



Response

Information Gathering Exercise on the process for low value personal injury claims resulting from road traffic accidents

December 2023



Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Civil Justice Committee welcomes the opportunity to consider and respond to the Scottish Government's Information Gathering Exercise on the process for low value personal injury claims resulting from road traffic accidents. The Committee has the following comments to put forward for consideration.

Digital Claims Portal¹

Question 1: Do you agree that introducing an online portal dealing with low value claims (similar to the one described [in the information paper] will provide a more timely and cost-effective system? If not, please say why and set out any alternative proposals.

The Civil Justice Committee are of the view that the current system of using the Pre-Action Protocol, which was introduced in 2016, is working well and is delivering timely and efficient settlements. If, however, the Scottish Government are minded to introduce a Digital Claims Portal for low value personal injury claims resulting from road traffic accidents, the Committee would be keen to work with Scottish Government to ensure that it meets the intended outcomes.

Question 2: If a claims portal was introduced, do you agree that there should be an upper limit set for the value of claim entering the portal? If so, what do you envisage being the most appropriate limit?

As a generality, the Committee agrees that there should be an upper limit. The Committee believes that a claim valued at £25,000 would be regarded as a medium level claim and therefore suggest that the upper limit should be lower. The Committee's view however is that it would be difficult to suggest an upper limit without appropriate data.

¹ The Civil Justice Committee do not have experience of using the online claims portal in England and Wales and therefore we are unable to provide response to questions 3 to 6 inclusive.

Question 7: If you have not had direct experience of the claims portal, do you foresee any issues or additional costs or savings to your business?

We anticipate that there will be costs for businesses to comply in terms of IT investment and for staff training. This could be significant, and potentially disproportionate, depending on the complexity and scope of the portal.

Question 8: Is there any further information or data you would want the Scottish Government to consider?

Not at this stage. However, the Committee would be happy to provide any further information that would assist.

Fixed costs

Question 1: If a claims portal was introduced, do you agree that fixed recoverable costs should be introduced for portal claims?

The Committee seeks clarification of the term “fixed recoverable costs” as this is not a commonly used term in Scotland. In Scotland, monies recovered are for the solicitors’ fees and outlays, for example, the costs for medical and other specialist reports. We understand that the table at Annex A of the Information Paper consists of solicitors’ fees for litigated cases, i.e. cases that would not utilise the portal in any event (for example, those where liability is disputed). It would therefore not be advisable to make decisions based on figures which show only litigated cases and will not include those that would not be subject to the portal.

Question 2: If a claims portal was not introduced, should fixed recoverable costs for low value personal injury claims still be put in place?

These types of cases are already successfully dealt with under the Pre-Action Protocol. Only those cases with added complexity are litigated and/or those where liability is in dispute.

Question 3: If fixed costs were introduced, do you foresee any impact on the claimant?

Our view is that solicitors’ fees awarded under the Pre-Action Protocol are proportionate to the value of the claim. If costs were to be fixed, they would not necessarily be proportionate to the value of the settlement. If fees were to be fixed, the result may be that potential claimants would not have access to appropriate legal advice. If there was to be a cap on outlays, it may mean that the availability of independent experts to complete medical and other reports would be reduced.

Question 4: If fixed costs were introduced, what impact on your business model do you anticipate?

It is inevitable that there will be an increase in costs to solicitors' businesses. It may be that not all firms will be able to make the investment required to comply and therefore consumer choice is likely to be reduced.

Question 5: Are you able to identify any unintended consequences of fixing recoverable costs? If so, please state your reasons why and provide any data.

In line with our comments to question 4 above, if firms do not offer this work, this may impact upon access to justice, particularly in rural areas. This could also in turn impact on the general economy.

Question 6: Please share any further information you feel should be considered

The Digital Claims Portal seems to be for low value motor accident claims when liability is admitted only. In comparison to the volume of cases which are likely to be dealt with by the Claims Portal in England and Wales, we would question whether there is a sufficient volume of cases in Scotland to justify this level of investment. Is it Scottish Government's intention to seek to extend this to other types of claims and/or integrate it with the proposals contained in the Scottish Civil Justice Council Rules Rewrite Project?

It is not clear whether claimants would have access to the portal or whether a claimant would require the assistance of solicitor to access the portal. If it is envisaged that claimants would have direct access to the portal, it should be borne in mind that not all members of the public have access to digital platforms.

Pre-Action Protocols

Question 1: In your experience, are the pre-action protocols working as intended? If not, please state why not and what might be done differently?

Our view is that the current Pre-Action Protocols are working well, and as intended, to settle straightforward cases removing the need to litigate.

Question 2: In your experience, are the time limits contained in the protocol allowing claims to be settled in a timely manner? If not, please state why not and what might be done differently, e.g. reduced time limits for each stage?

Yes, in our view, the time limits contained in the Pre-Action Protocol allow claims to be settled in a timely manner. The Pre-Action Protocol is fair to all parties and achieves equitable settlement. The object of the protocol is to avoid unnecessary litigation. Reducing time limits is unlikely to result in more claims settling.

Question 3: Please share any further information you feel should be considered.

Clarity is sought on what is to happen to claims that “fall out of the portal.” Would Scottish Government expect that be dealt with under the Pre-Action Protocol?

The Committee wish to make it clear that litigation is not a failure of the Pre-Action Protocol. Litigation is a necessary part of the justice system and should remain an option available to all parties in cases which cannot be resolved. These can include those where liability is in dispute and/or those which are not medically complex. It is possible that such cases are of a relatively low monetary value however they remain important to the parties, and as such there will always be a need to litigate some low value personal injury cases. Cases of all values can play an important part of developing the law.

The Committee welcomes the opportunity to continue to engage with Scottish Government and are keen to provide any further assistance that may be required.

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