EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT) RULES 2010

2010 No. 621 (L.3)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Civil Procedure Rules (S.I. 1998/3132) (the "CPR"). The CPR are rules of court, which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and county courts. The rules are a vehicle for implementation of new initiatives, modernisation of the rules, and introduction of European directives and regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The amendments to the CPR covered by this instrument mostly relate to Government or judicial initiatives.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Civil Procedure Act 1997 created the Civil Procedure Rule Committee ("the Committee") and gave it power to create civil procedure rules. The first CPR were made as the Civil Procedure Rules (1998). The intention of the CPR was to create a single procedural code for matters in the Civil Division of the Court of Appeal, the High Court and county courts, replacing the old

County Court Rules (CCR) and Rules of the Supreme Court (RSC).[1] The CPR had a number of policy objectives, two of the more prominent being to improve access to justice through transparent straightforward procedures and reduce, or at least control, the cost of civil litigation in England and Wales. The changes were made, and continue to be made, in response to the report 'Access to Justice' (1996) by Lord Woolf.

7.2 This instrument amends the CPR, in particular by:

(a) making amendments consequential on the introduction of a new procedure for personal injury claims in road traffic accidents valued at between £1,000 and £10,000 which is set out in the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (the "RTA Protocol"). This instrument inserts a new Section VI in Part 45 of the CPR which sets out the fixed costs that will apply in claims that have, or should have, followed the RTA Protocol, where the amount of damages are not agreed and proceedings are started under the CPR. This instrument also inserts a new section in Part 36 of the CPR which deals with offers to settle made by the parties under the Pre-Action Protocol. This instrument also makes a number of smaller amendments including to rule 14.1B (admissions made under the RTA Protocol), rule 27.14 (costs where the claim no longer continues under the RTA Protocol and falls within the small claims track) and rule 44.12C (costs only proceedings where a settlement is reached by the parties after proceedings are started);

(b) making amendments to provided for a registered proprietor of a registered charge to be notified by a claimant where a residential mortgage possession claim is started under Part 55 of the CPR; and

(c) making amendments to reflect the new term "private registered provider of social housing" as a consequence of the implementation of the Housing and Regeneration Act 2008.

8. Consultation outcome

8.1 The Civil Procedure Rule Committee must, before making Civil Procedure Rules, consult such persons as they consider appropriate (Civil Procedure Act 1997s.2(6)(a)). Where the Committee initiates amendments then consultation is undertaken where deemed necessary.

8.2 A consultation exercise, which sought views on the claims process for personal injury, was undertaken by the Ministry of Justice. The consultation period was from April 2007 to July 2007 and the response paper was published in July 2008. Two hundred and seventy one responses were received which included responses from the legal profession, judiciary, insurance industry, trade unions, Members of Parliament, Ombudsmen, professional mediators, and private businesses. Two hundred and nine responses were received to the question of whether the new claims process should apply to all

[1] This work is ongoing: the few remaining CCR and RSC are included in 'schedules' to the CPR.

claims for personal injury except clinical negligence. Approximately 50% stated either that the limit for the process should be lower than £25,000 or that certain types of claims were unsuitable and should be excluded. The response paper identified that £25,000 was too high, as a claim worth this amount could consist of multiple serious injuries, requiring multiple medical reports and a complicated schedule of special damages. The Ministry therefore concluded that the upper limit should be set at £10,000 and that the process should be restricted to personal injury claims resulting from road traffic accidents.

8.3 The consultation and response paper *Case track limits and the claims process for personal injury claims* can be found at http://www.justice.gov.uk/publications/cp0807.htm

8.4 A full consultation was carried out in respect of the Housing and Regeneration Act 2008 and can be found at http://www.communities.gov.uk/documents/housing/pdf/322429.pdf

9. Guidance

9.1 A preview summarising the forthcoming changes will also be published on the Ministry of Justice website in March 2010 at http://www.justice.gov.uk/civil/procrules_fin/index. The Ministry of Justice will also write to key stakeholders detailing the changes in March 2010. The rules will be published by the Stationery Office and will be available on the Ministry of Justice website in March 2010. On coming into force on 30th April 2010 the amendments to the rules will be made on the website, which will coincide with issue of the printed version of the consolidated rules.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment in relation to the RTA PI claim process is attached to this instrument.

10.4 A partial impact assessment was completed in relation to improving the claims process in the consultation paper *'Case track limits and the claims process for personal injury claims'*. This indicated that as this new process is different from the current one, it was difficult to estimate what the cost and savings will be. However, there would be a significant reduction in legal costs paid by defendants/insurers due to the more streamlined process and fixed costs regime. The legal profession may receive less money for a claim but the costs they do receive will reflect the actual work done. However, the process would result in a quicker turnover of cases and improved cash flow for those members of the legal profession that deal with such claims.

10.5 A further impact assessment (annexed) has been carried out which indicates

that the new process is expected to provide efficiency savings and should allow lower litigation costs to be paid in claims within the scope of the new process. However, there will be some costs related to the implementation of the new process. For example there will be costs to the insurance industry for the setting up and running of an electronic portal for the secure exchange of information for the new process. It is also recognised that at this stage it has not been possible to quantify all the impacts. However, it is expected that the process will benefit the legal representatives of both claimants and defendants through a standardised, streamlined process which will generate operational efficiencies. Claimant legal representatives will also benefit from the simplified process of starting court proceedings, because it entails fewer steps from the point where proceedings are started until the final decision by the court.

10.6 A regulatory impact assessment was carried out in relation to the Housing and Regeneration Act 2008 and can be found at:
www.opsi.gov.uk/si/si2008/em/uksiem_20083002

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide a summary of the changes up to three months in advance through the CPR website and by writing to key stakeholders.

11.3 The consultation paper *Case track limits and the claims process for personal injury claims* explains that the Minister consulted with the Federation of Small Businesses, the Confederation of British Industry and the Engineering Employers' Federation to explore the impact on business, including small business and to actively encourage small businesses to participate in the consultation.

11.4 During the development of the new RTA process the Ministry of Justice has engaged with practitioners across the country through a series of road shows. This has enabled small businesses to attend and understand how the new process will operate. The Ministry has also attended a number of conferences organised by both claimant and defendant representative organisations to explain the new process. Small businesses have attended these conferences. These representative organisations have also engaged directly with small businesses likely to have an interest in the new process.

12. Monitoring & review

12.1 These rules will form part of the Civil Procedure Rules 1998 that are kept under review by the Civil Procedure Rule Committee. The Civil Procedure Rule Committee will make any subsequent amendments to these rules.

13. Contact

Jane Wright at the Ministry of Justice Tel: 020 3334 3184 or email: jane.wright@justice.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
Ministry of Justice	**Impact Assessment of Low Value Personal Injury Claims in Road Traffic Accidents**	
Stage: Decision	**Version:** Final	**Date:** 5 March 2010

Related Publications: Case track limits and the claims process for personal injury claims – consultation paper, April 2007 and response paper July 2008; Low Value Personal Injury Claims in Road Traffic Accidents – information paper published 6 October 2009.

Available to view or download at: **http://www.justice.gov.uk/consultations/cp0807.htm and http://www.justice.gov.uk/publications/personal-injury-claims-road.htm**

Contact for enquiries: Narinder Tamana **Telephone:** 020 3334 3216

What is the problem under consideration? Why is government intervention necessary?

The process involved in making a claim for personal injury arising from road traffic accidents (RTA) often takes too long. Costs often exceed compensation, particularly in lower value claims. A key driver is that the general pre-action process parties must follow tends to increase costs at the early stage of the process. In particular claimant lawyers may undertake much investigative work before notifying the defendant of the claim. In cases where the defendant subsequently admits liability much of this work might prove unnecessary with hindsight. Government action is required to reduce legal costs overall, and to ensure effective compensation is paid in a timely manner in road traffic accident claims.

What are the policy objectives and the intended effects?

The new process for low value RTA personal injury claims (valued at up to £10,000) is designed to reduce costs and improve efficiency. It introduces a standard streamlined process which should avoid duplication of work and deliver compensation to claimants quicker and at a more proportionate legal cost. Standard procedures and electronic communication should enable savings for all parties relating to administrative costs. Claimant solicitors' income flow should be improved as they should receive payment for legal costs at the end of each stage of the new process, rather than at the conclusion of the case. The fixed costs associated with the process should make potential liability for costs more certain at the outset of each case, including when a settlement is not reached.

What policy options have been considered? Please justify any preferred option.

Option 0: Do Nothing

Option 1: Introduce a new process for RTA personal injury claims valued up to £10,000.

Option 1 is preferred as this should address the problems under consideration.

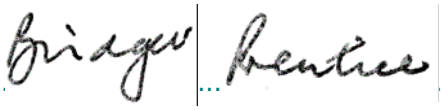
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Monitoring arrangements, including the gathering of data on success criteria, have been agreed with the stakeholder representative organisations. Monitoring will be on-going and a formal review should be undertaken after 12 months.

Ministerial Sign-off For Implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:



..... Date: 5 March 2010

Summary: Analysis & Evidence

Policy Option: 1	Description: **Implement a new process for RTA claims personal injury claims valued between £1,000 and £10,000.**

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yrs**	
£	
Average Annual Cost (excluding one-off)	
£	**Total Cost** (PV) **£**

■ Other **key non-monetised costs** by 'main affected groups' Solicitors, HMCS and insurers should face one-off adjustment costs from revising processes and IT systems and training staff. There may be other adjustment costs from the new protocol processes bedding down. The new protocol processes are contingent upon the private sector establishing and operating a new electronic communication portal. Fixed fees should reduce activity and income mainly for claimant solicitors. The judiciary

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups:
One-off **Yrs**	
£	
Average Annual Benefit (excluding one-off)	
£	**Total Benefit** (PV) **£**

■ Other **key non-monetised benefits** by 'main affected groups' Streamlined processes and improved communications should raise administrative efficiency. Claimant solicitors should benefit from improved cash flow. Defendants should pay lower claimant legal fees.

Key Assumptions/Sensitivities/Risks The number of claims and the number progressing to trial is assumed to remain the same. As with any fixed legal costs regime there is a risk that solicitors may have an incentive to reduce service quality or to do less work to secure a just settlement. However the process aims to control for this.

Price Base Year 2010	Time Period Years 10	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£**

What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	30/04/2010
Which organisation(s) will enforce the policy?	The Judiciary
What is the total annual cost of enforcement for these organisations?	£
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase £ Decrease £ **Net** **£**

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

1. Introduction and Background

1.1 In response to the Better Regulation Task Force report *Better Routes to Redress,* the Government indicated that it would look at ways to make the personal injury claims process more timely, proportionate and cost-effective. The resulting consultation paper *Case track limits and the claims process for personal injury claims* (published in April 2007) proposed a new claims process for personal injury claims up to £25,000, including road traffic accident (RTA), employers liability and public liability claims.

1.2 Having considered the responses to the consultation, the Government indicated that a new streamlined claims process should be established for RTA personal injury claims valued between £1,000 and £10,000. The Government considered that RTA claims by their nature tend to be less complex than other areas of personal injury (particularly Employer's Liability and Public Liability cases) and therefore would be more suited to the new claims process proposed.

1.3 The Ministry of Justice has since worked closely with key claimant and defendant representative bodies to agree the detail of the new process. The details of this process and its likely impacts are discussed in depth in this Impact Assessment (IA).

2. Scope of the Impact Assessment

Scope of the proposals

2.1 A new process for RTA personal injury claims valued between £1,000 and £10,000 will be introduced from 30 April 2010. The process will apply to any claim relating to a road traffic accident occurring on or after 30 April 2010 in England and Wales, where the expected damages relating to the injury, but excluding vehicle damage and car hire, are valued above the small claims limit (£1,000 pain suffering and loss of amenity) and below £10,000. The process will not apply in specified circumstances, for example where the driver cannot be traced or where either party is deceased.

Affected Groups and Sectors

2.2 The following sectors and groups are likely to be affected by the proposals:

- *Claimants*: Individuals who are injured in road traffic accidents will be required to proceed with cases under the new process.

- Defendants*:* Similarly, defendants will be required to proceed under the new process. Defendants in RTA cases are primarily insurers, the Motor Insurance Bureau and large companies involved in road transport such as hauliers, bus and coach companies. There are 71 companies that provide motor insurance registered with the Association of British Insurers. We do not know how many companies self insure at this level of damages;

however we are advised that many bus and coach companies and large road hauliers do so.

- *Legal Profession:* The proposed changes will affect claimant and defendant solicitors dealing with RTA personal injury claims. They will be affected by the procedural changes and by the new cost structure outlined in the proposal.

- Insurers*:* Insurers which provide insurance coverage for road traffic accidents, ATE (after the event) legal costs, and BTE (before the event) legal costs may be affected.

- *County courts:* There could be a potential impact on the court system if the new process results in a change in the number of cases settled at trial or a change in the number of proceedings issued. All 216 county courts deal with claims for damages in relation to RTA personal injury claims and will continue to do so under the new process.

2.3 It is estimated that there are around 500,000 road traffic accidents per year which fall within the scope of the new process. Defendants admit liability in around 390,000 cases per year, and legal proceedings are issued in around 185,000 cases. However, settlement is common. Only around 5,000 cases per year actually result in a court hearing when liability is admitted (for claims valued between £1,000 and £10,000). The act of issuing proceedings in some cases may be a means of triggering a settlement.

3. Problem under consideration

3.1 The current process for obtaining damages for relatively minor personal injury after a road traffic accident can be time consuming and can lead to legal costs which appear disproportionately high compared to the damages at issue. The pre-action protocol currently in place for personal injury claims outlines best practice for personal injury cases. However, it is designed to cover a variety of different types of personal injury cases of varying complexity, and in cases where an early admission of liability is admitted, it can often lead to unnecessary investigative work. This is one possible driver of high costs. The current process also allows considerable variation in the way claims are handled, and in the time taken to resolve them, and this may also contribute to high costs.

3.2 The current process for RTA claims also involves an element of fixed legal fees, but these cease to apply when legal proceedings are issued. This may lead to legal proceedings being issued in part to avoid the fixed fee regime. The issuing of unnecessary proceedings may increase the time taken to resolve cases, and may inflate costs overall.

4. Cost Benefit Analysis principles

4.1 The IA process aims to identify as far as possible the impacts of Government proposals on society. A critical part of the process is to undertake a cost benefit analysis (CBA) of the proposals. CBA assesses whether the government's

proposals would deliver a positive net impact to society, accounting for economic, social, distributional and environmental considerations amongst others. The IA process should not be confused with a financial appraisal, which is focused more narrowly on assessing how much resources government would save from certain proposals. The material contained in a financial appraisal would form a subset of the material contained in a CBA.

4.2 The CBA underpinning this IA rests on answering three basic questions:

- What is the "economic problem" that government is seeking to address that has led to the relevant market or sector not functioning properly and what is the economic rationale for government intervention?
- What options are available to government to correct this problem?
- Are the recommended solutions (options) likely to have the desired impact? To establish a strong case for government intervention, we must assess the costs and benefits of government involvement and show that the benefits are likely to justify the costs.

5. Economic rationale for government intervention

5.1 The conventional economic approach to Government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way a market operates ("market failures") or if there are strong enough failures in existing interventions ("government failures"). In both cases the proposed new intervention should avoid creating a further set of distortions. The Government also intervenes for equity (fairness) reasons.

5.2 In this IA the key economic issue at stake is considered to be how much resource (e.g. legal costs) should be devoted to securing an outcome which is sufficiently just in terms of the amount of compensation paid. (Other issues also apply, such as whether there is sufficient certainty and reassurance that the amount of payment is just, but this analysis does not focus on these other issues).

5.3 There might be a wider intrinsic value in justice being done, and being seen to be done, in terms of the amount of compensation being fair and reasonable. At the same time the ideal level of resource used to secure a settlement should probably still be proportionate to the amount of compensation, given other possible resource uses.

5.4 There might also be a trade-off between the degree to which a compensation payment is just and the amount of resource required to secure the payment. This trade-off could operate at individual level and at the level of society. For example it might be undesirable to devote an excessive amount of resource to securing an outcome which was only marginally more just than an existing offer.

5.5 Current arrangements enable 'external costs' to be generated in a number of circumstances. 'External costs' are generally regarded as one form of market failure. For example under a Conditional Fee Agreement (CFA) a claimant might not be liable for their costs at all, even if they lose. By taking out ATE (after the event) legal costs insurance with premium charged only if the case is

won, a claimant might also not be liable for the defendant's costs at all. Weakening or breaking the link between using resources and paying for them can lead to their inefficient over-use. Associated with an over-use of resources might be excessive time taken to settle the case in question.

5.6 Aside from using too many resources to secure a just level of compensation, the ability to generate 'external costs' might distort the trade-offs outlined above. In particular an incentive to avoid paying for excessive 'external costs' which are being generated by the other party might lead to less just outcomes being agreed in terms of the amount of compensation paid.

5.7 Efficiency savings would arise if fewer resources were used to secure an equally just compensation payment. One rationale for the proposals is to achieve such efficiency savings by introducing more appropriate and streamlined protocol processes and by introducing a wider fixed fee regime (which cannot be escaped simply by issuing proceedings).

5.8 It should be noted that an alternative approach to a fixed fee regime might be to address the causes of 'external cost' generation more directly, such as particular features of CFAs and ATE cover, including success fees and the ability to pass costs away from those who incur them onto the other party. The fact that these other approaches are not assessed in this IA should not be read as the Government having ruled them out.

5.9 The rationale for the reforms in this IA, and for fixed fees in particular, is contingent upon the behavioural implications not generating a further set of excessively inefficient distortions. With a fixed fee regime incentives may exist for solicitors to minimise costs and hence to maximise profits. This might be achieved through improving efficiency but also might be achieved through providing a lower quality service. This might manifest itself in terms of the justness of compensation payments agreed.

5.10 Avoiding such distortions is the rational for the fixed fee regime including some flexibilities, for it applying only to cases where liability has been admitted, for applying only to lower value cases, where there is a high volume of cases, and for applying in relatively more straightforward cases (i.e. RTAs).

6. Options analysis

6.1 The new road traffic accident personal injury protocol process aims to introduce a standardised and streamlined process for relatively low value claims to help eliminate unnecessary work. It should also generate administrative efficiencies for both parties.

6.2 In addition while some individual claimant solicitors and insurers have already developed two-way systems of secure electronic communication, it is expected that the development of a new protocol process for all low value RTA personal injury claims will act as a catalyst for the development of an open access portal for use by any claimant, solicitor, and defendant. This portal would be established and operated by the private sector rather than by the Government.

Base Case ("Do Nothing")

Overall description

6.3 The IA process requires that all options are assessed relative to a common "base case", assumed in this IA to be "do nothing". Doing nothing would mean continuing with the current process as described below. As the base case effectively is compared against itself its net present value is zero.

6.4 Under the current regime, costs differ depending on at which stage of the process a claim is settled. Generally there are three stages:

1. Settlement *before* a claim is issued;
2. Settlement *after* court proceedings but before trial;
3. Settlement at trial.

6.5 It is estimated that the average motor claim takes around 12–15 months to resolve. When a claim settles between issue and trial, the average total costs are around £3,000. Discussions with stakeholders strongly indicate that a high proportion of claims are for less than £2,500, suggesting that legal costs under the current claims process exceed the damages awarded in a large number of cases. The available data does not provide an exact estimate of the number of such cases.

6.6 One driver of the inefficiency in the current system is the manner in which parties communicate with one another. Communication is often done by post. This is one element of the system which the proposed policy seeks to address.

Settlement before issue of a claim

6.7 Under the current process a fixed recoverable costs regime applies to RTA claims which settle before proceedings are issued, for damages of up to £10,000. The costs are paid in one instalment once damages have been agreed. The general principle is that the loser pays the winning party's costs. The claimant is successful in the vast majority of these cases and will be paid their legal costs by the defendant.

6.8 The fixed costs are set out in the Civil Procedure Rules (Rule 45.9) and are as follows:

- For damages up to £5,000: £800 plus 20% of damages awarded
- For damages between £5,000 and £10,000: £800 plus 15% of damages awarded

6.9 In exceptional circumstance, in settled cases claimants can apply to a court to be exempt from these fixed recoverable costs. The court may order higher costs to be paid where the costs assessed by the court as being reasonable are more than 20% above the fixed costs that would apply to the case. In circumstances where RTA cases are funded under a conditional fee agreement, there is a standard success fee uplift of 12.5% for claims which settle pre-proceedings.

Settlement after a claim is issued but before trial

6.10 At present, claimants can escape the fixed recoverable costs regime in cases where court proceedings are issued. This also applies to cases where court proceedings are issued but the case is settled before trial. Where proceedings

are issued, defendants will not know the costs payable to the claimant at the end of the process as there are currently no fixed recoverable costs for claims at this point. This results in parties spending time and resources while negotiating costs, which increases the overall costs of the process.

6.11 In circumstances where a RTA case is funded under a conditional fee agreement, there is a standard success fee uplift of 12.5% for claims where court proceedings are issued but the case settles before trial commences. Where the claim concludes at trial a success fee of 100% applies.

Settlement at trial

6.12 Part 36.14 of the Civil Procedure Rules sets out the costs (and other) consequences that arise where an offer to settle is made but not accepted before trial and the court goes on to decide the claim.

6.13 Where the court awards less than the defendants offer, the claimant is generally required to pay the defendants costs from the date the offer expired and interest on those costs. (On the basis that the claimant was unreasonable in not accepting the defendants offer.) The defendant pays the claimant's costs up to the date the offer expired.

6.14 Where the claimant beats the defendants offer, the defendants offer is disregarded and the defendant pays the claimants costs in accordance with the usual principle that the loser pays the claimants costs.

6.15 Where the court awards damages equal to or more than the claimants offer the defendant is required to pay the claimants costs, and generally in addition from the date the offer expired interest on damages awarded, costs payable on an indemnity basis and interest on those. (On the basis that the defendant was unreasonable in not accepting the claimants offer.)

6.16 In circumstances where an RTA case is funded under a conditional agreement, there is a standard success fee uplift of 100% for the claim on all costs incurred.

Court Process and Fees

6.17 At present there are multiple steps in the court proceedings that parties are required to follow. In addition to recoverable fees, the losing party must pay court fees. These fees are made up as follows:

- £75 - £225 fee for issue of the proceedings, depending on the value of the claim.
- £200 allocation fee.
- £100 fee on filing the listing questionnaire.
- £500 hearing fee.

Option 1: Implement a new process for RTA claims personal injury claims valued between £1,000 and £10,000

Overall description

6.18 Option 1 involves introducing a new process for dealing with low value RTA personal injury claims. It specifies how to deal with low value RTA PI claims from the initial communication between the parties to final court proceedings,

where necessary. It applies only to claims where liability is admitted. In cases where liability is not admitted or is admitted subject to contributory negligence (other than failure to wear a seatbelt), the claim drops out of the new process and is continued under the current process and the current costs regime.

6.19 The process sets a timetable for action and can be divided into three stages:

- Stage 1: all claims pass through Stage 1 of the process. This is the initial stage where the claimant notifies the defendant of the claim. At this stage the defendant can either admit or deny liability and must do so within 15 days.
- Stage 2: involves cases where liability is admitted and the claimant sends a medical report, evidence of disbursements, and an offer which specifies the amount claimed to the defendant. This stage also involves offers to settle being made by both parties and time for the parties to negotiate a settlement.
- Stage 3: involves cases which are not settled at Stage 2 and for which proceedings are issued for the court to assess the amount of damages due to the claimant. At this stage, the parties may agree a settlement before the court assessment or progress to an assessment, which may be on the papers or at a hearing.

6.20 The process also governs the information that must be provided. It requires the necessary information (only) to be provided for each stage in the process at the earliest opportunity. The new claims process also provides for standard forms and electronic communication.

Costs Structure under the new process

6.21 Under the new process recoverable costs will be fixed for each stage of the process, including Stage 3 (court proceedings). The claimant will receive payments at the end of each stage. This means that by the time a claim reaches the trial, the fixed recoverable costs for Stage 1 and Stage 2 will have already been paid by the defendant. This introduces certainty for the defendant as to the magnitude of costs payable at the end of the claims process, even if they lose the trial. It also improves cash flow for claimant solicitors.

Settlement before issue of claim

6.22 The scenarios where cases are settled before court proceedings are issued apply to Stage 1 and Stage 2. The recoverable fixed costs of each stage under new process are structured as follows:

- Stage 1**:** Fixed costs of £400 will be payable to the claimant by the defendant at the end of Stage 1, where an admission of liability (or contributory negligence is alleged other than failure to wear a seatbelt) is made and the case is to stay in the process.
- Stage 2**:** Fixed Costs of £800 will be payable to the claimant by the defendant at the end of Stage 2.

6.23 In circumstances where a RTA PI case is funded under a conditional fee agreement (CFA), a standard success fee uplift of 12.5% is payable once it is clear that the claimant has been successful, i.e. that the damages are agreed.

Settlement after Court Proceedings but before trial

6.24 The claimant can issue proceedings where no agreement on damages has been reached. Both parties still have the option to settle when the proceedings are issued but prior to the court's assessment of the damages. In this case the claimant would receive:

- Stage 3**:** £250 Fixed Cost for a paper decision

6.25 In addition to the Stage 3 fixed costs for cases funded under a CFA, a 12.5% success fee uplift would at this point also be paid on all fixed costs (Stages 1 to 3).

Settlement at Trial

6.26 For the proportion of cases progressing to trial, the court determines damages. At this stage the defendant has already paid the fixed costs for Stages 1 and 2, therefore the losing party at trial pays only the fixed cost relating to trial costs, which are as follows:

- Stage 3**:** £250 for a written hearing.
- Stage 3**:** £500 for an oral.

6.27 For cases funded under a CFA, where court proceedings are issued and the claim concludes at trial, a success fee uplift of 100% will apply to the fixed trial costs (of either £250 or £500). In addition a success fee uplift of 12.5% is paid on Stages 1 and 2 costs.

Court Process and Fees

6.28 The process of how the court proceedings are issued has been simplified. It entails fewer steps from the point where proceedings are issued to the final decision by the court. In particular there is no allocation stage and no listing questionnaire is required, nor is there provision for case management or directions hearing. There is therefore no allocation or hearing fee even if a case proceeds to trial. Claims will still attract a commencement fee of between £75 and £225, depending on the value of the claim.

Costs of Option 1

One-off administrative costs

6.29 In the short term both claimant and defendant solicitors will have to bear the costs of training staff, revising their internal process guidance to take account of the new process. No additional equipment is required to access the system of secure electronic communication being developed for the process, although many solicitors will choose to adapt their case management systems to enable direct data flow between the two. The Association of British Insurers (ABI) has indicated that for the largest insurers the start up costs may be as high as £600,000, but has been unable to provide an industry wide figure.

6.30 ATE insurers would also face one off adjustment costs associated with recalculating the risks and levels of insurance premium required in relation to the new process.

6.31 HMCS may also face some one-off costs associated with amending court forms.

Ongoing administrative costs

6.32 It is estimated that running the new system of electronic communication is likely to cost around £1 per claim, including development costs. Assuming the current rate of around 500,000 claims in scope per year, this suggests running costs will be around £500,000 per year. These costs will be borne by defendants. Implementation of the new process protocol is contingent upon this new communication infrastructure being in place and operating smoothly.

Claimant solicitors

6.33 The fixed costs recoverable by claimant solicitors will be lower than costs currently payable both for preparation and advocacy. However, the costs associated with the new process have been agreed between claimant and defendant representatives on the basis that the new streamlined process will enable offsetting operational efficiencies to be made and that the fixed legal costs are sufficient to cover the work required.

Defendants

6.34 The special Part 36 arrangements applying to this process (which govern the costs payable when a party is considered to have succeeded in his or her court claim) mean that claimants are more likely to be awarded their costs than currently. This represents a further cost to defendants.

Claimants

6.35 Claimants could potentially face costs under the new process, if the new process results in lower damages awarded. It is however unclear whether the new process will in practice alter the level of awards. The Ministry of Justice is keen that this should not happen and the level of damages is one of the factors that the Ministry of Justice will monitor following introduction of the new process.

HMCS

6.36 Under the new RTA PI process, court fees would be limited to the issue fee only. Overall, this is expected to be sufficient to meet HMCS' costs of hearings under the new process based on the proportion of cases that settle at trial under the current process. However, any increase in the volume of cases reaching trial as a result of the introduction of the new process could increase HMCS' costs. Our assessment is that the new process is not expected to impact on the volume of cases reaching trial. This impact on HMCS is therefore presented as a risk, rather than an expected impact.

Benefits of Option 1

Efficiency savings

6.37 Claimant and defendant solicitors should benefit from a standardised, streamlined process, which will generate operational efficiencies. In addition,

the new system of secure electronic communication between claimant solicitors and defendant/insurers will make it easier for all parties to communicate.

6.38 Claimant solicitors should also benefit from the simplified process of issuing court proceedings. It entails fewer steps from the point where proceedings are issued until the final decision by the court. In particular there is no allocation stage and no listing questionnaire is required, nor is there provision for case management or directions hearing.

6.39 Claimants without legal representation should also benefit as they will be able to use the new process and the system of secure electronic communication to progress their claim. This will make it easier to follow process and to communicate with defendants or the defendant's solicitor.

Claimants

6.40 Claimants should benefit from the new process as a result of earlier certainty on liability, and earlier receipt of damages. Under the new process, claimants should know whether liability has been admitted within 3 weeks of submitting the claim notification form, and could receive final payment of damages within 12 weeks. However, in practice it is expected that most claims, settled without court proceedings, will take nearer 32 weeks (160 days) to payment – assuming that on average it will take 3 months to prepare a medical report. Where court proceedings are required, claims may take a further 12–16 weeks. However under the new process claimants (except child claimants) will receive an automatic interim payment of damages, at the level of the defendant's last offer, before court proceedings are commenced.

Claimant Solicitors

6.41 Claimant solicitors should benefit from better cash flow because of earlier resolution and staged payments of costs and disbursements.

Defendants

6.42 Greater certainty and lower legal costs may lead to a fall in ATE insurance premiums and therefore could benefit defendants who must ultimately pay the ATE insurance premium under the two way cost shifting regime. The scale of any benefit will however depend to which extent ATE insurers reduce their premiums.

Net Impact of Option 1

6.43 It has not been possible to quantify all of the impacts set out above. However, the proposed policy is expected to provide efficiency savings and should allow lower litigation costs to be paid in RTA cases within the scope of the new process. There are some costs of implementing the proposed policy.

7. Risks and uncertainties

7.1 Costs may be greater if the new processes do not bed down as quickly or as smoothly as has been anticipated. The bedding-down process may include

resolving challenges to the applicability of the new processes to particular cases.

7.2 Linked to above, benefits may be reduced if fewer cases than anticipated are subject to the new processes.

7.3 Costs may be greater if the new electronic communications portal does not work as effectively or as efficiently as has been assumed. This may include greater than expected costs in establishing and operating the portal, and other costs associated with the way the portal works and is used.

7.4 It has been assumed that these reforms will have no impact on the total number of RTA personal injury cases and on the total number going to trial. The number of cases where proceedings are issued is expected to fall as proceedings should no longer be issued as a means of escaping the fixed fee regime.

7.5 It has been assumed that any reductions in justness relating to the level of compensation payments are considered to be acceptable from society's perspective given the reduced resources required to settle claims. The same has been assumed in relation to any reductions in service quality. However it should be noted that the process has been developed in conjunction with stakeholders with the aim of maintaining levels of compensation payments paid.

8. Enforcement and Implementation

8.1 Enforcement will be a matter for individual District Judges. Implementation will be a matter for the Ministry of Justice

9. Specific Impact Tests

Competition Assessment

9.1 An initial assessment suggests that the policy is not anticipated to directly or indirectly limit the number or range of suppliers, to limit their ability to compete, nor to limit the incentives of suppliers to compete vigorously.

Small Firms Impact Test

9.2 The Department involved the Federation of Small Businesses, the Confederation of British Industry and the Engineering Employers' Federation when exploring the impact on business, including small business, and actively encouraged small businesses to participate in the consultation. Subsequently during the development of the new protocol process the key claimant and defendant representative organisations engaged with the small business likely to have an interest in this process.

Legal Aid and Justice Impact Test

9.3 Personal injury claims are normally funded by way of Conditional Fee Agreements and are not subject to legal aid funding. The policy is therefore not expected to have any impact on legal aid.

Sustainable Development

9.4 The majority of claimants/claimant solicitors under the current pre-action protocol for personal injury claims use post for exchanging information and relevant documents. At the request of both claimant solicitor and defendant/insurers representatives, the new process will only provide for electronic exchange of information. In moving away from a paper based system, environmental impacts relating to the manufacture, transportation, packaging and disposal of paper will be reduced. Through the evaluation process that is put in place for the new process we will seek to establish the level of administrative efficiencies that have been achieved by implementation of the new process.

Carbon Assessment and Other Environmental tests

9.5 Any effects on carbon emissions and on the environment are likely to be positive. These effects might relate to the move towards more electronic communication (see sustainable development test below) and also a general reduction in the amount of resource used to settle these cases.

Health assessment

9.6 The proposals are not expected to have any significant impacts on health, well-being or health inequalities.

Human Rights

9.7 The policy is not expected to have any significant human rights impacts.

Privacy Impact Test (a Ministry of Justice Specific Impact Test)

9.8 The new process requires that standard forms and information be exchanged electronically between the parties. It makes no provision for data to be exchanged by post. This is at the request of both claimant solicitor and defendant/insurer representatives. The data to be exchanged is the same as that exchanged under the current pre-action protocol process, largely by post. The Association of British Insurers has agreed to fund a system of secure electronic exchange of data between any claimant or claimant solicitor and any defendant insurer (or defendant where they are self insured). This will facilitate the exchange of data in a way which is consistent with the requirements of the Data Protection Act 1998. Claimant solicitor and insurer representative organisations are involved in the development of the system and will ensure that it meets the needs of its users in terms of Data Protection as well as functionality, accessibility and interface with existing case management systems. The Information Commissioner's Office has been consulted as part of developing the new system to ensure compatibility with the Data Protection Act 1998.

Rural proofing

9.9 The policy is not expected to have any significant rural impacts.

Equalities Impact Assessment

9.10 An EIA has been completed.

Specific Impact Tests: Checklist

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	Yes	No
Rural Proofing	Yes	No