



Liability Claims

The Legal Process

Liability Claims

A claim is influenced/led by :

- CPR
- PI Protocols
- Case Law
- Commercial pressures
- Reputation
- Good will

Summary of the Process

- Claimant's first steps
- Starting the Claim
- Response to claim
- Compensator's options and tactics
- Proving the Claim
- Proving the loss
- Costs
- The Hearing

Claimant's first steps

- Initial instructions given to Claimant lawyer
- Funding discussed and agreed
- Initial review of merits of the claim
- Assessment of value (key = over or under £25,000)
- Preparation of Claim Notification Form or letter of claim

Starting the Claim

Via the MOJ Portal

(claim value £25,000 or under)

- Applies for RTAs, Employer Liability and Public Liability claims
- Low Value Personal Injury Protocol applies
- Claim Notification Form completed, approved by C and sent via MOJ portal – contains basic details.

Letter of Claim

(claim value over £25,000)

- Applies in all other cases and where value exceeds £25,000
- Personal Injury Protocol applies
- Letter in accordance with protocol

What is the MOJ Portal?

- A practical way of resolving claims where liability is *admitted*
- Applies to all accidents after 31 July 2013 if value is £25,000 or less
- Fixed costs
- Does not apply to accidents abroad, fatal accidents, disease claims if there is more than one Defendant or mesothelioma cases

The aim of the Portal Protocol

To ensure that:

- (1) the defendant pays damages and costs using the process set out in the Protocol without the need for the claimant to start proceedings;
- (2) damages are paid within a reasonable time; and
- (3) the claimant's legal representative receives the fixed costs at each appropriate stage.

Commencing claim in Portal

- Claimant must identify insurer and submit CNF via portal and send paper CNF direct to Defendant
- If no insurer details available C to send CNF to Defendant who then must send on to insurers and email acknowledgment to confirm insurers have been notified

Response to Claim

- Response times
- Further details
- Input from HS officers
- HSE and inquests
- Liability
- Response Process
- More on Documents

Response Times

Portal

- Electronic acknowledgment in one day; then response:
- RTA – 15 days
- EL – 30 days
- PL – 40 days

Days = all days except Saturday
Sunday and bank holiday

Letter of Claim

- Acknowledge within 21 days
- Response within 3 months

Further details required?

- There are certain mandatory fields in CNF which must be completed or claim will be rejected
- If there is insufficient info the Defendant can reject the CNF but it has to be substantial defect so that no proper assessment can be carried out
- Lack of details of accident and/or allegations are more difficult to address in portal – can try to email request..
- Strict time limits – do you want to deny liability just because you don't have all the information?

Input from HS officers

- Evidence gathering
- Witness statements
- Risk Assessments
- Accident Book entry
- Accident investigation report
- Training records
- Earnings data

Liability Issues

No longer have to accept strict liability for breaches of “six pack” regulations (unless government agency) – looking for evidence of breach of common law duty of care:

- Safe place of work
- Safe system of work

In EL cases it may be easier to assess the legitimacy of the claim as the Claimant will be known to the Defendant! Easier access to witnesses, knowledge of claimant’s mind-set etc.

HSE investigations and Inquests

- HSE reports and actions
- Inquests
- These are separate from civil claims process but findings can influence outcome.
- Problems of delays with HSE and inquest decisions slows down access to evidence.

Response Process

Portal

- Response is a simple admit or deny via MOJ portal
- If liability denied claim falls out of portal but stays in alternative fixed costs regime
- If there is any contributory negligence claim falls out of portal
- Ask for further particulars/details?

Other

- Letter of admission or denial
- If deny liability include all documents relevant to claim (whether helpful or not)
- Explain if any docs requested by C are not included
- Avoid Pre-Action disclosure applications
- n.b Can admit liability but deny causation

More on documents ...

- Check the Protocol List (see attached)
- Even if allegations of negligence are v basic – check the facts and review what documents are potentially relevant!
- Warning: Claimant can add in more allegations in Particulars of Claim
- If low value claim falls out of Portal (liability denied) you will need to produce the documents

Options and Tactics

Assess value of claim vs cost of defending it.

Consider:

- Rehab
- Fixed costs case? Portal/Low value
- QOCS – bad news for the innocent Defendant
- Part 36 offers – if you are going to make them, make them early!
- Watch out for Claimant offers!
- Fundamental Dishonesty? Investigate!

Rehab and return to work

- Case Managers
- Rehabilitation Code
- Return to work – light duties/part time?
- Interim payments
- Treatment support
- Vocational assessments

Settlement in the Portal

- Claimant sends Settlement pack to Defendant together with all relevant evidence (medical reports, documents);
- Claimant makes offers in relation to each section of the claim;
- Defendant responds within 15 days with agreement or counter offers for each section (in the settlement pack);
- If Claimant wants they can continue to negotiate up to 35 days

Settlement in non portal cases

Defendant can make offers at any stage in relation to:

- Liability (split apportionment)
- Contrib Negligence
- Value

These offers are usually done via CPR Part 36 which provides rules for offers but can be “calderbank” offer – eg “all in” costs and compensation offers

Part 36

- Part 36 offers - a useful tactical tool.
- Costs impact of Part 36 Offers do not apply in the Portal.
- “Sunset clauses” (time limited) can be used to reflect commercial offers which apply only to settlement at an early stage.
- Recent Court clarification on how Claimants can avoid fixed costs - Broadhurst v Tan.

Proving the Claim

Evidence gathering by Claimant and Defendant :

- Witnesses
- Experts
- Documents

The Court sets out a timetable within which the parties must file and serve their evidence.

“Causation” – proving the Loss

- A Claimant has to prove that the act of negligence caused the injury..... and that the symptoms complained of are as a result of that injury

How?

- Expert Medical Evidence

n.b. In claims worth less than £25,000 a Defendant has no right to reply on own expert evidence (unless Court makes an exception) but can ask Qs of Claimant’s experts

Costs

The good news ...

- Compensators enjoy a greater element of certainty in relation to costs in the post Jackson era.

The not so good news ...

- QOCS encourages Compensators to settle any cases which are not clear cut or even settle those cases where case is weak but where a nuisance offer makes commercial sense

The Current Position

- Portal cases (where liability is admitted) for EL and PL claims now limit costs to a maximum of:
 - £1400 + VAT for claims of < £10,000
 - and
 - £2,100 + VAT for claims above £10,000
- An additional £150 is allowed for counsel in infant settlement cases.

Fixed costs in relation to the EL/PL Protocol

add VAT and disbursements (reports, court fees)

Where the value of the claim for damages is not more than £10,000		Where the value of the claim for damages is more than £10,000, but not more than £25,000	
Stage 1 (after CNF is acknowledged)	£300	Stage 1 (after CNF is acknowledged)	£300
Stage 2 (after settlement pack sent)	£600	Stage 2 (after settlement pack sent)	£1300
Stage 3 (assessment by Court) - Type A fixed costs	£250	Stage 3 (assessment by Court) - Type A fixed costs	£250
Stage 3 - Type B oral hearing	£250	Stage 3 - Type B oral hearing	£250
Stage 3 - Type C child cases	£150	Stage 3 - Type C child cases	£150

The Current Position cont.

- Defended claims (or cases exiting the portal for other reasons) valued under £25,000 are also subject to fixed costs via CPR Part 45.
- The costs formula is based on a mixture of % recovery and fixed costs.
- Success fees no longer recoverable
- The maximum costs recovery for a litigated claim (valued at £25,000) is £13,485 for EL or £12,370 for PL plus VAT and disbursements. This is over £10,000 more than max recovery in the portal.

Costs savings if admitting liability for “low value” EL claims

Portal Claim concluded at Stage 3 hearing

- Claim award of £5,000 generates costs savings of £4,990 plus VAT
- Claim award of £12,000 generates costs savings of £6,850 plus VAT
- Claim award of £20,000 generates costs savings of £9,885 plus VAT

Is it worth fighting on?

Settlement of an EL claim for £4,000:

- Settlement in the portal at the end of stage 2 will incur costs of £900 plus VAT and disbs.
- Settlement outside the portal but pre issue will incur costs of £1,650 plus VAT and disbs.

Settlement of PL claim for £15,000:

- A portal claim at a stage 3 hearing will incur costs of £2,100 plus VAT and disbs.
- A non portal claim at a final hearing will incur costs of £8,985 plus VAT and disbs.

The Hearing

- 95% of injury cases settle before trial

But if you cannot agree:

- Liability
- % Contributory negligence
- Medical causation
- Value

You will go to trial and HS officer may have to give evidence.

Witness Evidence

- Witness Statements and statement of truth
- Do the documents support your evidence?
- Make your evidence as clear and thorough as possible
- Stick to knowledge not opinion!
- Evidence in Court is limited to clarification of your statement and cross examination
- Conference with counsel

Outcomes

- Reporting of settlement or Judgment?
- Reputational issues
- Review of procedures
- Worries about copy cat claims?
- Evidence of policy and procedures – is this easily accessible?
- Lessons learnt?

The role of the HS officer

- Evidence gathering
- Analysis of the evidence
- Knowledge of the systems and procedures.
- Supplementing the documents with evidence of the process
- Documents are the key to success – are they easily accessible?
- Witness Evidence at court

Civil Law and Security

- **Jean Charles de Menezes' R v Comm of Met**
- **Lubbe (and Others) v Cape PLC [2000] 1 W.L.R 1545**
- *Lungowe v Vedanta Resources Plc [2016] EWHC 975*
- **Palfrey v. Ark Offshore Ltd (2001)**
- *Dusek v Stormharbour Securities LLP [2015]*
- **Hopps v. Mott MacDonald Ltd (2009)** - Compensation Act 2006
- *Cassley v GMP Securities Europe LLP [2015] EWHC 722 (QB)*
- **Valentine v Ministry of Defence (2010)**

Health and Safety Stop Press

- SHP - The number of company directors prosecuted for safety and health offences has more than tripled in a year, according to data from the Health and Safety Executive (HSE)
- Sentencing – what does Alton Towers tell us?

Sentencing Ranges - HSE

Large Turnover or equivalent: £50 million and over		
	Starting point	Category range
Very high culpability		
Harm category 1	£4,000,000	£2,600,000 – £10,000,000
Harm category 2	£2,000,000	£1,000,000 – £5,250,000
Harm category 3	£1,000,000	£500,000 – £2,700,000
Harm category 4	£500,000	£240,000 – £1,300,000
High culpability		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
Harm category 2	£1,100,000	£550,000 – £2,900,000
Harm category 3	£540,000	£250,000 – £1,450,000
Harm category 4	£240,000	£120,000 – £700,000
Medium culpability		
Harm category 1	£1,300,000	£800,000 – £3,250,000
Harm category 2	£600,000	£300,000 – £1,500,000
Harm category 3	£300,000	£130,000 – £750,000
Harm category 4	£130,000	£50,000 – £350,000
Low culpability		
Harm category 1	£300,000	£180,000 – £700,000
Harm category 2	£100,000	£35,000 – £250,000
Harm category 3	£35,000	£10,000 – £140,000
Harm category 4	£10,000	£3,000 – £60,000

- Ashfords LLP has partnered with the Chartered Trading Standards Institute (CTSI), to deliver a new and innovative business regulatory solution (BRS).
 - BRS is an online platform that will help you to co-ordinate the regulatory advice and resources you use throughout your organisation by providing detailed commercially focused guidance on the following regulatory areas:
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