

PORTALS - THE NEW ERA

A REVIEW OF THE NEW EL / PL RULES EFFECTIVE 31 JULY 2013

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Summary of the Portal Scheme

- The Portal is an online system – direct communication with the insurers
- Already in place for RTA cases under £10k – but being extended now to £25k – separate Protocol
- 3 stages
 - submission
 - medical evidence and offer
 - issuing court proceedings using P8



Qualifying EL and PL cases

- One Protocol covers both – applies to all cases where the injury occurs after 31/07/2013
- Section 4.1 – those cases that fit

Section 4.1

- **4.1 This Protocol applies where —**

- (1) Either — (a) the claim arises from an accident occurring on or after 31 July 2013; or (b) in a disease claim, no letter of claim has been sent to the defendant before 31 July 2013;
 - (2) the claim includes damages in respect of personal injury;
 - (3) the claimant values the claim at not more than £25,000 on a full liability basis including pecuniary losses but excluding interest ('the upper limit'); and
 - (4) if proceedings were started the small claims track would not be the normal track for that claim.
- (Rule 26.6 provides that the small claims track is not the normal track where the value of any claim for damages for personal injuries (defined as compensation for PSLA) is more than £1,000.)

EL definition

- Found in the Protocol at s1.1(13) and (14)
- **1.1(13)** 'employee' has the meaning given to it by s2(1) of the Employers' Liability (Compulsory Insurance) Act 1969;
- The Act defines an employee as an individual who has entered into, or works under, a contract of service whether such contract is expressed or implies, oral or in writing.



- **1.1.(14)** ‘employers’ liability claim’ means a claim by an employee against their employer for damages arising from —
- (a) a bodily injury sustained by the employee in the course of employment; or
- (b) a disease that the claimant is alleged to have contracted as a consequence of the employer’s breach of statutory or common law duties of care in the course of the employee’s employment, other than a physical or psychological injury caused by an accident or other single event;

PL definition

- In the Portal at 1.1(18)
- 1.1.(18) 'public liability claim' —
- (a) means a claim for damages for personal injuries arising out of a breach of a statutory or common law duty of care made against —



- (i) a person other than the claimant's employer; or
- (ii) the claimant's employer in respect of matters arising other than in the course the claimant's employment; but
- (b) does not include a claim for damages arising from a disease that the claimant is alleged to have contracted as a consequence of breach of statutory or common law duties of care, other than a physical or psychological injury caused by an accident or other single event;

What is a Disease Claim?

- Disease claims – all come into the Portal now for example VWF, RSI, hearing loss, back problems
- Exceptions: these will fall outside the Portal –
- Mesothelioma cases,
- harm / abuse cases,
- fatal claims,
- disease claims where more than one Defendant

Stage 1 – the ‘£300 stretch’

- Interview client
- Explain funding
- Prepare CNF
- Trace Defendant
- Submit the claim



- Get client to complete questionnaire –v- taking a statement
- Explain funding to the client – CFA or LEI?
- Trace Defendant

- Prepare Claim Notification Form (CNF)
- Draft circumstances of accident and allegations carefully
- Funding section on form – you only need to tick if CFA before 1 April
- Statement of Truth – must be signed by the client or they give written authority for you to sign it
- Submit CNF through the Portal – print out and send by post to the Defendant

Can't find Insurer?

- Send Form by Post to Defendant directly
- They have to acknowledge within 1 day of receipt and pass to insurer
- Insurer have to acknowledge receipt and then CNF form to be re-submitted through Portal

Defendant Response



- Strict time limits apply for response:-
- Defendant must complete Response section on CNF
 - EL cases 30 days – if not, exit
 - PL 40 days – if not, exit
 - If Defendant say not enough evidence in form - exit (need to be careful you don't purposefully put nothing in the form to exit)
 - If the Defendant says G.D less than £1,000 – exit (then the portal was the least of your worries!)

Liability Denied

- If the Defendant denies liability / causation or alleges contributory negligence then D supposed to provide brief reasons – exit the Portal
- When you exit the CNF becomes the Letter of Claim and you have to ask for disclosure and nominate experts – then carry on as normal PI protocol

Liability Admitted

- If D admits liability they have to admit that the breach occurred, the claimant suffered some loss and that there is no limitation defence
 - If admission of causation is withdrawn the claim drops out of the Portal.
 - In EL cases within 20 days of admission you should be sent earnings information – otherwise exit.

Stage 2 – Settlement Pack

- Costs for this stage - different in EL, PL and depend upon the value of the claim
- Get Medical report – on EL3 or PL3
 - Report must state what records reviewed, which are relevant
 - Need to disclose any records that are relevant
 - Any photos must also be disclosed
- D has no choice on the expert and is not allowed to ask questions of expert



- If need further medical evidence or other report i.e care report then:
- - able to ask for a £1,000 interim payment (or more) but must send an Interim Settlement Pack to the Defendant with the initial medical report and evidence of financial losses.
- If interim not paid within 10 days (15 days) then the claim exits the Portal and issue Part 7

First offer to settle

- Submission of Settlement pack – 35 day consideration period by D, comprised of
 - 15 days to consider and make an offer - they put on form what they agree with and what they don't – can then always submit further quantum evidence if necessary
 - 20 days to negotiate – can be extended if agreed

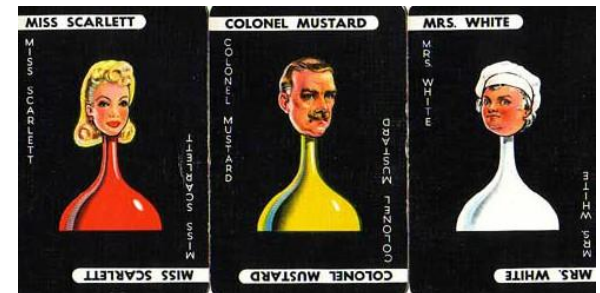
- Stage 1 costs payable within 10 days of receiving settlement pack - £300 – if not, you come out the Scheme but have to tell them within 10 days
- If settlement agreed then the D has to pay damages and costs within 10 days – Stage 2 costs set out in table.
- If settlement not agreed -
- Extra money for Counsel opinion or specialist sol reviewing quantum (7.29)

Costs if Settlement not agreed

- If a settlement not reached at end of Stage 2 then the Defendant must pay the following;
- All outstanding Stage 1 costs
- Stage 2 costs
- The agreed disbursements (or if disputed Defendant must pay what they consider a reasonable sum for a particular disbursement)
- The Defendant's final offer of Damages.
- This all should be paid within 15 days of the Defendant receiving the Court Settlement Pack.

Stage 3 - Court

- Send Defendant Court Proceedings Pack (Part A and Part B)
 - Part A - First Schedule of Loss and D response
 - Part B – Claimant and Defendant final offers
 - After 5 days – Issue Part 8 Claim Form and submit with the Court Proceedings Pack
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- **Note: Part B of the Pack must be in a sealed envelope**



Submitting the Pack to Court

- Oral or paper hearing ?
- Claim Form will be issued and served
- D should send acknowledgement of service
- Paper hearing - you should receive a decision with written reasons for judgment – costs awarded £250.
- If you decide to have an oral hearing – then can go to Court and will receive an additional £250.



Part 36 consequences in the Portal

- Part 1 – costs shifting rule which operates outside of Protocol
- Part 2 - only costs at risk are Stage 3 costs
- When make offer under Portal it is automatically under P36 (part 2) – which does not allow for Qualified One Way Cost Shifting. Any offers made before submission of settlement pack do not hold any risk for your client, only costs at risk are Stage 3 costs. You will always be paid Stage 1 and 2 costs.
- If don't beat offer in Stage 3 then the client has to pay the Defendant Stage 3 fixed costs.

Costs under the Portal

- Fixed costs

	<u>Claims of £1k -10k</u>				<u>Claims of £10k - £25k</u>			
Stage	1	2	3	Total	1	2	3	Total
EL/PL	£300	£600	£250/ £500	£1,150/ £1,400	£300	£1,300	£250/ £500	£1,850/ £2,100

Key Points

- Standardised approach
- Complete form economically – client questionnaire?
- Draft allegations – precedents?
- Supervisory systems
- Think about what evidence you will need – keep to a minimum to begin with
- Ignore liability evidence until drop out of the Portal
- Using Counsel only when absolutely needed

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