiation	Claim discontinued	Parties bear own costs Defendant	Stage 1-5 Expert fee
	Defendant accepts claimant's offer.	Defendant	Expert fee Stages 1-5
	Claimant accepts offer of defendant made in stage 2	Defendant	Experts fee Stage 1 50% Stages 3-5
	Settlement through negotiation, between offers	Defendant	Expert fee Stages 1-5
	NB Defendant can no longer withdraw admission save in relation to fraud or on application to the court under CPR 14		
Stage 6 Claim referred for decision on quantum/approval	Claim discontinued	Parties bear own costs Defendant	Stage 1-6 Expert fee Court Fee
	Claimant fails to better own offer	Parties bear own costs Defendant	Stage 6 Stage 1-5 Expert fee Court Fee
	Claimant maintains or betters own offer	Defendant	Expert fee Court fee Stages 1-6
	Defendant sustains or betters offer made in stage 2	Parties bear own cost Defendant	Stage 6 Expert fee Court fee Stage 1 50% Stages 3-5
	Where a claim is referred under the procedure for approval, the Defendant should bear the claimant's costs of the hearing and the court fee.		

Appropriately pitched settlement offers, if not accepted within 10 days, should bear costs implications. However neither party should be expected to offer precisely the 'right' figure in settlement. We suggest that if settlement or assessment results in damages within 10% of a party's offer then that should amount to the offer being equalled.

Fixed Costs

The Civil Justice Council's review of the fixed fee regime under section II of CPR 45 demonstrates that fixed costs do reduce satellite litigation and, overall, reduce the cost of claims handling. There is, however, evidence of claimants attempting to remove claims from that scheme in order to secure more favourable costs orders and this has informed our responses above.

Extension of the fixed costs regime as proposed under the procedure will have beneficial effects in terms of achieving a cost effective and rapid resolution of claims.

We have identified 3 relevant approaches to fixed costs and have used the following descriptions:

- **Fixed costs** – a set lump sum which does not vary from one case to another
- **Predictive costs** – we have adopted this terminology following the scheme under section II of CPR 45. These costs are calculated according to a formula based on the value of the claim
- **Fixed assessment costs** – costs of dealing with an assessment of quantum involving attendance at court. We would anticipate this being calculated in accordance with a tariff divided up according to the value of the claim, in a manner similar to that for fast track trial costs under CPR 46, although we would expect recoverable costs to be lower in relation to this procedure.

Stage 1 should involve the same costs in all cases; we therefore consider fixed costs to be appropriate.

In relation to other investigative stages, we consider it right that the approach taken by the parties is proportionate to the value of the claim. We have therefore suggested predictive fees be used. At each stage, an additional layer of predictive costs will be incurred as investigations continue.

Where quantum is to be assessed by a judge on the papers, there should be no need for costs other than a court fee.

Where the parties attend assessment, a scheme of fixed assessment costs might be applied. As indicated above, that would be according to a tariff based on the value of the claim.

The cost of a referral to a judge for approval should be borne by the defendant in all cases.

Recovery of Costs

What costs will be recoverable by parties is a separate question. We believe that the most cost effective process will be achieved if ATE is excluded altogether. We have proposed a scheme which assumes this will be the case.

The Defendant will bear disbursements and it's own costs in all cases. Where the claimant discontinues the claim or fails to better his or her offer (subject to a 10% margin), the claimant will not recover full costs, but this will be offset by a fixed success fee applicable to those claims where the claimant succeeds.

Offers and Part 36

Part 36 does not sit comfortably with a fixed cost scheme such as the one proposed and so is not applicable to the small claims track. We have therefore included specific proposals as to costs provisions where offers of the defendant are not bettered by the claimant at a stage before assessment.

We have suggested in our response to question 9 that a margin of appreciation should be allowed in relation to offers so that achieving damages within 10% of an offer would amount to succeeding on the offer. This will be particularly important under the proposed procedure as it is intended to speed up enquiries and consideration of claims and to allow rapid settlement. Parties will not always have time to scrutinise quantum in detail and a more broad brush approach to offers and their costs consequences will be appropriate.

Defendant's Costs

Notwithstanding the fact that defendants' costs are not recoverable under the proposed procedure, we consider that a scheme of fixed costs for defendants should be established. If a claim moves outside of the procedure, then it may be appropriate that the defendant recovers costs incurred while the procedure was followed.

Question 19 - Do you agree ATE cannot be justified in the suggested circumstances?

We consider ATE should be excluded under the procedure proposed.

If the procedure is extended to include a process for determination of liability, then ATE insurance may be justified for that part of the procedure.

Under our costs proposals there will be no circumstances within the procedure in which the claimant will be at risk of paying disbursements or the defendant's costs. As indicated in the consultation paper, those cases in which claimant costs are not recoverable will be offset by incorporation of an appropriate success fee within the fixed fees scheme.

The claimant will therefore not be at risk on costs and so does not require ATE insurance.

Where liability is disputed, the claimant will be at some risk. We have proposed above that liability disputes might be dealt with through an appropriate procedure for referral to a judge. In such cases, an ATE premium may be justified.

We envisage that there may be certain circumstances in which a claim comes out of the procedure and it is subsequently determined that the claimant should bear the defendant's costs. For that reason we have proposed that a fixed costs scheme be established in relation to defendants' investigations. Those cases are likely to be rare, but once the claim is removed from the scheme the claimant will be able to secure ATE insurance in any event and so will have adequate protection under our proposals.

Question 20 - What would be the impact on the ATE market of these proposals?

The above proposals remove costs risk from the claimant in relation to claims falling within the procedure. In those circumstances, ATE insurance cannot be justified.

We do not anticipate that this will "severely damage" the ATE market. Instead the use of ATE will be focused upon claims where it is appropriate.

We have seen no evidence to suggest that the ATE market will be severely damaged by the proposed procedure. While premiums may change to reflect the fact that there is a narrower market, this is a result of premiums being focused upon the claims where there is a genuine risk to be insured.

Question 21 – Should the process apply to all claims for personal injury, except clinical negligence, within the fast track limit?

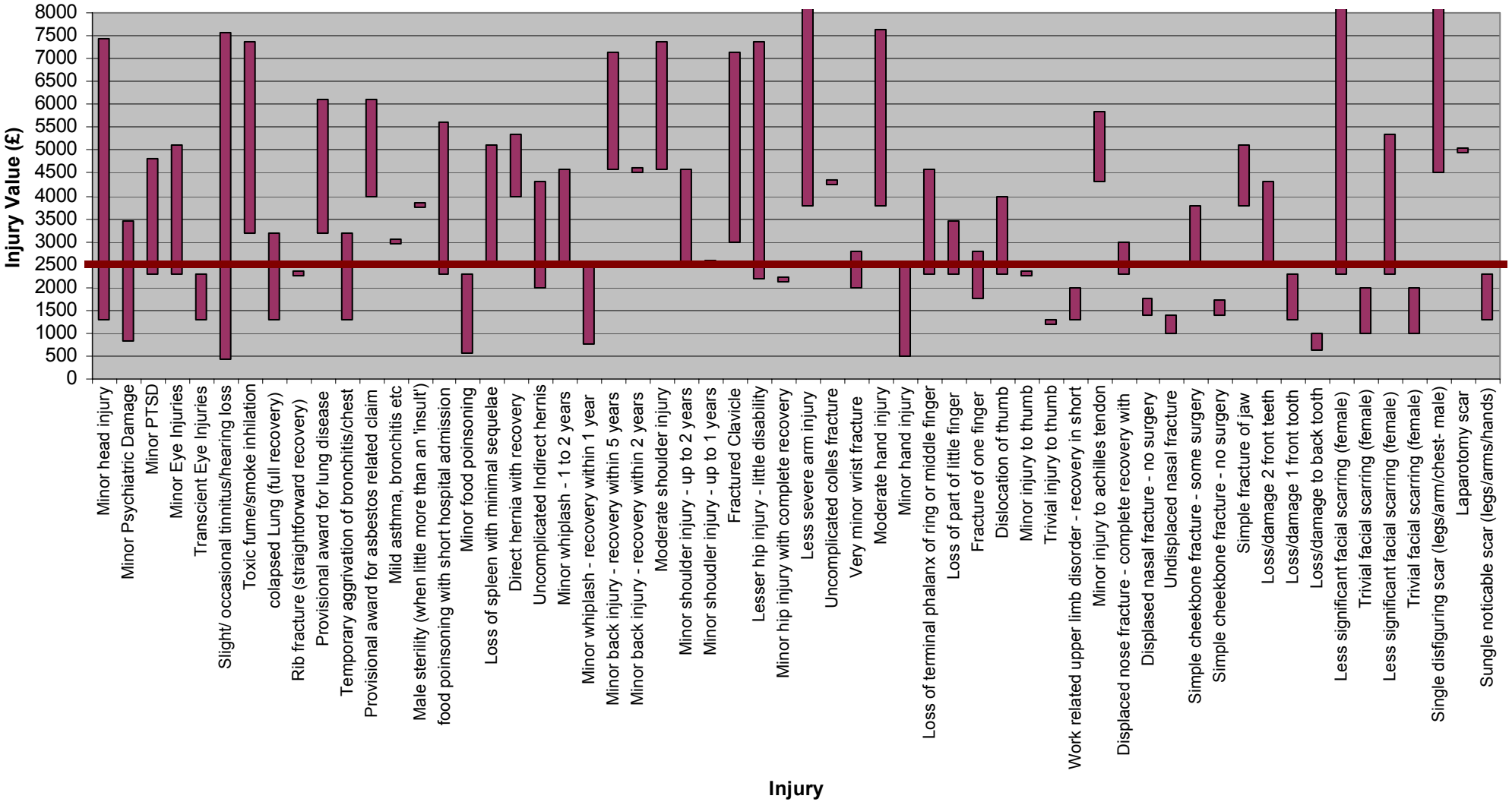
We understand that appropriate claims will be capable of being removed from the procedure to the multi track. As indicated in our response to question 5 this would be necessary, for example, where complex issues of quantum or causation arise as in disease cases.

We understand that MIB have already been involved in discussions in relation to procedure and time limits specific to their claims.

Save for the above categories, we consider that the process can appropriately be applied to all claims within the fast track limit.

Appendices

Appendix 1 – JSB Guidelines for injuries valued below £5,000



Appendix 2 – Claim Form proposed in response to Civil Justice Council consultation on a Consolidated pre action Protocol

The forms below were proposed in response to a consultation of the Civil Justice Council in relation to a consolidated Pre action Protocol applicable to all claims.

We believe these forms deal with many points of relevance to the proposed procedure. Sections of the forms which will not be relevant to a claim within the procedure are identified. The information in these sections should be exchanged by the parties if a claim commenced under the procedure later falls to be dealt with outside of it.

If forms are adopted, both for use within the procedure and in a broader category of claims, then we consider these forms should be made compatible in order to ensure a clear and consistent legal process and to avoid unnecessary costs when claims transfer to or from the procedure.

Date		
Reference (as set out in initial notification, if provided)		
Are you making a claim to Judicial Review?		Yes/No
1. Claimant's details		
Name		
Address		
Tel		
Fax		
Email		
Reference		
2. Claimant's representative (if appointed)		
Name		
Address		
Tel		
Fax		
Email		
Reference		
3. The Facts		
Set out the facts on which you base your claim. Include dates and locations of incidents and details of relevant persons, vehicles, equipment, documents etc:		
4. Legal Basis of Claim		

Set out the legal basis of your claim here. Include details of any statutes, regulations or cases relied upon.	
5. Are you claiming against other people in relation to this incident? (If so, copies of this form should be prepared for each defendant. And should be included with this form)	Yes/No
6. Injuries	
Are you claiming in respect of injuries?	Yes/No
If yes, set out details of the injuries below. Include the duration of symptoms and details of any treatment received.	
Give an estimate of the sum you expect to recover for your injuries	£
7. Financial losses	
Are you claiming in respect of financial losses?	Yes/No
If yes, set out details of the losses below and give the amount of each loss. Where precise figures are not available, an estimate should be given.	
Description	Value
	£
	£
	£
	£
	£
	£
TOTAL	£
8. Other Remedies	
Are you seeking any other remedies?	Yes/No
If yes, set out details below. If any of the remedies are required by a certain date, then include details of this.	
9. Ongoing Loss (It is important that you fill out this section fully where there is an ongoing loss. Failure to do so may, in some cases, prevent you from recovering your full losses)	
Are you currently suffering ongoing injuries, symptoms or financial losses?	Yes/No
If yes, what are these?	

Please set out details of what you have done to reduce these symptoms or losses (for example any treatment received).
Is there anything the defendant could do to reduce the symptoms or losses? If so, please give details of your proposals.

10. Disclosure

You can refer to the appendix to the pre action protocol for lists of relevant documentation in the most common types of claim.

You should generally disclose any document that is relevant to your defence, including documents you hold which may damage your claim or assist the defendant. Certain documents may be privileged, in which case you need not disclose them.

Set out below details of the disclosure you have. Where available copies of relevant documents should be sent with this form:

(If you fail to disclose relevant documents you may be subject to sanctions at a later stage in proceedings)

Document	Date	Tick if enclosed

List below the documents you consider the Defendant should disclose

Document	Date if known

11. Expert Evidence

Do you consider expert evidence is needed? If yes, set out proposals below. (You should generally seek to agree what evidence is needed with the defendant before obtaining reports)	Yes/No

Expert 1	Field of expertise:
Reason for instruction:	
Have you obtained a report yet? (if you have, then it should be enclosed with this form)	Yes/No

Please give your view as to the appropriate means of instruction (tick one box):	
Joint instruction	
Single instruction by the claimant	
Both parties should be allowed to obtain their own reports	

Set out the names of experts you propose to use below (you should attach CVs for each expert nominated)	
1	
2	
3	
Expert 2	Field of expertise:
Reason for instruction:	
Have you obtained a report yet? (if you have, then it should be enclosed with this form)	Yes/No
Please give your view as to the appropriate means of instruction (tick one box):	
Joint instruction	
Single instruction by the claimant	
Both parties should be allowed to obtain reports at this stage	
Set out the names of experts you propose to use below (you should attach CVs for each expert nominated)	
1	
2	
3	
Expert 3	Field of expertise:
Reason for instruction:	
Have you obtained a report yet? (if you have, then it should be enclosed with this form)	Yes/No
Please give your view as to the appropriate means of instruction (tick one box):	
Joint instruction	
Single instruction by the claimant	
Both parties should be allowed to obtain reports at this stage	
Set out the names of experts you propose to use below (you should attach CVs for each expert nominated)	
1	
2	
3	
Further Experts	If you wish to propose further experts tick the box to the right and attach their details to this form

THE FOLLOWING SECTIONS, PROPOSED TO THE CIVIL JUSTICE COUNCIL FOR INCLUSION IN A REVISED PRE ACTION PROTOCOL, WILL NOT BE REQUIRED IN RELATION TO THE PROPOSED PROCEDURE

12. Alternative Dispute Resolution (ADR)	
Have you attempted to resolve this claim through ADR already?	Yes/No
If yes, please give details	
Are you willing to engage in some form of ADR	Yes/No

If no, please give reasons.
If yes, please set out any suggestions you have as to an appropriate method

13. Period for response

A reply should be provided by the defendant within a reasonable period. In Judicial review claims a reasonable period will generally 14 days. In all other claims it will generally be 3 months

Please set out the period you consider reasonable for a full response:	

If you have specified a period other than the usual period of 14 days in Judicial review claims or 3 months in other claims, then please give reasons:

The defendant should now reply to this form.

If this is a judicial review claim the defendant should use either:

- the acknowledgement form if he objects to his identification as a defendant or to the jurisdiction of the court; or
- the response form in all other cases.

In relation to claims that are not for judicial review he should provide an acknowledgement within 28 days in all cases. Within that acknowledgement he should comment upon whether the claimant's proposed time period for a full response is reasonable.

Appendix 3 – Response Forms proposed in response to Civil Justice Council consultation on a Consolidated pre action Protocol

Under the procedure, we anticipate the 'acknowledgement form' and 'response form ' might be consolidated.

Acknowledgement Form

I have received your 'letter of claim' form dated:	
Your reference (if provided) is:	
1. Defendant's details	
My contact details on the letter of claim form are correct If no, then accurate details are set out below	Yes/No
Name	
Address	
Tel	
Fax	
Email	
Reference	
2. Objection to identification as a Defendant	
I believe that you have identified the correct defendant to your claim.	Yes/No
If 'no' set out your reasons here and the correct details for the defendant, if available, below:	
Name	
Address	
Tel	
Fax	
Email	
If you have objected to your identification as a defendant, you need not complete the remainder of this form	
3. Insurer's details (if applicable)	
Name	
Address	
Tel	
Fax	
Email	
Reference	
You should correspond with my insurer in relation to this claim	Yes/No
4. Legal Representative's details (if applicable)	
Name	
Address	
Tel	
Fax	

Email	
Reference	
You should correspond with my legal representative in relation to this claim	Yes/No
5. Objection to Court's Jurisdiction	
If you consider that the court lacks jurisdiction to deal with this claim, then set out your reasons below:	

THE FOLLOWING SECTIONS, PROPOSED TO THE CIVIL JUSTICE COUNCIL FOR INCLUSION IN A REVISED PRE ACTION PROTOCOL, WILL NOT BE REQUIRED IN RELATION TO THE PROPOSED PROCEDURE

5. Time for Full Response	
If you have raised an objection to your identification as a defendant or to the court's jurisdiction then you will not be expected to provide a full response to the claim unless you later retract the objection. Otherwise you should complete the section below	
Do you agree the time period proposed by the claimant?	Yes/No
If no, give reasons and provide proposals for an alternative time period: NB the parties should seek to agree a time period wherever possible. In most claims (excluding those relating to judicial review) this will be 3 months. If you cannot agree a time period with the claimant then the standard period will apply.	

Response Form

This is a response to a letter of claim form dated:	
The reference (if provided) is:	
1. Facts	
Do you agree with the facts set out in the letter of claim form?	Yes/No
If you disagree set out details of the facts on which you disagree below. Set out your own version of events, if applicable:	
2. Legal basis of claim	
Do you agree the legal basis of your claim, as set out in the letter of claim form?	Yes/No
If 'no' set out your reasons here and your understanding of the correct legal position:	
3. Contributory Negligence	
Do you consider the claimants injuries or losses were caused or contributed to by his own negligence?	Yes/No
If yes, give details of the facts on which you rely and the legal basis of the allegation:	
3. Other claims	
Do you intend to bring a counterclaim against the claimant If you are bringing a counterclaim then you should set out details (unless they are already given above) in a separate letter before claim form	Yes/No
Do you intend to bring a claim against anther person in relation to this incident? (if you are bringing against another person the you should prepare a 'letter of claim' form relating to that claim. The form should be sent to the person against whom you are claiming and should accompany this form.	Yes/No
4. Injuries	
Do you agree the value of the injuries claimed (subject to any disagreement as to facts or the legal basis of your claim)?	Yes/ No

5. Financial losses	
Do you agree the claim to financial losses (subject to any disagreement as to facts or the legal basis of your claim)?	Yes/No
If you agree some parts of the claim to financial losses, please give the total sum agreed:	£
If you do not agree the whole claim to financial losses then set out reasons below. If you require further documentary or expert evidence then this should be referred to in sections 8 and 9. If some claims to financial loss are agreed then set these out:	
6. Other Remedies	
Set out any other remedies you are prepared to offer below:	
7. Ongoing Losses	
What are your proposals to address the claimant's ongoing losses? Please see the Rehabilitation Code of Best Practice which deals with without prejudice rehabilitation. If you consider rehabilitation under that code is appropriate then proposals should be sent to the claimant separately.	
8. Disclosure	
You can refer to the appendix to the pre action protocol for lists of relevant documentation in the most common types of claim. You should generally disclose any document that is relevant to your defence, including documents you hold which may damage your claim or assist the defendant. Certain documents may be privileged, in which case you need not disclose them.	
In the letter of claim form, the claimant may have listed documents he considers you should disclose. If you disagree, give your reasons here:	
Set out below details of the disclosure you have. Where available copies of relevant documents should be sent with this form:(If you fail to disclose relevant documents you may be subject to sanctions at a later stage in proceedings)	

Document	Date	Tick if enclosed

List below the documents you consider the Claimant should be disclosing		
Document		Date if known
9. Expert Evidence		
In relation to each expert proposed by the claimant please complete the details below. If more than three experts are proposed, continue on a separate sheet		
Expert 1	Do you agree an expert in this field is required?	Yes/No
If no, please give reasons		
Please give your view as to the appropriate means of instruction (tick one box):		
Joint instruction		
Single instruction by the claimant		
Both parties should be allowed to obtain reports at this stage (if both parties have agreed this option, you need not fill out the remaining questions in relation to this expert)		
If you can agree one of the claimants nominated experts give the name:		
If you do not agree any of the claimant's nominations then set out your own below. Please attach CVs for each expert nominated		
1		
2		
3		
Expert 2	Do you agree an expert in this field is required?	Yes/No
If no, please give reasons		
Please give your view as to the appropriate means of instruction (tick one box):		
Joint instruction		
Single instruction by the claimant		
Both parties should be allowed to obtain reports at this stage (if both parties have agreed this option, you need not fill out the remaining questions in relation to this expert)		
If you can agree one of the claimants nominated experts give the name:		
If you do not agree any of the claimant's nominations then set out your own below. Please attach CVs for each expert nominated		
1		
2		
3		

Expert 3	Do you agree an expert in this field is required?	Yes/No
If no, please give reasons		
Please give your view as to the appropriate means of instruction (tick one box):		
Joint instruction		
Single instruction by the claimant		
Both parties should be allowed to obtain reports at this stage (if both parties have agreed this option, you need not fill out the remaining questions in relation to this expert)		
If you can agree one of the claimants nominated experts give the name:		
If you do not agree any of the claimant's nominations then set out your own below. Please attach CVs for each expert nominated		
1		
2		
3		
If you consider experts in fields other than those proposed by the claimant are required then set out details below		
Additional Expert 1	Field of expertise:	
Reason for instruction:		
Have you obtained a report yet? (if you have, then it should be enclosed with this form)		Yes/No
Please give your view as to the appropriate means of instruction (tick one box):		
Joint instruction		
Single instruction by the claimant		
Both parties should be allowed to obtain reports at this stage		
Set out the names of experts you propose to use below (please attach CVs for each expert nominated)		
1		
2		
3		
Additional Expert 2	Field of expertise:	
Reason for instruction:		
Have you obtained a report yet? (if you have, then it should be enclosed with this form)		Yes/No
Please give your view as to the appropriate means of instruction (tick one box):		
Joint instruction		
Single instruction by the claimant		
Both parties should be allowed to obtain reports at this stage		
Set out the names of experts you propose to use below (please attach CVs for each expert nominated)		
1		
2		
3		

Further Additional Experts	If you wish to propose further experts tick the box to the right and attach their details to this form	

If the parties have not agreed what evidence is required, how experts are to be instructed or which experts are to be used then the claimant should contact the defendant following receipt of this form to discuss what expert evidence is required with a view to reaching agreement.

THE FOLLOWING SECTIONS, PROPOSED TO THE CIVIL JUSTICE COUNCIL FOR INCLUSION IN A REVISED PRE ACTION PROTOCOL, WILL NOT BE REQUIRED IN RELATION TO THE PROPOSED PROCEDURE

9. Alternative Dispute Resolution (ADR)

If you do not agree the claimant's comments relating to previous ADR then set out your comments here:

Are you willing to engage in ADR?	Yes/No

If no, please give reasons
If yes, please set out your proposals for ADR

When the claimant has received this form, it will generally be appropriate for the parties to arrange a convenient time to discuss the claim on a without prejudice basis. An agenda for the discussion may be useful and that would include points such as:

1. Is liability agreed? If not what points of disagreement are there as to the facts or the law. What can be done to resolve these?
2. A discussion of the claimants injuries or losses. What further information is required to allow the parties to fully understand these
3. What documents should be exchanged by way of disclosure that have not already been provided?
4. What expert evidence is required. Can the parties agree a joint instruction? When should expert reports be obtained (for example, it may be appropriate to delay a report if the claimant's circumstances will change significantly in the near future)
5. What can be done to put a stop to any ongoing loss?
6. Is rehabilitation under the Rehabilitation Code of Best Practice appropriate?
7. Agree a time for a further discussion.