

GIRO Conference and Exhibition 2012

Juggling uncertainty the actuary's part to play

20 September 2012



GIRO Conference and Exhibition 2012

Ministry of Justice reforms: implications for pricing and reserving

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Agenda

- Introduction
- Overview of Ministry of Justice (MoJ) process
- Implications for reserving
- Implications for pricing
- Additional resources

Overview of MoJ process

MoJ reforms – key points

• Date introduced

- 30 April 2010

• Scope

- Motor personal injury claims
- General damages value £1k - £10k
- Includes pain suffering and loss of amenity (PSLA)
- Excluding vehicle damage and hire costs

• Excluded Claims

- Pre-MoJ reforms protocol applies

- Claims where PSLA <£1,000
- Claims incl. employers' liability/public liability
- Deceased/bankrupt/protected party claimant
- MIB Untraced Drivers Agreement cases

• Process

- Fixed time periods, fixed recoverable costs
- Communications through secure online portal
- Claims can still be settled directly

The standard process

Stage 1

Acceptance or denial of liability

- Claim Notification Form (CNF)
- CNF sent electronically to defendant's insurer
- 15 days to admit or deny responsibility

Stage 2

Medical evidence, offers to settle and negotiation

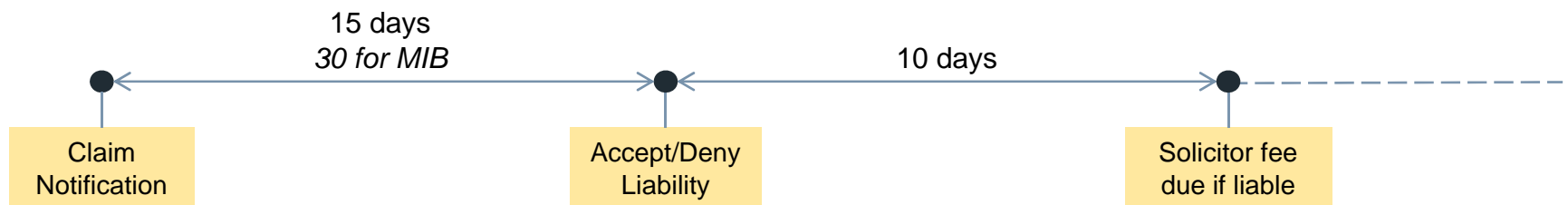
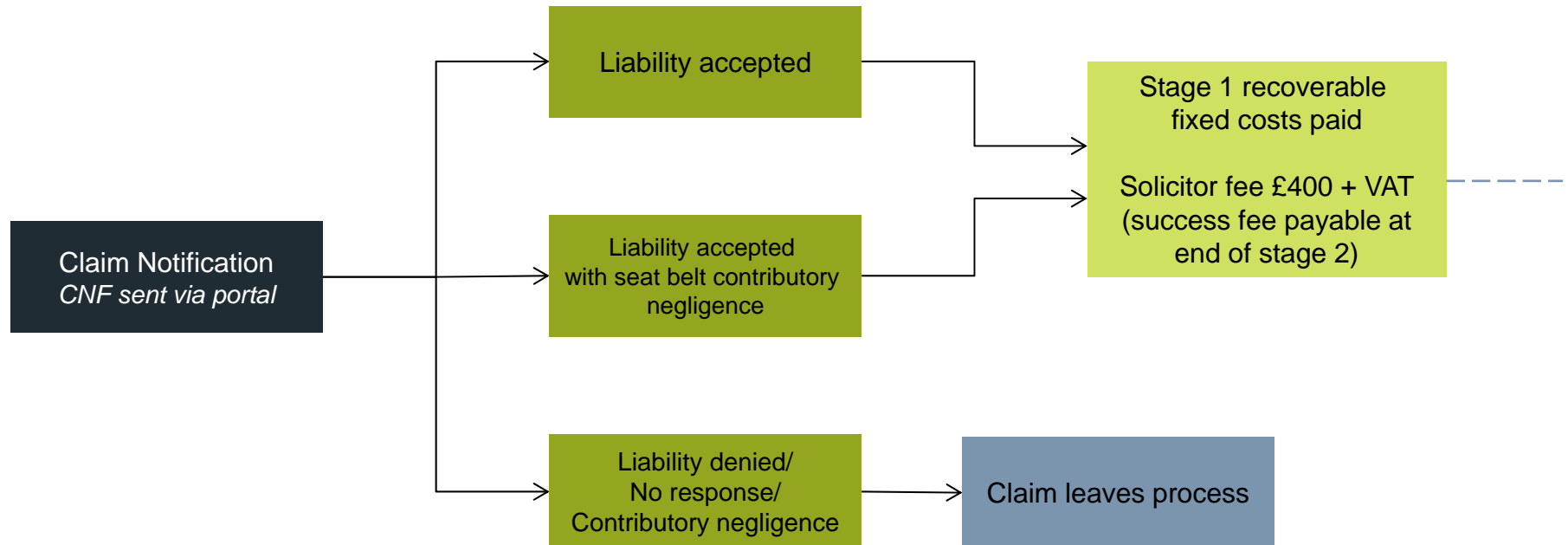
- Claimant solicitor obtains a medical report
- Then completes Stage 2 Settlement Pack Form
- Insurer accepts offer or makes counter offer

Stage 3

Disputed amounts

- Application made to court to determine quantum
- Court may order additional information
- Remaining payment made

Stage 1



Claims notification form

Claim notification form
Low value personal injury claims in road traffic accidents (£1,000 - £10,000)

Before filling in this form you are encouraged to seek independent legal advice.

Date sent

Are you a litigant in person? ☐ Yes ☐ No If you are the litigant in person please put your details in the claimant's representative section.

Claimant's representative - contact details	Defendant's details
Name <input type="text"/>	Defendant's full name <input type="text"/>
Address <input type="text"/>	Defendant's vehicle registration number <input type="text"/>
Postcode <input type="text"/>	Insurer reference <input type="text"/>
Name of case handler <input type="checkbox"/> N/A <input type="text"/>	
Direct telephone number <input type="text"/>	
E-mail address <input type="text"/>	
Reference number <input type="checkbox"/> N/A <input type="text"/>	

Section A — Claimant's details

☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss ☐ Other

Is this a child claim? ☐ Yes ☐ No

National Insurance number

If you do not have a National Insurance number, please explain why

Claimant's full name

Address

Postcode

Date of birth

Occupation

Claimant's vehicle registration number (if applicable)

Accident date

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Section H — MIB Claims - For uninsured cases only

7.1 Are the defendant's details known? ☐ Yes ☐ No
If No, please state why not

7.2 Full name
Address

Vehicle registration number

Vehicle make and model

7.3 Description of defendant

Postcode

7.4 Approximate age of defendant

7.5 Sex of defendant ☐ Male ☐ Female

7.6 How were the defendant's details obtained?

Section N — Statement of truth

☐ I believe ☐ The claimant believes that the facts stated in this claim form are true.
☐ I am duly authorised by the claimant to sign this statement.

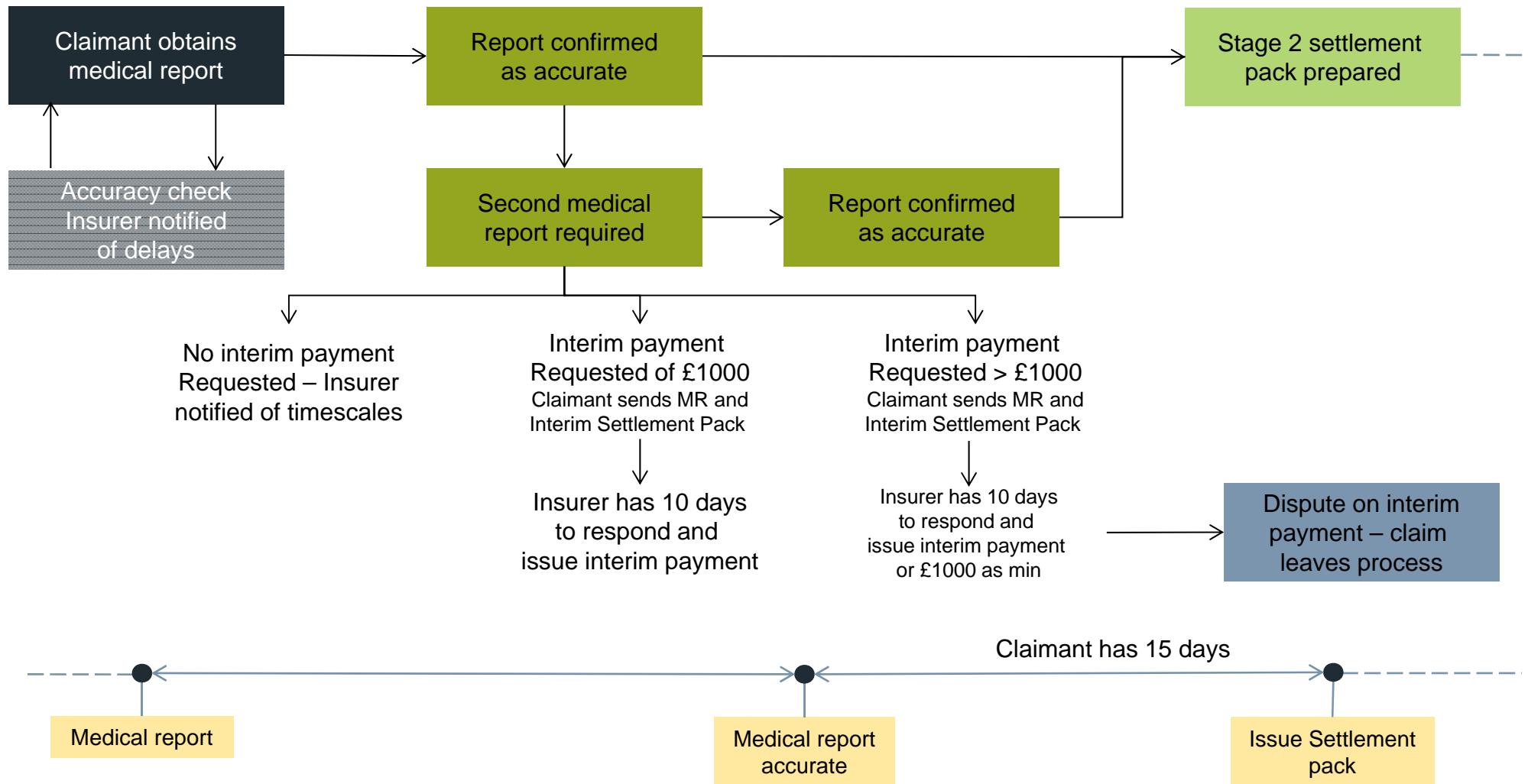
Signed Date

(Claimant)(Claimant's solicitor)

Position or office held (if sign on behalf of firm or company)

☐ I have printed and retained a copy of this form including the statement of truth.

Stage 2



Medical report form

Medical report form

Low value personal injury claims in road traffic accidents (£1,000 to £10,000)

The first report is without notes except where requested by medical experts

Section A — Claimant's details

Claimant's full name

Date of birth

/

Occupation

Address

Postcode

1.1 Has photo ID been confirmed?

☐ Yes ☐ No

If Yes, what type of photo ID was checked

If No, what other ID was provided

1.2 Age of the claimant at time of accident?

1.3 Date of examination

/

1.4 Date of report

/

1.5 Name of instructing solicitors/agency

Section G

Statement of truth

Civil Procedure Rule 35.3 states that it is the duty of an expert to help the court on the matters within their expertise. This duty overrides any obligation from whom he has received instructions or by whom he is paid.

Where I am not able to give my opinion without qualification, I have stated the qualification.

I confirm that I understand my duty to the court and have complied and will continue to comply with that duty.

I confirm that in so far as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true and that the opinions I have expressed represent my true and complete professional opinion.

Signature

Date

/

Stage 2 settlement pack form

Stage 2 Settlement Pack Form and Response to Settlement Pack Form

Low value personal injury claims in road traffic accidents (£1,000 - £10,000)

Claimant's full name

Claimant's representative

Contact details

Company name

Name of case handler

Direct telephone number

E-mail address

Reference number

Date of claimant 1st offer

Date of claimant's reply to insurer

Business days to reply to insurer

Date of final response

Business days to final response

Defendant's representative

Contact details

Company name

Name of case handler

Direct telephone number

E-mail address

Defendant's full name

Reference number

Date of insurer 1st offer

Business days to make offer

Date of reply to claimant

Business days from initial insurer reply

Date of final response

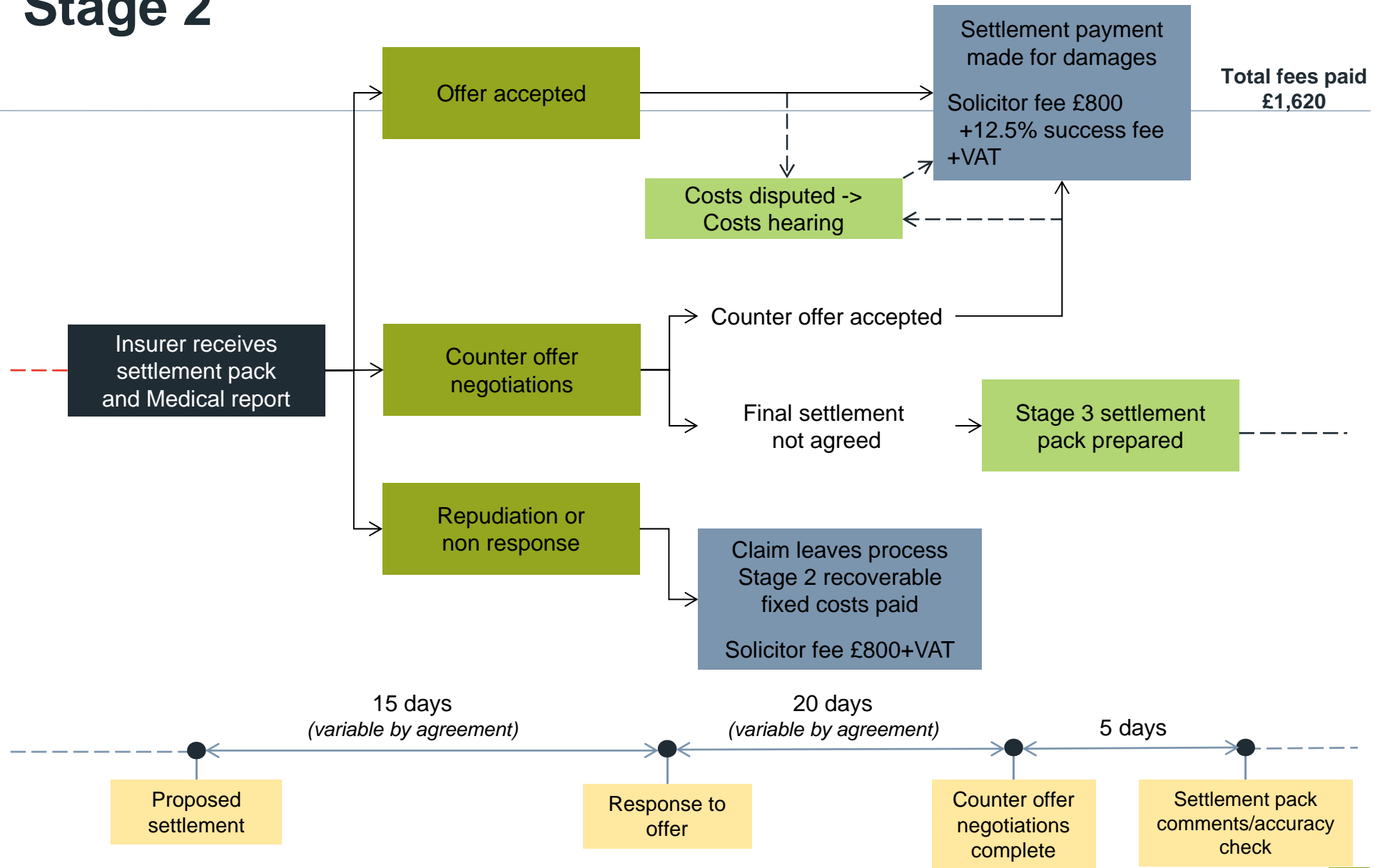
Business days to final response

Stage 2 settlement pack form

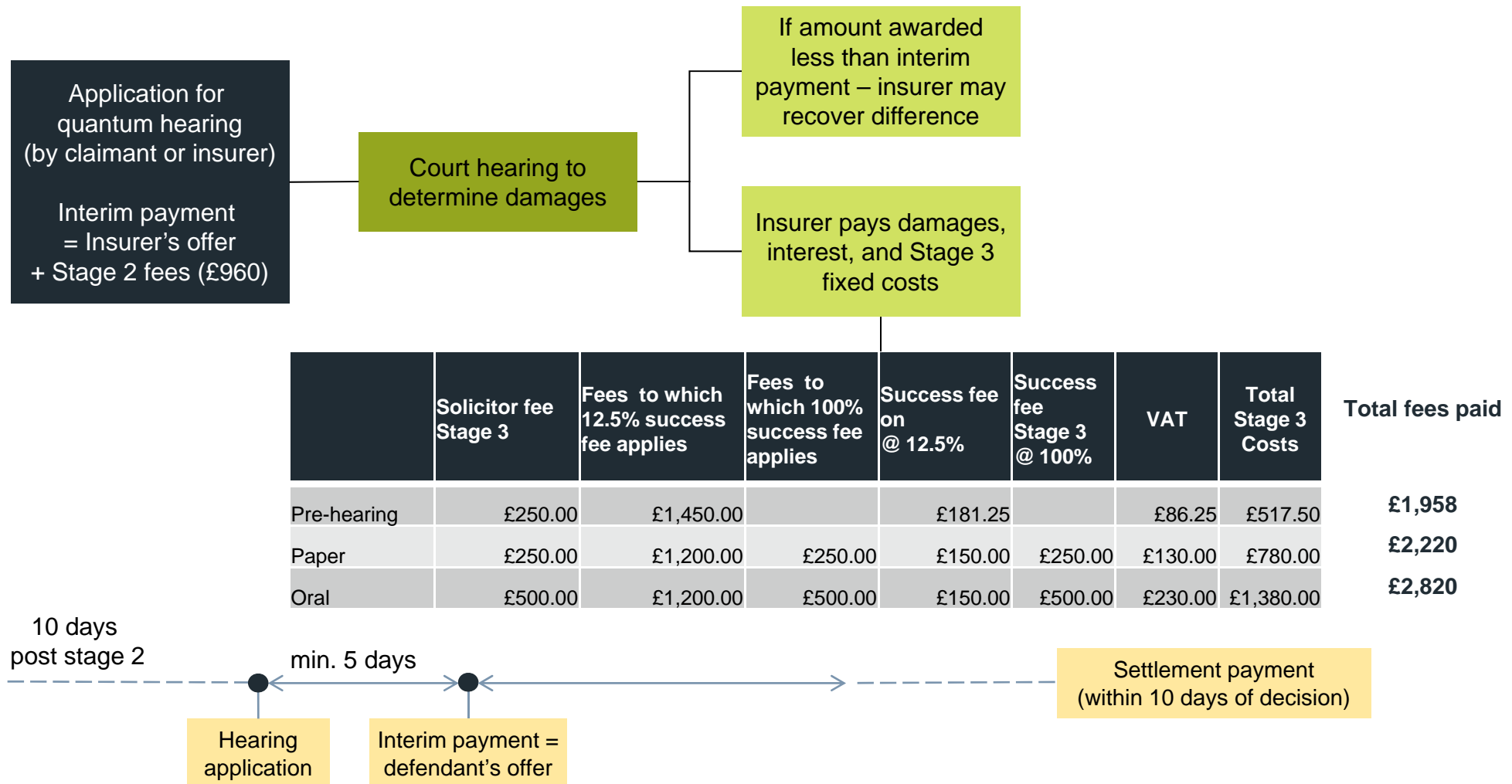
Stage 2 Settlement pack and response

Initial claimant offer						Initial defendant response			
Loss	Claim item being pursued	Evidence attached	% Interest rate	Comments	Value claimed	Is amount agreed?	Comments	Value offered	Amount in dispute
	Yes/No/N/A								
Policy excess									
Loss of use									
Car hire									
Repair costs									
Fares (taxis, buses, tube, etc.)									
Medical expenses									
Clothing									
Care/Services									
Loss of earnings a) Claimant									
b) Employer									
Other losses									
General damages									
Total gross claimant offer						Total gross defendant offer			
% Contributory negligence deductions						% Contributory negligence deductions			
Total net claimant offer						Offer less contributory negligence deductions			
						CRU deductions			
						Total net defendant offer			

Stage 2



Stage 3



Stage 3 settlement pack form

Stage 3 Settlement Pack Form (Part A)

Claimant Losses	Claim item being pursued	Evidence attached	% Interest rate	Claimant		Defendant response	
	Yes/No/N/A			Amount	Comments	Amount	Comments
Policy excess							
Loss of use							
Car hire							
Repair costs							
Fares - taxis, buses, tube etc.							
Medical expenses							
Clothing							
Care/Services							
Loss of earnings							
a) Claimant							
b) Employer							
Other losses							
General damages							

CRU benefits received

Up to date CRU Certificate attached

Statement of truth

☐ I believe ☐ The claimant believes
that the facts stated in this claim form are true.

☐ I am duly authorised by the claimant to sign this statement.

Signed

(Claimant) (Claimant's solicitor)

Position or office held

(if sign on behalf of firm or company)

Date

/ /

Stage 3 settlement pack form

Stage 3 Settlement Pack Form (Part B)

Low value personal injury claims in road traffic accidents (£1,000 - £10,000)

This form should be submitted to
the court in a sealed envelope

Date of accident

Claimant's full name

Claimant's representative

Contact details

Company name

Name of case handler

Direct telephone number

E-mail address

Reference number

Claimant final offer

Amount awarded

Defendant's representative

Contact details

Company name

Name of case handler

Direct telephone number

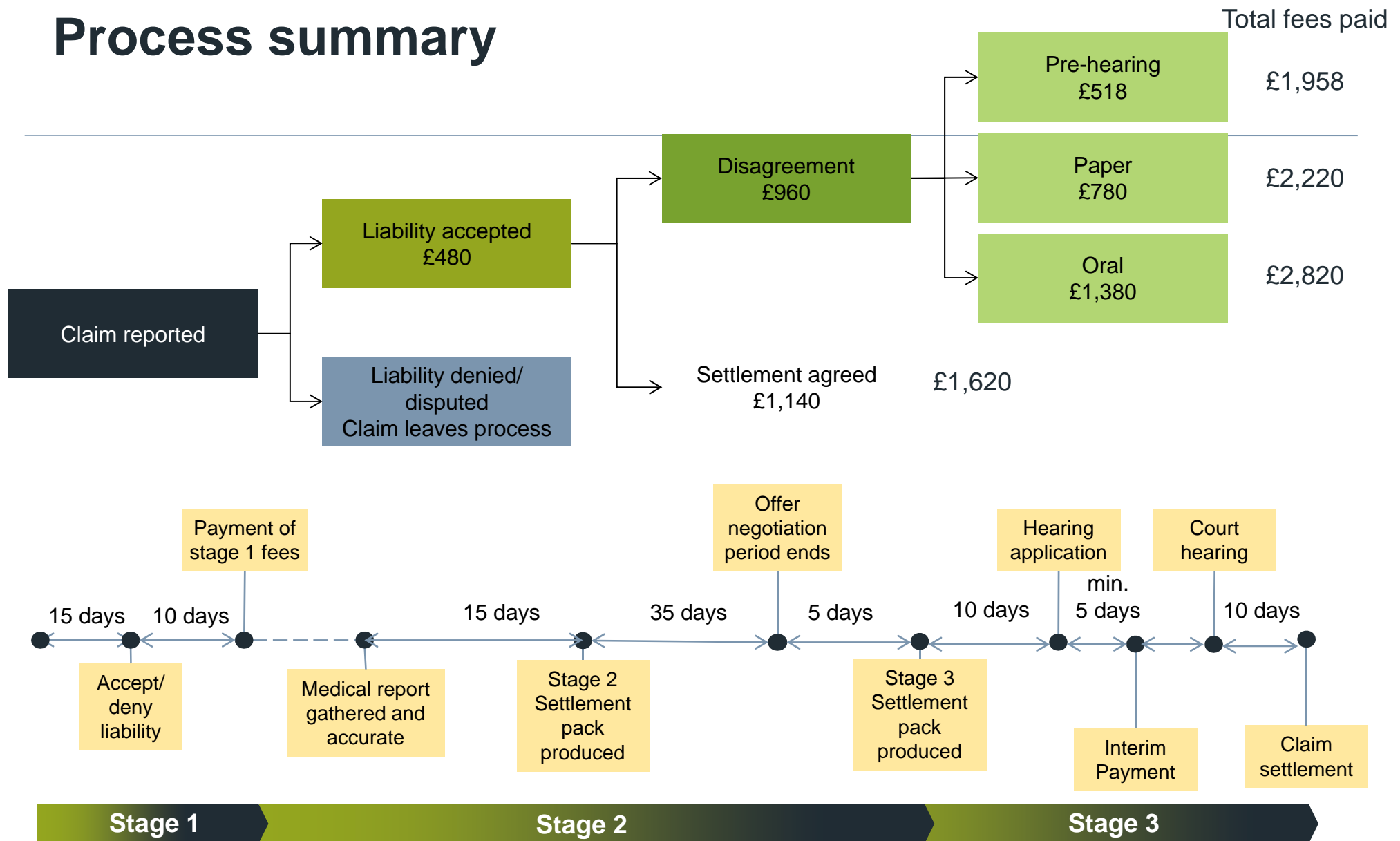
E-mail address

Reference number

Defendant's full name

Defendant final offer

Process summary



Minors

- Follow process, except:
 - Stage 1: box on CNF to state claimant is a child
 - Stage 2:
 - no interim payments, unless specified by a court
 - settlement in stage 2 subject to oral approval hearing
 - Stage 3:
 - hearing will be oral
 - if the judge requests further evidence (and does not award damages), the claim exits the process

	Solicitor fee Stage 3	Success fee Stage 3 @ 100%	Solicitor fees Stages 1&2	Success fee on Stage 1&2 fees @ 12.5%	Counselling fee	VAT	Total
Settlement agreed	£250.00	£250.00	£1,200.00	£150.00	£150.00	£160.00	£960.00
Disagreement	£500.00	£500.00	£1,200.00	£150.00	£150.00	£260.00	£1,560.00

Additional points

Value of the claim

- Claim value excludes disbursements incurred as part of the claims process (for example the costs of obtaining a medical report) and relates to the value for each claimant.
- Claim value includes deduction for seatbelt contributory negligence.
- If claim value does not reach £1000 pain suffering and loss of amenity:
 - The fixed recoverable costs for Stage 1 will be paid on all claims;
 - Stage 2 fixed recoverable costs will be paid and reasonable disbursements will be met where there was a reasonable prospect of exceeding £1000 PSLA;
 - Where it later becomes clear in Stage 2 that the value of the claim was less than £1000 PSLA. In these cases: the claim will exit the process; and the defendant shall notify the claimant that the claim is valued at less than £1000.
- Claim value rises above £10,000 PSLA. In these cases:
 - The claim will exit the process;
 - The claimant shall notify the defendant that the claim is valued at more than £10,000; and
 - Where the claim is found by the court to have unreasonably exited the process the court may limit any costs awarded to the claimant up to the maximum of the fixed recoverable costs applicable to the new process.

Vehicle damage and hire charges

- Typically, any vehicular damage and hire charges, policy excess etc are settled separately from a claim for personal injuries.
 - A claimant could lose their right of action to make a claim for personal injuries if the vehicular damage and hire charge element of the claim were issued and concluded independently.
 - Therefore, even where the vehicular damage and hire charges are being dealt with by a third party they will need to be brought together with the personal injury process if they remain unsettled at Stage 3.

Stage 1

- The claimant solicitor should note on the CNF if they have been instructed to deal with vehicular damage/hire charges as well as the personal injury claim and send invoices for vehicular damage and hire charges should be sent with the CNF.

Stage 2

- Where the claimant solicitor has notified the defendant's insurer that they are involved in the vehicular and hire charge, parties would be able to negotiate vehicular damage/hire charges along with other heads of damage during Stage 2. If parties have not been able to settle in Stage 2, the claim would proceed into Stage 3.
- Where the claimant solicitor is not initially instructed on vehicular damage and hire charges. They would need to contact the third party dealing with them to ensure that both elements of the claim are brought together for Stage 3.

Stage 3

- Where there is a quantum dispute over vehicular damage/hire charges it will be resolved at a Stage 3 hearing.
- Where the personal injury element of the claim had settled and the vehicular damage and hire charge element of the claim was ongoing, Stage 3 could be used for resolution of any quantum only issue, subject to direction by the judge.

Points of interest

- Claimant can still make claim directly (not through solicitor)
- We understand that some insurers have been able to settle before stage 2
- We understand some claims sit between stages 1 and 2
- We understand some claims may sit in stage 3 without resolution
 - Unclear as to reason why solicitors would not move to stage 3
- Claims arising before 6 April 2010 may adopt process by agreement
- Where the Claimant lives or works in London and the solicitors conduct the work in London, the claimant is entitled to 12.5% London weighting on the fixed recoverable cost (small % of claims)

Future developments

- The introduction of Legal Aid, Sentencing and Punishment of Offenders Bill (LASPO) in April 2013
 - Banning of referral fees – reduction in spurious claims, when can benefit be taken?
 - End of no win, no fee – fees now limited to 25% of general damages
 - Simmons v Castle seems to confirm that general damages will indeed be increased by 10% for judgments post 1 April 2013 before the benefits are seen from abolishment of recoverability of ATE premiums and success fees.
 - Outcome of consultation on level of fixed fees
- Extension of the portal
 - Consultation now closed
 - Plans to extend the portal for claims up to £25,000
 - Plans to expand to Employers Liability and Public Liability

Fenn Report

- Author:
 - Professor Paul Fenn, Head of the Economics and Finance Division and Professor of Insurance Studies at Nottingham University Business School
- Context:
 - Impact of the introduction of the portal on general damages, costs, and speed of settlement in low value RTA claims
- Approach:
 - Report assesses whether mean general damages, mean costs and mean speed of settlement differed before and after the RTA process was introduced in May 2010, through a comparison of pre- and post-Portal data.
- Sample:
 - 7,416 pre-Portal and 8,584 post-Portal claims that reached a settlement within the observation periods: May 1st 2009 - April 30th 2010 and May 1st 2010 - April 30th 2011.

Fenn Report

- Results:
 - 6% reduction in mean general damages
 - a fall of around 3–4% in average costs
 - a reduction of around 5–7% in the average delay to settlement.
- Key assumptions:
 - Data derived from only three claimant solicitor firms and two defendant insurers
 - Post portal claims represent only 8% of all eligible RTA claims for the discrete pre- and post-Portal periods
 - Includes claims which exited the process ~ 50%.
 - Changes observed between pre- and post-Portal periods are attributable to the RTA process.
 - The period of follow-up from the introduction of the RTA process to the collection of data for this study is only one year. This may be too short to make conclusions about the impact of the process, particularly those more complex, higher value claims that are settled within stage 3 of the process.

Implications for reserving

Implications for pricing

Additional resources

Other references and links

- MoJ paper:
 - <http://www.justice.gov.uk/publications/docs/personal-injury-claims-road.pdf>
- Protocol:
 - http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/protocols/prot_rta.htm
- Quick overview of process and legal fees:
 - http://www.rtapiclaimsprocess.org.uk/moj_guidelines.html
- Detailed process flowchart:
 - http://www.rtapiclaimsprocess.org.uk/pdfs/RTAPI_Reform_Process_Flow.pdf
- Fenn report:
 - <http://www.justice.gov.uk/publications/research-and-analysis/moj/evaluating-the-low-value-road-traffic-accident-process>

Questions or comments?

Expressions of individual views by members of The Actuarial Profession and its staff are encouraged.

The views expressed in this presentation are those of the presenter.

