Ministry of Justice reforms: implications for pricing and reserving

Neil Chapman, Nicola Tulk

Towers Watson
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**
  - 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

The standard process describes a three-stage claim resolution process involving the acceptance or denial of liability, medical evidence, offers to settle, and negotiation. Each stage involves specific actions and timelines, including the submission of a Claim Notification Form (CNF) within 15 days of receiving it. The process also includes the involvement of solicitors and insurers in medical reports and offers to settle, with potential court intervention to determine the quantum of compensation.
Stage 1

Claim Notification
CNF sent via portal

- Liability accepted
- Liability accepted with seat belt contributory negligence
- Liability denied/No response/Contributory negligence

Stage 1 recoverable fixed costs paid
Solicitor fee £400 + VAT (success fee payable at end of stage 2)

Claim leaves process

15 days
30 for MIB

10 days

Claim Notification
Accept/Deny Liability
Solicitor fee due if liable

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Claims notification form

Section A — Claimant’s details

- Mr. [ ] Mrs. [ ] Ms. [ ] Miss [ ] Other [ ]
- Is this a child claim? [ ] Yes [ ] No
- National Insurance number [ ]
- Address
- Postcode
- Date of birth
- Claimant’s full name
- If you do not have a National Insurance number, please explain why:

Section H — MIB Claims — For uninsured cases only

- Are the defendant’s details known? [ ] Yes [ ] No
- If No, please state why not
- Full name
- Address
- Vehicle registration number
- Vehicle make and model
- Description of defendant
- Approximate age of defendant
- Sex of defendant [ ] Male [ ] Female
- 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

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

- Claimant obtains medical report
  - Accuracy check
    - Insurer notified of delays
  - Second medical report required
    - Report confirmed as accurate
      - No interim payment requested – Insurer notified of timescales
      - Interim payment requested of £1000
        - Claimant sends MR and Interim Settlement Pack
        - Insurer has 10 days to respond and issue interim payment
      - Interim payment requested > £1000
        - Claimant sends MR and Interim Settlement Pack
        - Insurer has 10 days to respond and issue interim payment or £1000 as min
        - Dispute on interim payment – claim leaves process

- Claimant has 15 days
  - Medical report
  - Medical report accurate
  - Issue Settlement pack
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

<table>
<thead>
<tr>
<th>Claimant’s full name</th>
<th>Date of birth</th>
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<tbody>
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<table>
<thead>
<tr>
<th>Occupation</th>
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<table>
<thead>
<tr>
<th>Address</th>
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<table>
<thead>
<tr>
<th>Postcode</th>
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</table>

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)

<table>
<thead>
<tr>
<th>Claimant’s full name</th>
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</table>

<table>
<thead>
<tr>
<th>Defendant’s representative</th>
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<tbody>
<tr>
<td>Contact details</td>
</tr>
<tr>
<td>Company name</td>
</tr>
<tr>
<td>Name of case handler</td>
</tr>
<tr>
<td>Direct telephone number</td>
</tr>
<tr>
<td>E-mail address</td>
</tr>
<tr>
<td>Defendant’s full name</td>
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<tr>
<td>Reference number</td>
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</table>

<table>
<thead>
<tr>
<th>Date of claimant 1st offer</th>
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</thead>
<tbody>
<tr>
<td>Date of claimant’s reply to insurer</td>
</tr>
<tr>
<td>Business days to reply to insurer</td>
</tr>
<tr>
<td>Date of final response</td>
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<tr>
<td>Business days to final response</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of insurer 1st offer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business days to make offer</td>
</tr>
<tr>
<td>Date of reply to claimant</td>
</tr>
<tr>
<td>Business days from initial insurer reply</td>
</tr>
<tr>
<td>Date of final response</td>
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<tr>
<td>Business days to final response</td>
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</table>
## Stage 2 settlement pack form

### Stage 2 Settlement pack and response

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<tr>
<th>Initial claimant offer</th>
<th>Initial defendant response</th>
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<td>Loss</td>
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<td>Policy excess</td>
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<tr>
<td>Loss of use</td>
<td></td>
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<tr>
<td>Car hire</td>
<td></td>
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<tr>
<td>Repair costs</td>
<td></td>
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<tr>
<td>Fares (taxis, buses, tube, etc.)</td>
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<tr>
<td>Medical expenses</td>
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<tr>
<td>Clothing</td>
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<tr>
<td>Care/Services</td>
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<td>Loss of earnings</td>
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<tr>
<td>a) Claimant</td>
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<td>b) Employer</td>
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<td>Other losses</td>
<td></td>
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<td>General damages</td>
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<table>
<thead>
<tr>
<th>Claim item being pursued</th>
<th>Evidence attached</th>
<th>% Interest rate</th>
<th>Comments</th>
<th>Value claimed</th>
<th>Is amount agreed?</th>
<th>Comments</th>
<th>Value offered</th>
<th>Amount in dispute</th>
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</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Total gross claimant offer</th>
<th>Total gross defendant offer</th>
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<tbody>
<tr>
<td>% Contributory negligence deductions</td>
<td>% Contributory negligence deductions</td>
</tr>
<tr>
<td>CRU deductions</td>
<td>CRU deductions</td>
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<tr>
<td>Total net claimant offer</td>
<td>Total net defendant offer</td>
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</tbody>
</table>

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Stage 2

Insurer receives settlement pack and Medical report

Offer accepted

Counter offer negotiations

Repudiation or non response

Costs disputed -> Costs hearing

Counter offer accepted

Final settlement not agreed

Stage 3 settlement pack prepared

Settlement payment made for damages
Solicitor fee £800 +12.5% success fee +VAT

Claim leaves process
Stage 2 recoverable fixed costs paid
Solicitor fee £800+VAT

15 days (variable by agreement)

Proposed settlement

Response to offer

Counter offer negotiations complete

Settlement pack comments/accuracy check

Total fees paid £1,620

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## Stage 3

- **Application for quantum hearing** (by claimant or insurer)
  - Interim payment = Insurer’s offer + Stage 2 fees (£960)

- **Court hearing to determine damages**
  - If amount awarded less than interim payment – insurer may recover difference
  - Insurer pays damages, interest, and Stage 3 fixed costs

### Solicitor fee

<table>
<thead>
<tr>
<th></th>
<th>Solicitor fee Stage 3</th>
<th>Fees to which 12.5% success fee applies</th>
<th>Fees to which 100% success fee applies</th>
<th>Success fee on @ 12.5%</th>
<th>Success fee Stage 3 @ 100%</th>
<th>VAT</th>
<th>Total Stage 3 Costs</th>
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<tbody>
<tr>
<td>Pre-hearing</td>
<td>£250.00</td>
<td>£1,450.00</td>
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<td>£181.25</td>
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<td>£86.25</td>
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<tr>
<td>Paper</td>
<td>£250.00</td>
<td>£1,200.00</td>
<td>£250.00</td>
<td>£150.00</td>
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<td>Oral</td>
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<td>£1,200.00</td>
<td>£500.00</td>
<td>£150.00</td>
<td>£500.00</td>
<td>£230.00</td>
<td>£1,380.00</td>
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</tbody>
</table>

### Total fees paid
- £1,958
- £2,220
- £2,820

- **10 days post stage 2**
- **min. 5 days**
  - Hearing application
  - Interim payment = defendant’s offer
  - Settlement payment (within 10 days of decision)

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Stage 3 settlement pack form

<table>
<thead>
<tr>
<th>Claimant Losses</th>
<th>Claim item being pursued</th>
<th>Evidence attached</th>
<th>% Interest rate</th>
<th>Claimant</th>
<th>Defendant response</th>
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</thead>
<tbody>
<tr>
<td>Policy excess</td>
<td>Yes/No/N/A</td>
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<td>Amount</td>
<td>Amount</td>
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<td>Loss of use</td>
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<td></td>
<td></td>
<td>Comments</td>
<td>Comments</td>
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<tr>
<td>Car hire</td>
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<tr>
<td>Fares - taxis, buses, tube etc.</td>
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<tr>
<td>Medical expenses</td>
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<td>Care/Services</td>
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<tr>
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<tr>
<td>a) Claimant</td>
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<tr>
<td>b) Employer</td>
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<tr>
<td>Other losses</td>
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<tr>
<td>General damages</td>
<td></td>
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</tbody>
</table>

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: ____________________________

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

Date: ____________________________

(Claimant) (Claimant's solicitor)
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)

- 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

**Defendant’s representative**

- Contact details
  - Company name
  - Name of case handler
  - Direct telephone number
  - E-mail address
  - Reference number
  - Defendant’s full name

**Claimant final offer**

**Defendant final offer**

**Amount awarded**
Process summary

Claim reported

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liability accepted £480</td>
<td>Disagreement £960</td>
<td>Settlement agreed £1,140</td>
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<tr>
<td>Liability denied/disputed Claim leaves process</td>
<td></td>
<td>£1,620</td>
</tr>
<tr>
<td>Payment of stage 1 fees</td>
<td></td>
<td></td>
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<tr>
<td>15 days</td>
<td>15 days</td>
<td>10 days</td>
</tr>
<tr>
<td>Accept/deny liability</td>
<td>Medical report gathered and accurate</td>
<td>Stage 2 Settlement pack produced</td>
</tr>
<tr>
<td>Offer negotiation period ends</td>
<td>Stage 3 Settlement pack produced</td>
<td>Hearing application</td>
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<td>35 days</td>
<td>5 days</td>
<td>10 days</td>
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<td></td>
<td></td>
<td>Interim Payment</td>
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<td>5 days</td>
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<td>10 days</td>
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<td></td>
<td>Court hearing</td>
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<td></td>
<td>Claim settlement</td>
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</table>

Total fees paid
- Pre-hearing £518
- Paper £780
- Oral £1,380
- £1,958
- £2,220
- £2,820

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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

<table>
<thead>
<tr>
<th></th>
<th>Solicitor fee Stage 3</th>
<th>Success fee Stage 3 @ 100%</th>
<th>Solicitor fees Stages 1&amp;2</th>
<th>Success fee on Stage 1&amp;2 fees @ 12.5%</th>
<th>Counselling fee</th>
<th>VAT</th>
<th>Total</th>
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<tbody>
<tr>
<td>Settlement</td>
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<td>£250.00</td>
<td>£1,200.00</td>
<td>£150.00</td>
<td>£150.00</td>
<td>£160.00</td>
<td>£960.00</td>
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<tr>
<td>Disagreement</td>
<td>£500.00</td>
<td>£500.00</td>
<td>£1,200.00</td>
<td>£150.00</td>
<td>£150.00</td>
<td>£260.00</td>
<td>£1,560.00</td>
</tr>
</tbody>
</table>
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:

• Protocol:

• Quick overview of process and legal fees:

• Detailed process flowchart:

• Fenn report:
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.