

78th UPDATE – PRACTICE DIRECTION AMENDMENTS

The new Practice Direction and the amendments to the existing Practice Directions supplementing the Civil Procedure Rules 1998 are made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Lord Faulks, Minister of State, by the authority of the Lord Chancellor.

Amendments to the existing Pre-Action Protocol are approved by the Master of the Rolls as Head of Civil Justice.

The new Practice Directions and the amendments to the existing Practice Directions, and amendments to the existing Pre-Action Protocol come into force as follows—	
Practice Direction 4 – Forms	06.04.2015
Practice Direction 8B – Pre-Action Protocol For Low Value Personal Injury Claims In Road Traffic Accidents and Low Value Personal Injury (Employers’ Liability and Public Liability) Claims – Stage 3 Procedure	06.04.2015
Practice Direction 16 – Statements of Case	06.04.2015
Practice Direction 21 – Children and Protected Parties	06.04.2015
Practice Direction 27 – The Small Claims Track	06.04.2015
Practice Direction 29 – The Multi-Track	06.04.2015
Practice Direction 35 – Experts and Assessors	06.04.2015
Practice Direction 36A – Offers to Settle	06.04.2015
Practice Direction 46 – Costs Special Cases	06.04.2015
Practice Direction 52D – Statutory Appeals and Appeals Subject to Special Provision	06.04.2015
Practice Direction – RSC 54 (Applications for Writ of Habeas Corpus)	06.04.2015
Pre-Action Protocol For Low Value Personal Injury Claims In Road Traffic Accidents	06.04.2015
Pre-Action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims	06.04.2015

The Right Honourable The Lord Dyson
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

Minister of State
Ministry of Justice

PRACTICE DIRECTION 4 – FORMS

- 1) In paragraph 1.3, in the first bullet point, for “86” substitute “87”.
- 2) In Table 1, after the entry for Form No 84 - Order for appointment of receiver by way of equitable execution (section 37 of the Senior Courts Act 1981), insert the following entries—

“No 89	Writ of habeas corpus for release
No 91	Writ of habeas corpus to give evidence
No 92	Writ of habeas corpus to answer a charge”.

- 3) In Table 2, omit the entries for the following forms—
 - (a) form No 87 - Claim form for writ of habeas corpus ad subjiciendum;
 - (b) form No 88 - Notice of adjourned application for writ of habeas corpus;
 - (c) form No 89 - Writ of habeas corpus ad subjiciendum;
 - (d) form No 90 - Notice to be served with writ of habeas corpus ad subjiciendum;
 - (e) form No 91 - Writ of habeas corpus ad testificandum; and
 - (f) form No 92 - Writ of habeas corpus ad respondendum.

PRACTICE DIRECTION 8B – PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS AND LOW VALUE PERSONAL INJURY (EMPLOYERS’ LIABILITY AND PUBLIC LIABILITY) CLAIMS – STAGE 3 PROCEDURE

- 4) For paragraph 3.5 substitute—

“‘Accredited medical expert’, ‘fixed costs medical report’, ‘MedCo’ and ‘soft tissue injury claim’ have the same meaning as in paragraph 1.1(A1), (10A), (12A), and (16A), respectively, of the RTA Protocol.”.

5) In paragraph 6.1A—

- (a) for “In a soft tissue injury claim” substitute “(1) In a soft tissue injury claim”;
- (b) in the second sentence, after the words “fixed cost medical report”, where they first appear, insert “from an accredited medical expert selected via the MedCo Portal (website at: www.medco.org.uk)”; and
- (c) after paragraph (d) insert—

“(2) The cost of obtaining a further report from an expert not listed in paragraph (1)(a) to (d) is not subject to rule 45.19(2A)(b), but the use of that expert and the cost must be justified.”.

PRACTICE DIRECTION 16 – STATEMENTS OF CASE

6) In paragraph 4.3A—

- (a) in the second sentence, after the words “fixed cost medical report”, where they first appear, insert “from an accredited medical expert selected via the MedCo Portal (website at: www.medco.org.uk)”; and
- (b) after paragraph (d) insert—

“(1A) The cost of obtaining a further report from an expert not listed in paragraph (1)(a) to (d) is not subject to rule 45.29(2A)(b), but the use of that expert and the cost must be justified.”; and

- (c) for subparagraph (2) substitute—

“(2) In this paragraph, ‘accredited medical expert’, ‘fixed costs medical report’, ‘MedCo’ and ‘soft tissue injury claim’ have the same meaning as in paragraph 1.1(A1), (10A), (12A), and (16A), respectively, of the RTA Protocol.”

PRACTICE DIRECTION 21 – CHILDREN AND PROTECTED PARTIES

7) In the heading to paragraph 11.1, for “Expenses” substitute “Costs or expenses”.

8) In paragraph 11.1—

- (a) in the first sentence, after “may make a claim for” insert “costs or”;
- (b) after subparagraph (1) insert—

“(1A) where the court has assessed the costs to be paid by the child by way of summary assessment under rule 46.4(5)(b), at the conclusion of the hearing at which damages to be paid to the child are assessed or at the hearing to approve the compromise or settlement under Part 21, or at any time thereafter;”;

- (c) in subparagraph (3), for “costs judge” substitute “Costs Judge”.

9) For paragraph 11.2 substitute—

“11.2 In all circumstances, the litigation friend must support a claim for payment out in relation to costs or expenses by filing a witness statement setting out—

- (1) the nature and amount of the costs or expense; and
- (2) the reason the costs or expense were incurred.

11.3 Where the application is for payment out of the damages in respect of costs pursuant to rule 21.12(1A) the witness statement must also include (or be accompanied by)—

- (1) a copy of the conditional fee agreement or damages based agreement;
- (2) the risk assessment by reference to which the success fee was determined;
- (3) the reasons why the particular funding model was selected;
- (4) the advice given to the litigation friend in relation to funding arrangements;
- (5) details of any costs agreed, recovered or fixed costs recoverable by the child; and
- (6) confirmation of the amount of the sum agreed or awarded in respect of—
 - (a) general damages for pain, suffering and loss of amenity; and
 - (b) damages for pecuniary loss other than future pecuniary loss,

net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions.”.

PRACTICE DIRECTION 27 – THE SMALL CLAIMS TRACK

10) In paragraph 7.3(1), for “£90” substitute “£95”.

PRACTICE DIRECTION 29 – THE MULTI-TRACK

11) After paragraph 2.6 insert—

“2.6A

If the claim falls within a specialist list or area of work (i.e. Chancery, Commercial/Mercantile, or TCC), and concerns a dispute arising in a region outside London, the parties are required to explain in their directions questionnaire how and why the case is not suitable to be heard in the appropriate regional specialist court. Those regional specialist court centres have been set up to deal with appropriate cases out of London, so the parties will need to state in detail why, despite the availability of a regional specialist court, they wish the case to be heard in London.”.

PRACTICE DIRECTION 35 – EXPERTS AND ASSESSORS

12) After paragraph 2.5 insert—

“2.6

(1) In a soft tissue injury claim, where permission is given for a fixed cost medical report, the first report must be obtained from an accredited medical expert selected via the MedCo Portal (website at: www.medco.org.uk).

(2) The cost of obtaining a further report from an expert not listed in rule 35.4(3C)(a) to (d) is not subject to rules 45.19(2A)(b) or 45.29(2A)(b), but the use of that expert and the cost must be justified.

(3) ‘Accredited medical expert’, ‘fixed cost medical report’, ‘MedCo’, and ‘soft tissue injury claim’ have the same meaning as in paragraph 1.1(A1), (10A), (12A) and (16A), respectively, of the RTA Protocol.”.

13) The amendments in paragraph 2.6(1) apply only to any soft tissue injury claim for damages which arises from a road traffic accident where the Claim Notification Form is submitted on or after 6 April 2015.

PRACTICE DIRECTION 36A – OFFERS TO SETTLE

14) For Practice Direction 36A– Offers to Settle, substitute Practice Direction 36A in Schedule 1 to this update.

PRACTICE DIRECTION 46 – COSTS SPECIAL CASES

15) In paragraph 2.1—

- (a) after “circumstances in which the court need not order the” insert “detailed”;
- (b) for “rule 46.4(3)” substitute “rule 46.4(2)”;
- (c) at the end of paragraph (c) omit “and”;
- (d) at the end of subparagraph (d), for “.” substitute “; and”; and
- (e) after subparagraph (d) insert—

“(e) where the court has given a direction for summary assessment pursuant to rule 46.4(5).”.

16) In paragraph 3.4, for “£18” substitute “£19”.

PRACTICE DIRECTION 52D – STATUTORY APPEALS AND APPEALS SUBJECT TO SPECIAL PROVISION

17) In paragraph 27.1A, for subparagraph (1) substitute—

“(1) This paragraph applies to appeals to the High Court under section 24 of the Crime and Courts Act 2013—

- (a) from decisions of the Bar Standards Board on review under the Bar Training Rules or under Part 3, Section E of its Handbook, relating to the authorisation of bodies to undertake reserved legal activities (including its approval of specific roles within those bodies); or
- (b) from decisions of Disciplinary Tribunals of the Council of the Inns of Court.”.

PRACTICE DIRECTION - RSC 54 (APPLICATION FOR WRIT OF HABEAS CORPUS)

18) Omit Practice Direction – RSC 54 (Application for Writ of Habeas Corpus).

PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS

19) In the table of contents—

- (a) in the entry for paragraph 6.19A, after “Defendant’s account” insert “of the accident”;
- (b) in the entry for paragraph 7.1, after “Medical reports” insert “– all claims”;
- (c) for the entry for paragraph 7.8 substitute “All claims other than soft tissue injury claims – subsequent medical reports” and
- (d) after the entry for paragraph 7.8 insert—

“Soft tissue injury claims – medical reports

Para 7.8A”

20) In paragraph 1.1—

- (a) before subparagraph (1) insert—

“(A1) ‘accredited medical expert’ means a medical expert who—

- (a) prepares a fixed cost medical report pursuant to paragraph 7.8A(1) before 1 January 2016 and, on the date that they are instructed, the expert is registered with MedCo as a provider of reports for soft tissue injury claims; or
- (b) prepares a fixed cost medical report pursuant to paragraph 7.8A(1) on or after 1 January 2016 and, on the date that they are instructed, the expert is accredited by MedCo to provide reports for soft tissue injury claims;”;

- (b) in subparagraph (4), for “36.15(1)(e)(i)” substitute “36.22(1)(e)(i)”;
- (c) in subparagraph (9), for “36.15(1)(d)” substitute “36.22(1)(d)”;
- (d) in subparagraph (10A(c)), for “that they or an associate provide treatment” substitute “treatment that they or an associate then provide”; and
- (e) after subparagraph (12), insert—

“(12A) ‘MedCo’ means MedCo Registration Solutions;”.

21) For paragraph 4.7 substitute—

“4.7

(1) Subject to subparagraph (2), provisions for soft tissue injury claims, and in particular the requirement that the first report from a medical expert must be a fixed cost medical report, apply to any such claim for damages which arises from a road traffic accident where the CNF is submitted on or after 1 October 2014.

(2) The provisions, in respect of soft tissue injury claims, for accredited medical experts and the MedCo Portal, and the provisions, in respect of all claims, for searches of ask.CUEPI.com, identified in the first column (and specified in the corresponding second column) below, apply to claims for damages which arise from a road traffic accident where the CNF is submitted on or after the corresponding date specified in the third column—

Column 1	Column 2	Column 3
Accredited medical experts	Paragraph 1.1(A1),	6 April 2015
In a soft tissue injury claim, the requirement that the first medical report must be a fixed cost medical report from an accredited medical expert selected via the MedCo Portal	Paragraphs 1.1(12A), 7.8A(1), 7.8B(3) and 7.32A	6 April 2015
Searches of askCUEPI.com	Paragraphs 5.10(3), 5.10A, 6.3A 6.8(2) and 6.9	1 June 2015

(3) In a soft tissue injury claim, where a medical expert is instructed to provide the first fixed cost medical report before 6 April 2015, but the CNF is submitted on or after that date, that report shall be treated as a fixed cost medical report obtained from an accredited medical expert selected via the MedCo Portal."

22) For paragraph 5.10 substitute—

"5.10 Where the claimant does not have a legal representative, on receipt of the CNF the defendant must—

- (1) explain the period within which a response is required;
- (2) explain that the claimant may obtain independent legal advice; and
- (3) undertake a search of askCUEPI (website at: www.askCUEPI.com) or an equivalent search system for defendants.

5.10A Where the claimant does not have a legal representative, paragraph 6.3A does not apply."

23) After paragraph 6.3 insert—

“6.3A

(1) Before the CNF is sent to the defendant pursuant to paragraph 6.1, the claimant’s legal representative must undertake a search of askCUEPI (website at: www.askCUEPI.com) and must enter in the additional information box in the CNF the unique reference number generated by that search.

(2) Where the claimant has sent the CNF without the unique reference number required by subparagraph (1), the defendant may require the claimant to resend the CNF with the reference number inserted. The period in paragraph 6.11 or 6.13 starts from the date the CNF was sent with the unique reference number.

(3) Where the claimant has sent the CNF without the unique reference number required by subparagraph (1) and the defendant does not require the claimant to resend the CNF pursuant to subparagraph (2), the defendant must respond in accordance with paragraph 6.11 or 6.13.”.

24) In paragraph 6.8—

- (a) for “Where the defendant” substitute “(1) Subject to subparagraph (2) and paragraph 6.3A(2), where the defendant”; and
- (b) after what will now be subparagraph (1) insert—

“(2) Where the claimant has sent the CNF to the defendant without the unique reference number required by paragraph 6.3A(1), but the defendant does not require the claimant to resend the CNF with the reference number inserted pursuant to paragraph 6.3A(2), the fact that the claimant has not provided this information shall not be a valid reason for the defendant to decide that the claim should no longer continue under this Protocol.”.

25) In paragraph 6.9, after “Rule 45.24(2)” insert “and (2A)”.

26) In the heading to paragraph 6.19A, after “account” insert “of the accident”.

27) In the heading to paragraph 7.1, after “Medical reports” insert “– all claims

28) Omit paragraph 7.1A.

29) For the heading to paragraph 7.8 substitute “All claims other than soft tissue injury claims – subsequent medical reports”.

30) Before paragraph 7.8A insert the following heading “Soft tissue injury claims – medical reports”.

31) For paragraph 7.8A substitute—

“7.8A In addition to paragraphs 7.1 to 7.7, and subject to paragraph 7.8B, in a soft tissue injury claim—

(1) the first report must be a fixed cost medical report from an accredited medical expert selected for the claim via the MedCo Portal (website at: www.medco.org.uk); and

(2) where the defendant provides a different account under paragraph 6.19A, the claimant must provide this as part of the instructions to the medical expert for the sole purpose of asking the expert to comment on the impact, if any, on diagnosis and prognosis if—

- (a) the claimant's account is found to be true; or
- (b) the defendant's account is found to be true.

7.8B In a soft tissue injury claim—

(1) it is expected that only one medical report will be required;

(2) a further medical report, whether from the first expert instructed or from an expert in another discipline, will only be justified where—

- (a) it is recommended in the first expert's report; and
- (b) that report has first been disclosed to the defendant; and

(3) where the claimant obtains more than one medical report, the first report must be a fixed cost medical report from an accredited medical expert selected via the MedCo Portal and any further report from an expert in any of the following disciplines must also be a fixed cost medical report—

- (a) Consultant Orthopaedic Surgeon;
- (b) Consultant in Accident and Emergency Medicine;
- (c) General Practitioner registered with the General Medical Council;
- (d) Physiotherapist registered with the Health and Care Professions Council.”;

32) In paragraph 7.32A, in the second sentence, for the words “Where the claimant includes more than one medical report” to the end, substitute “Where the claimant includes more than one medical report, the first report obtained must be a fixed cost medical report from an accredited medical expert selected via the MedCo Portal and any further report from an expert in any of the disciplines listed in paragraph 7.8B(3)(a) to (d) must also be a fixed cost medical report.”.

PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY (EMPLOYERS’ LIABILITY AND PUBLIC LIABILITY) CLAIMS

33) In paragraph 1.1—

- (a) In subparagraph (4), for “36.15(1)(e)(i)” substitute “36.22(1)(e)(i)”; and
- (b) In subparagraph (10), for “36.15(1)(d)” substitute “36.22(1)(d)”.

TRANSITIONAL PROVISIONS

34) In this update—

- (a) the amendments in—

- (i) paragraph 5)(a) and (b);

- (ii) paragraph 6)(a); and

- (iii) in respect of newly inserted paragraph 2.6(1) in Practice Direction 35, paragraph 12),

apply only to a soft tissue injury claim for damages which arises from a road traffic accident where, pursuant to the provisions of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents, the Claim Notification Form is submitted on or after 6 April 2015; and

- (b) where a medical expert is instructed to provide the first fixed cost medical report before 6 April 2015, but the Claim Notification Form is submitted on or after that date, that report shall be treated as a fixed cost medical report obtained from an accredited medical expert selected via the MedCo Portal.

35) The new Practice Direction 36A in Schedule 1 to this update applies only in relation to Part 36 offers made on or after 6th April 2015, except that paragraphs 3.1 to 3.3 of the new Practice Direction 36A also apply where—

- a) the offer is made before 6th April 2015; but

- b) a trial of any part of the claim or of any issue arising in it starts on or after 6th April 2015.

SCHEDULE 1

“PRACTICE DIRECTION 36A – OFFERS TO SETTLE

This Practice Direction supplements CPR Part 36

Contents of this practice direction	
Title	Number
Formalities of Part 36 offers and other notices under this Part	Para.1
Application for permission to withdraw or change the terms of a Part 36 offer	Para.2
Acceptance of a Part 36 offer	Para.3

1. Formalities of Part 36 offers and other notices under this Part

- 1.1 A Part 36 offer may be made and accepted using Form N242A.
- 1.2 Where a Part 36 offer, notice of acceptance or notice of withdrawal or change of terms is to be served on a party who is legally represented, the document to be served must be served on the legal representative.

2. Application for permission to withdraw or change the terms of a Part 36 offer

- 2.1 Rule 36.10 makes provision as to the circumstances in which the offeror must seek the permission of the court in order to withdraw a Part 36 offer or change its terms to be less advantageous to the offeree before expiry of the relevant period.
- 2.2 The permission of the court must, unless the parties agree otherwise, be sought—
- (1) by making an application under Part 23, which must be dealt with by a judge other than the trial judge;
 - (2) at a trial or other hearing, provided that it is not to the trial judge.
- (Rule 36.3 defines “the trial judge”.)

3. Acceptance of a Part 36 offer

- 3.1 Where a Part 36 offer is accepted in accordance with rule 36.11(1), the notice of acceptance must be served on the offeror and filed with the court where the case is proceeding.
- 3.2 Where the court's permission is required to accept a Part 36 offer, the permission of the court must, unless the parties agree otherwise, be sought—
- (1) by making an application under Part 23, which must be dealt with by a judge other than the trial judge;
 - (2) at a trial or other hearing, provided that it is not to the trial judge.
- (Rule 36.3 defines “the trial judge”.)
- 3.3 Where rule 36.11(3)(b) applies, the application for permission to accept the offer must—
- (1) state—
 - (a) the net amount offered in the Part 36 offer;
 - (b) the deductible amounts that had accrued at the date the offer was made; and
 - (c) the deductible amounts that have subsequently accrued; and
 - (2) be accompanied by a copy of the current certificate. ”