



LPC BUDDY

Personal Injury & Clinical Negligence
2024

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Personal Injury & Clinical Negligence

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Colour Coding Guide	<ul style="list-style-type: none"> ❖ Blue Text – Reference to statutes and case law. ❖ Green Text – Reference to textbook¹ paragraphs, workshop tasks² and other notes in this guide. ❖ Orange Text – CPR References ❖ Purple Text – Reference to Professional Conduct Rules or Principles.
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¹ Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

² References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

1. Road Traffic Accidents



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Funding Options

❖ [Personal Injury & Clinical Negligence Litigation, Chapter 9](#)

Overview	❖ There are various issues regarding funding that are specific to personal injury claims, which a personal injury lawyer must take into account when advising a client at an initial interview.								
Relevant Code of Conduct obligations¹	<p>❖ When advising a client on funding, a solicitor should bear in mind the following obligations in the SRA Codes of Conduct:</p> <table border="1"> <thead> <tr> <th>Code of Conduct Reference</th><th>Description</th></tr> </thead> <tbody> <tr> <td>Principle 7</td><td>❖ Must act in your client's best interests.</td></tr> <tr> <td>Para 8.7 Code for Solicitors</td><td> ❖ You must provide a client with the best possible information about: <ul style="list-style-type: none"> ➢ How their matter will be priced; and ➢ The likely overall cost of the matter and any costs incurred. ❖ At the time of engagement and when appropriate as the matter progresses </td></tr> <tr> <td>Para 8.6 Code for Solicitors</td><td> ❖ Information (generally, but including about costs) must be given: <ul style="list-style-type: none"> ➢ In a way clients can understand. ➢ So that they are in a position to make informed decisions about the services they need, how their matter will be handled, and the options available to them. </td></tr> </tbody> </table>	Code of Conduct Reference	Description	Principle 7	❖ Must act in your client's best interests .	Para 8.7 Code for Solicitors	❖ You must provide a client with the best possible information about : <ul style="list-style-type: none"> ➢ How their matter will be priced; and ➢ The likely overall cost of the matter and any costs incurred. ❖ At the time of engagement and when appropriate as the matter progresses	Para 8.6 Code for Solicitors	❖ Information (generally, but including about costs) must be given: <ul style="list-style-type: none"> ➢ In a way clients can understand. ➢ So that they are in a position to make informed decisions about the services they need, how their matter will be handled, and the options available to them.
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Qualified One-way Costs Shifting (QOCS) Personal Injury & Clinical Negligence Litigation, 9.3	<p>❖ In personal injury and clinical negligence claims, a defendant will not generally recover costs from their opponent <i>even</i> if they successfully defend the claim (CPR 44.13-44.17).</p> <p>❖ This is known as “Qualified One-way Costs Shifting” (QOCS).</p> <table border="1"> <tbody> <tr> <td>When does QOCS apply? CPR 44.13(1)</td><td> ❖ QOCS applies to claims for damages for: <ul style="list-style-type: none"> ➢ Personal injuries; or ➢ Under the Fatal Accidents 1976; or ➢ Under s1(1) Law Reform (Miscellaneous Provisions) Act 1934. </td></tr> <tr> <td>What is its effect? CPR 44.14</td><td> ❖ Where QOCS applies, costs orders can be made against claimants but only to the extent that those costs do not exceed the total damages the claimant recovers. ❖ So, if a claimant loses, they will obtain no damages, and therefore a defendant will not be able to recover any costs. </td></tr> </tbody> </table>	When does QOCS apply? CPR 44.13(1)	❖ QOCS applies to claims for damages for: <ul style="list-style-type: none"> ➢ Personal injuries; or ➢ Under the Fatal Accidents 1976; or ➢ Under s1(1) Law Reform (Miscellaneous Provisions) Act 1934. 	What is its effect? CPR 44.14	❖ Where QOCS applies, costs orders can be made against claimants but only to the extent that those costs do not exceed the total damages the claimant recovers . ❖ So, if a claimant loses, they will obtain no damages, and therefore a defendant will not be able to recover any costs.				
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¹ [Workshop 1, Prep Task, Question \(c\)](#)

		<ul style="list-style-type: none"> ❖ If the claimant wins, it would normally be expected for them to not have to pay the defendant's costs, as the general rule is that the unsuccessful party pays the successful party's costs. ❖ Since 6 April 2023, it has been permissible for a defendant to agree to set off their costs against an agreement to pay or settle a claim, including by way of a Part 36 offer (CPR 44.14), meaning claimants now need to be more mindful of pursuing claims without regard to the costs consequences, as there is a risk that a defendant will refuse to settle unless some or all of their costs are paid by the claimant. ❖ The intention of QOCS is to make ATE/AEI insurance unnecessary for PI actions, as the claimant will not be liable for the defendant's costs if the claim fails. 	
		<p>Exceptions</p> <ul style="list-style-type: none"> ❖ QOCS will NOT apply if, per CPR 44.15 and CPR 44.16: 	
		<p>The claim is “fundamentally dishonest”:</p>	<ul style="list-style-type: none"> ❖ I.e., if the claimant brings a claim for a sham accident or exaggerates the extent of their injuries (Gosling v Screwfix and another (Cambridge County Court, 29 March 2014)).
		<p>The defendant wins because the claim is struck out, because of the following reasons.</p>	<ul style="list-style-type: none"> ❖ QOCS will not apply if the defendant wins, and the claim is struck out because: <ul style="list-style-type: none"> ➤ There are no reasonable grounds for bringing the proceedings. ➤ The claim is an abuse of process. ➤ The claimant's conduct is likely to obstruct the just disposal of the proceedings.
		<p>The proceedings include a claim which is made for the financial benefit of a person other than the claimant.</p>	<ul style="list-style-type: none"> ❖ This means that QOCS will not apply if, for instance, the claim is a subrogated claim where the beneficiary is the claimant's insurer.

Funding Options

- ❖ [Personal Injury & Clinical Negligence Litigation, 9.2](#)

Overview	❖ The funding options available to personal injury claimants are as follows:	
	<ul style="list-style-type: none"> ❖ <u>Legal Expenses Insurance</u> ❖ <u>Conditional Fee Agreements</u> ❖ <u>Damages Based Agreements</u> ❖ <u>Public Funding</u> 	<ul style="list-style-type: none"> ❖ <u>After-the-Event Insurance</u> ❖ <u>Trade Union Funding</u> ❖ <u>Private Funding</u>
	❖ These options are considered in detail below:	

Legal Expenses Insurance <u>Personal Injury & Clinical Negligence Litigation, 9.2.7</u>	What is it?	<ul style="list-style-type: none"> ❖ Legal Expenses Insurance (LEI) is an insurance policy where the insurer will cover the legal costs of a claimant pursuing a claim in the event that they suffer loss e.g., due to a Road Traffic Accident. ❖ Cover will only be available in the event that the policy's terms are complied with. ❖ For example, LEI policies generally require the claim to have “<i>reasonable prospects of success</i>”, meaning cover will likely be declined if the solicitor considers that the claim won't succeed. 	
	Obligations on a solicitor.	<ul style="list-style-type: none"> ❖ A solicitor who is advising a client on funding options should: <ul style="list-style-type: none"> ❖ The solicitor should send a letter asking for: <ul style="list-style-type: none"> ➤ A copy of any motor or household insurance policies; or ➤ Any stand-alone “before the event” (BTE) insurance policies that the client or a partner living in their household has. ➤ (Sarwar v Alam [2001] EWCA Civ 1401). ❖ The policy will set out the maximum amount that the policy will cover. This will often be set at just £25,000. ❖ If the cover is insufficient, it may be reasonable (indeed, necessary) to enter into an alternative funding arrangement e.g., CFA/DBA/After the Event Insurance. 	
	Can an LEI funded client use their own solicitor?	<ul style="list-style-type: none"> ❖ Generally, an LEI funded client will only be able to choose to use their own solicitors after proceedings have been issued. ❖ Insurers normally have preferred “panel firms” who they will require to be instructed on a claim. ❖ Whilst the insured is technically free to choose their lawyer “<i>in any enquiry or proceedings</i>” (Insurance Companies (Legal Expenses 	

		Insurance) Regulations 1990), insurers often take a restrictive view of the meaning of “ <i>enquiry or proceedings</i> ”, and limit the client’s freedom of choice to after court proceedings have been issued.				
Conditional Fee Agreements - CFAs ² Personal Injury & Clinical Negligence Litigation, 9.2.4	What are they?	<ul style="list-style-type: none">❖ CFAs are colloquially known as “no win, no fee agreements”; if entered into, they have the following consequences:<table><tr><td>If the claimant wins</td><td><ul style="list-style-type: none">❖ The defendant will normally pay the claimant’s reasonable costs and disbursements under the general rule of CPR 44.2(2)(a).❖ However, the claimant will have to pay their solicitor a “success fee” of up to a maximum of 100% of their costs (s5, Conditional Fee Agreements Order 2013 (SI 2013/689)).❖ The success fee, is however, <i>capped</i>, for personal injury claims, at 25% of:<ul style="list-style-type: none">➢ General damages awarded for pain, suffering and loss of amenity (PSLA);➢ Plus past losses;➢ Minus any benefits recoupable by the Compensation Recovery Unit.❖ The success fee cannot be recovered from an opponent (s44, Legal Aid, Sentencing and Punishment of Offenders Act 2012).</td></tr><tr><td>If the claimant loses.</td><td><ul style="list-style-type: none">❖ The claimant will not have to pay their own solicitors’ costs.❖ The claimant will not have to pay the defendant’s costs due to QOCS.❖ The claimant may have to pay disbursements unless they have covered costs and disbursements by using an AEI policy.</td></tr></table>	If the claimant wins	<ul style="list-style-type: none">❖ The defendant will normally pay the claimant’s reasonable costs and disbursements under the general rule of CPR 44.2(2)(a).❖ However, the claimant will have to pay their solicitor a “success fee” of up to a maximum of 100% of their costs (s5, Conditional Fee Agreements Order 2013 (SI 2013/689)).❖ The success fee, is however, <i>capped</i>, for personal injury claims, at 25% of:<ul style="list-style-type: none">➢ General damages awarded for pain, suffering and loss of amenity (PSLA);➢ Plus past losses;➢ Minus any benefits recoupable by the Compensation Recovery Unit.❖ The success fee cannot be recovered from an opponent (s44, Legal Aid, Sentencing and Punishment of Offenders Act 2012).	If the claimant loses.	<ul style="list-style-type: none">❖ The claimant will not have to pay their own solicitors’ costs.❖ The claimant will not have to pay the defendant’s costs due to QOCS.❖ The claimant may have to pay disbursements unless they have covered costs and disbursements by using an AEI policy.
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Formality requirements.	<ul style="list-style-type: none">❖ s58 and s58A of the Courts and Legal Services Act (CLSA) 1990: a CFA:<ul style="list-style-type: none">➢ Must be in writing.➢ Must state the percentage success fee.➢ May not be used in family and criminal proceedings.➢ Must be signed by the client and solicitor.					
Damages Based	What is a DBA?	<ul style="list-style-type: none">❖ Damages based agreements (DBAs) are funding agreements which provide that, if the client succeeds and recovers damages, their solicitor				

² [Workshop 1, Prep Task, Question \(c\)](#)

<div>Agreements (DBAs)</div> <div>Personal Injury & Clinical Negligence Litigation.</div> <div>9.2.4</div>		<div>will be entitled to an amount equal to an agreed percentage of those damages.</div> <div><div>❖ For example, if the client recovers £100,000 and the DBA is set at 10%, then the client pays the solicitor £10,000.</div><div>❖ This amount is known as the “contingency fee”, and will cover solicitor’s costs + VAT + counsel’s fees. It will not cover any disbursements which will be owed on top of this sum.</div></div>
	<div>25% cap in personal injury claims.</div>	<div><div>❖ In personal injury claims, the amount of damages recovered by the solicitor under a DBA cannot exceed 25% of:<div><div>➢ General damages for pain, suffering and loss of amenity (PSLA);</div><div>➢ Plus past pecuniary losses (that is, past financial losses).</div></div></div><div><div><div>Example</div><div><div>❖ A claimant, who has entered into a DBA set at 25%, is awarded:<div><div>➢ £70,000 for PSLA;</div><div>➢ £30,000 for past loss of earnings;</div><div>➢ £400,000 for future loss of earnings.</div></div></div><div>❖ The fee payable to the solicitor will be 25% of PSLA + past loss of earnings, i.e., £70,000 + £30,000 = £100,000. 25% = £25,000</div><div>❖ The £400,000 for future losses will not be able to be touched.</div></div></div></div></div>
	<div>Summary of their effect.</div>	<div><div>❖ If entered into, a DBA will have the following consequences:</div><div><div><div>If the claimant wins.</div><div><div>❖ The claimant will normally recover, from the defendant, their reasonable costs and disbursements under the general rule of CPR 44.2(2)(a).</div><div>❖ The defendant will thus pay for the claimant’s solicitor’s fees, however these may be less than the sum the claimant owes their solicitors accounting for the agreed percentage of damages which the claimant’s solicitors are entitled to under the DBA.</div><div>❖ If that happens, the claimant will need to make up any shortfall.</div></div></div><div><div>If the claimant loses.</div><div><div>❖ The claimant will not have to pay the defendant’s costs due to QOCS.</div><div>❖ The claimant will therefore have to pay their own solicitors’ costs in full. There will be no additional fee.</div></div></div></div></div>

	<p>“Score” Each of the Risk Factors</p>	<ul style="list-style-type: none">❖ Each factor above then needs to be “scored”; i.e., given some sort of value to show the level of risk (e.g. 1-10; or percentages).❖ Based on the score achieved, a risk assessment co-ordinator at the firm (usually a partner) will judge whether to accept the case on a CFA/DBA or not, and the level of success fee etc.	
<p>Public funding (Legal Aid)</p> <p><u>Personal Injury & Clinical Negligence Litigation, 9.2.2</u></p>	<p>When is legal aid available?</p>	<ul style="list-style-type: none">❖ Generally, legal aid is unavailable in personal injury and clinical negligence claims.❖ There is, however, one major exception. claimants remain eligible for legal aid if the claim concerns clinical negligence causing a neurological injury to a child resulting in a severe disability (Sch 1, Pt 1, Para 23 LASPO 2012).❖ This will apply where there is, for example, mismanagement of the mother’s labour results in deprivation of oxygen resulting in a brain injury.❖ The negligence must occur either:<ul style="list-style-type: none">➤ <u>When the child is in the womb; or</u>➤ <u>During or after birth but before 8 weeks after:</u><ul style="list-style-type: none">▪ The 37th week of pregnancy (if the child was born before the 37th week); or▪ The day of the birth (if the child was born on or after the 37th week).❖ The applicant must also satisfy financial criteria in the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (SI 2013/480) and Civil Legal Aid (Merits Criteria) Regulations 2013 (SI 2013/104).	
	<p>Two levels of funding available</p>	<ul style="list-style-type: none">❖ Two levels of public funding are available:<ul style="list-style-type: none">➤ Investigative representation; and➤ Full representation. <table><tr><td><p>Investigative representation.</p></td><td><ul style="list-style-type: none">❖ “Investigative representation” is an initial level of funding designed to cover the costs of investigating the strength of a claim.❖ It is given where:<ul style="list-style-type: none">➤ The prospects of success of the client’s claim are not clear; and</td></tr></table>	<p>Investigative representation.</p>
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			<ul style="list-style-type: none"> ➤ <u>Substantial work needs to be undertaken before prospects can be determined;</u> and ➤ The Legal Aid Agency (LAA) has reasonable grounds for believing that, <u>once the investigative work is completed,</u> the case will satisfy the criteria for <u>Full Representation</u> (see below); and ➤ The individual's claim is <u>primarily a claim for damages exceeding £5,000</u> or, if not, the case is of significant wider public interest. <p>❖ The applicant will also need to satisfy the Standard Criteria set out in regulation 39 of the Merits Criteria Regulations. This requires the LAA to be satisfied that:</p> <ul style="list-style-type: none"> ➤ The individual <u>does not have access to other potential sources of funding</u> (other than a CFA) from which it would be reasonable to fund the case; ➤ The case is <u>unsuitable for a CFA;</u> ➤ Subject to limited exceptions, there is <u>no person other than the individual, including a person who might benefit from the proceedings,</u> who can reasonably be expected to bring the proceedings; ➤ The individual has exhausted <u>all reasonable alternatives to bringing proceedings</u> including any complaints system, ombudsman scheme or other form of alternative dispute resolution; ➤ There is a <u>need for representation in all the circumstances of the case.</u> ➤ The proceedings are <u>not likely to be allocated to the small claims track.</u>
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			<ul style="list-style-type: none">❖ The funding will cover investigative and pre-action steps, and costs of settling proceedings in light of counsel’s advice. <p><u>Will not</u> cover costs of trial.</p>				
		<p><u>Full representation.</u></p>	<ul style="list-style-type: none">❖ Full representation covers all costs <u>up to and including</u> exchange of witness statements, questioning of experts and obtaining counsel’s opinion.❖ There are two criteria to satisfy:<table><tr><td><p><u>The “cost-benefit criteria”.</u></p><p>Reg 5 Merits Criteria Regulations.</p></td><td><ul style="list-style-type: none">❖ That is, the likely costs of pursuing the matter are weighed against the prospects of success.❖ <u>If the prospects of success are 80% or greater, the damages must either be the same as or exceed the <u>likely costs of the case.</u></u>❖ <u>If the prospects of success are 60-80%, the damages must be at least 2x likely cost.</u>❖ <u>If the prospects of success are 50-60%, the damages must be at least 4x likely cost.</u></td></tr><tr><td><p><u>The “prospects of success” criteria.</u></p></td><td><ul style="list-style-type: none">❖ The prospects of success criteria provide that funding is unavailable if prospects of success are below 50%.</td></tr></table><p>If the claimant wishes to then proceed to a full trial, <u>the cost-benefit criteria are REAPPLIED.</u></p>	<p><u>The “cost-benefit criteria”.</u></p> <p>Reg 5 Merits Criteria Regulations.</p>	<ul style="list-style-type: none">❖ That is, the likely costs of pursuing the matter are weighed against the prospects of success.❖ <u>If the prospects of success are 80% or greater, the damages must either be the same as or exceed the <u>likely costs of the case.</u></u>❖ <u>If the prospects of success are 60-80%, the damages must be at least 2x likely cost.</u>❖ <u>If the prospects of success are 50-60%, the damages must be at least 4x likely cost.</u>	<p><u>The “prospects of success” criteria.</u></p>	<ul style="list-style-type: none">❖ The prospects of success criteria provide that funding is unavailable if prospects of success are below 50%.
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		<ul style="list-style-type: none">❖ : <p>■</p>					

	<p>“Exceptional Funding”</p> <ul style="list-style-type: none"> ❖ Even if the case does not fulfil the above criteria, public funding <i>may</i> still be available for “exceptional” cases. ❖ “Exceptional funding” will be available where: <ul style="list-style-type: none"> ➤ A failure to provide public funding will result in either a breach, or a risk of a breach of: <ul style="list-style-type: none"> ▪ Convention rights; or ▪ Any enforceable EU rights relating to the provision of legal services. ▪ (s10(3) LASPO 2012) ❖ The overarching question is whether the “<i>withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings</i>” (guidance from the Lord Chancellor). ❖ This is a very high threshold. 		
<p>After the Event Insurance (ATE / AEI)</p> <p>Personal Injury & Clinical Negligence Litigation, 9.2.6</p>	<ul style="list-style-type: none"> ❖ After the Event Insurance is an insurance policy taken out after a legal dispute has arisen to cover potential future liabilities associated with that dispute. ❖ It covers the risk of the client paying: <ul style="list-style-type: none"> ➤ The other side’s costs and disbursements; and ➤ The client’s own disbursements; ❖ However, it does not cover the risk that the claimant will have to pay their own costs in the event he loses. ❖ AEI policies in personal injury and clinical negligence claims are generally limited to being used in disbursement heavy claims, because the claimant generally won’t have a risk of paying the defendant’s costs due to QOCS. <table border="1" data-bbox="305 1392 1526 1938"> <tr> <td data-bbox="305 1392 472 1938">The AEI premium.</td><td data-bbox="472 1392 1526 1938"> <ul style="list-style-type: none"> ❖ Entering into an AEI policy will cost the client a “premium”. These tend to be expensive as an AEI policy is taken out “after the event” i.e., after a claim has already been made, and so are often “staged” (that is, additional premiums become payable at specific “stages” of the litigation as the matter moves closer to trial). ❖ For policies entered into after 1st April 2013, the AEI Premium generally cannot be recovered from the Defendant. ❖ HOWEVER, in clinical negligence cases the premium is recoverable if the AEI policy was taken out to cover the costs of obtaining expert evidence on liability and causation (but not quantum) (Costs Insurance Premiums and Clinical Negligence Proceedings (No 2) Regulations 2013). </td></tr> </table>	The AEI premium.	<ul style="list-style-type: none"> ❖ Entering into an AEI policy will cost the client a “premium”. These tend to be expensive as an AEI policy is taken out “after the event” i.e., after a claim has already been made, and so are often “staged” (that is, additional premiums become payable at specific “stages” of the litigation as the matter moves closer to trial). ❖ For policies entered into after 1st April 2013, the AEI Premium generally cannot be recovered from the Defendant. ❖ HOWEVER, in clinical negligence cases the premium is recoverable if the AEI policy was taken out to cover the costs of obtaining expert evidence on liability and causation (but not quantum) (Costs Insurance Premiums and Clinical Negligence Proceedings (No 2) Regulations 2013).
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		❖ The idea behind this is that clinical negligence claimants should not be deterred from pursuing their case by the unusually heavy burden of expert evidence required.
Trade Union Funding <u>Personal Injury & Clinical Negligence Litigation, 9.2.8</u>	❖ Some clients will be able to receive free access to legal advice through membership of their Trade Union . ❖ This is most likely to be relevant to an Employer's Liability claim (i.e., an accident at work) . ❖ This should be considered by the solicitor at the outset of the matter. ❖ If available, this will give the client the financial support of the Union and they will not have to worry about damages potentially being used to pay legal fees as with a CFA, DBA or publicly funded claim.	
Private Fees <u>Personal Injury & Clinical Negligence Litigation, 9.2.9</u>	❖ Some clients will have no alternative but to fund their cases privately. ❖ The solicitor should adhere to the requirements of the Code above.	

Case Analysis - Road Traffic Accident Claims¹

❖ [Personal Injury and Clinical Negligence Litigation, Chapter 3.2](#)

Overview	<ul style="list-style-type: none"> ❖ There are six elements relevant to establishing liability where a claimant has suffered personal injury as the result of a road traffic accident: <ul style="list-style-type: none"> ➤ Step 1 – Is there a duty of care? ➤ Step 2 – Was the duty breached? ➤ Step 3 – Did the breach of duty cause the loss? ➤ Step 4 – Has the claimant suffered loss? ➤ Step 5 – Was the loss suffered too remote? ➤ Step 6 – Consider contributory negligence. ❖ Each step is considered in detail below.
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Step 1 – Is there a duty of care? Personal Injury and Clinical Negligence Litigation, 3.2.1	<ul style="list-style-type: none"> ❖ It is well-established that road users owe a duty of care to other road users. ❖ “Road users” are not limited to those driving vehicles. This includes: <ul style="list-style-type: none"> ➤ Passengers ➤ Pedestrians ➤ Owners of property next to the highway. ➤ Highway authorities. <table border="1" data-bbox="324 1050 1502 1409"> <tr> <td data-bbox="324 1050 511 1409"> What is the standard of care? </td><td data-bbox="511 1050 1502 1409"> <ul style="list-style-type: none"> ❖ The standard of care expected is that of the “ordinary skilful/competent driver”. ❖ This is not lowered on account of a driver’s lack of experience e.g., if they are a learner driver (Nettleship v Weston [1971] 2 QB 691). ❖ It is not a standard of perfection so, for instance, a driver may still avoid liability even if they did not do everything perfectly (such as failing to sound their horn (Stewart v Glaze [2009] EWHC 704 (QB))). </td></tr> </table>	What is the standard of care?	<ul style="list-style-type: none"> ❖ The standard of care expected is that of the “ordinary skilful/competent driver”. ❖ This is not lowered on account of a driver’s lack of experience e.g., if they are a learner driver (Nettleship v Weston [1971] 2 QB 691). ❖ It is not a standard of perfection so, for instance, a driver may still avoid liability even if they did not do everything perfectly (such as failing to sound their horn (Stewart v Glaze [2009] EWHC 704 (QB))).
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Step 2 – Was the duty breached? Personal Injury and Clinical Negligence Litigation, 3.2.2 – 3.2.3	<ul style="list-style-type: none"> ❖ Factors which may indicate a breach of the duty of care include: <table border="1" data-bbox="324 1491 1502 1890"> <tr> <td data-bbox="324 1491 511 1890"> Criminal convictions Personal Injury and Clinical Negligence Litigation, 3.2.3.1 </td><td data-bbox="511 1491 1502 1890"> <ul style="list-style-type: none"> ❖ Previous criminal convictions which are related to the incident that caused the injury can be useful evidence to establish a breach of duty. ❖ These must, however, be relevant, i.e., they must relate to how the accident was caused or to quantification of damages. For example, an offence of driving without insurance will <i>not</i> normally be relevant to a civil negligence claim. ❖ Check the Police Accident Report (PAR) for evidence of this. </td></tr> </table> 	Criminal convictions Personal Injury and Clinical Negligence Litigation, 3.2.3.1	<ul style="list-style-type: none"> ❖ Previous criminal convictions which are related to the incident that caused the injury can be useful evidence to establish a breach of duty. ❖ These must, however, be relevant, i.e., they must relate to how the accident was caused or to quantification of damages. For example, an offence of driving without insurance will <i>not</i> normally be relevant to a civil negligence claim. ❖ Check the Police Accident Report (PAR) for evidence of this.
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¹ [Workshop 1, Prep Task 1, Question \(a\)](#)

❖ Potentially relevant offences include:	
Offences related to vehicle maintenance.	
Vehicle in a condition that could cause injury.	❖ s40A Road Traffic Act 1988 (RTA 1988) : it is an offence to use, cause or permit another to use a vehicle in a condition that involves a danger of injury .
Failure to comply with regulations relating to tyres and brakes².	❖ s41A RTA 1988 : it is an offence if the vehicle does not comply with regulations governing the construction and use of brakes, steering-gear or tyres . ❖ E.g., tyre tread-depth; tyre pressures etc.
Offences related to poor driving	
Speeding	❖ Driving in excess of the speed limit does not in itself prove a breach of duty (Quinn v Scott [1965] 2 All ER 588). ❖ Equally, driving below the speed limit does not , in itself, negate liability (Richardson v Butcher [2010] EWHC 214 (QB)). ❖ The key question is whether the defendant was driving at a speed appropriate in the circumstances , taking into account the: <ul style="list-style-type: none"> ➤ Weather. ➤ Available light. ➤ Road layout. ➤ Weight of traffic. ➤ Parked vehicles or other obstructions. ➤ Warning signs. ➤ Likelihood of pedestrians, particularly children, crossing the road.
Dangerous driving.	❖ s2 RTA 1988 : a conviction of dangerous driving is indicative that the person was driving far below the standard of a competent and careful driver .
Driving without due care and attention.	❖ s3 RTA 1988 : a conviction of driving without due care and attention is indicative of the person driving far below the standard of a competent and careful driver .
Other potentially relevant offences	
Driving under the	❖ It is an offence to:

² [Workshop 1, Prep Task](#): The Defendant was convicted, following the accident, of a breach of requirement as to tyres. This was potentially relevant to establishing a breach of duty as Peter's failure to clear the highway was the alleged cause of the accident. This point is also raised again in [Workshop 4, Task 2](#).

		<u>influence of alcohol or drugs.</u>	<ul style="list-style-type: none"> ➤ Drive, or attempt to drive whilst <u>unfit to do so through drink or drugs</u> (s4 RTA 1988). ➤ Drive, or attempt to drive whilst <u>over the prescribed limit</u> (s5 RTA 1988), of: <ul style="list-style-type: none"> ▪ 35 micrograms of alcohol in 100 millilitres of breath; ▪ 80 milligrams of alcohol in 100 millilitres of blood; and ▪ 107 milligrams of alcohol in 100 millilitres of urine. ➤ Drive whilst there is a <u>concentration of specified controlled drugs</u> in excess of specified limits (s5A).
		<u>Driving whilst using a mobile phone.</u>	❖ It is an offence to drive whilst holding a mobile phone (s41D RTA 1988).
		<u>Failure to wear a seat belt or helmet.</u>	<ul style="list-style-type: none"> ❖ It is an offence to drive without wearing a seat belt under (s14 RTA 1988). ❖ It is an offence to ride a motorbike without a helmet under (s16 RTA 1988). ❖ A conviction for either of these offences is potentially relevant to the question <u>contributory negligence</u>.
	<u>Breaches of the Highway Code</u> Personal Injury and Clinical Negligence Litigation, 3.2.3.2	<ul style="list-style-type: none"> ❖ A breach of the Highway Code can be <u>relied upon in Civil Courts</u> to establish breach of duty (s38(7) RTA 1988). ❖ However, a breach <u>does not create a presumption of negligence</u>; merely it is a <u>potentially relevant factor</u> to establish breach (Powell v Phillips [1972] 3 All ER 864). 	
	<u>Res Ipsa Loquitur</u> Personal Injury and Clinical Negligence	<ul style="list-style-type: none"> ❖ <i>Res Ipsa Loquitur</i> is a Latin maxim which means that <u>“the facts speak for themselves”</u>. ❖ This can be invoked where the facts of the case lend themselves to <u>no credible alternative explanation for what happened</u>. ❖ However, it is <u>very rare</u> for this to be invoked successfully in RTA cases. 	

	Litigation, 3.2.3.3	
	<p>The Police Accident Report (PAR)³</p> <p>Personal Injury and Clinical Negligence Litigation, 10.10.3.1</p>	<ul style="list-style-type: none"> ❖ The PAR is the police’s report of the incident giving rise to the injury. A solicitor who is acting for a claimant in an RTA claim should normally seek to obtain this. ❖ The PAR will contain, in particular: <ul style="list-style-type: none"> ➤ Statements from witnesses whom the claimant’s solicitor can try to contact. ➤ A sketch plan. ➤ The police officer’s comments on the condition of the vehicles, the road surface, the weather conditions. ➤ Details of convictions arising from the accident. ❖ To obtain a copy of the PAR, the solicitor will need to contact the accident records department at the police force headquarters for the area the accident occurred. <ul style="list-style-type: none"> ➤ The PAR will not be released until the conclusion of any criminal investigation and proceedings. ➤ A fee is payable. ➤ On payment of a further fee, the officer who prepared the PAR may be interviewed. ❖ If there is no PAR, it is still possible to obtain copies of police notebooks and witness statements on payment of a fee.
<p>Step 3 – Did the breach of duty cause the loss?</p> <p>Personal Injury and Clinical Negligence Litigation, 3.2.5</p>	<ul style="list-style-type: none"> ❖ Causation is established by asking “but for” the defendant’s wrongful act or omission, would the claimant have suffered harm in any event? ❖ If the answer to this question is “yes”, there is no causation (as the claimant would have suffered the injury/condition irrespective of the defendant’s breach of duty). ❖ Barnett v Chelsea and Kensington Hospital Management Committee [1969] 1 QB 428: <ul style="list-style-type: none"> ➤ Three night-watchmen suffered arsenic poisoning after drinking poisoned tea. On attending the hospital, they were sent home and advised to go to bed and call their GP if symptoms persisted. They were not examined. One of the men, Mr Barnett, later died. ➤ The Court found that had the nightwatchmen been treated with all the necessary care, Mr Barnett still would have died. The defendant hospital’s negligence therefore had not caused the claimant’s death on the “but for” test. ❖ The likely counter-arguments the defendant will raise on this point are: 	

³ [Workshop 1, Task 1](#)

	<ul style="list-style-type: none"> ➤ The cause of the injury was actually the claimant's own negligence⁴. ➤ The accident could not have caused the injuries complained of e.g., exaggerated whiplash claims. ➤ The critical point here will be medical evidence. 				
Step 4 – Has the claimant suffered loss?	<p>❖ The losses that a claimant can recover in a claim for personal injury are reviewed in detail in later notes in this guide. In overview, however, compensation for the loss suffered by a claimant falls broadly into two categories.</p> <table border="1"> <tr> <td>Special Damages</td><td> <p>❖ These are financial losses that are incurred prior to trial, which can include:</p> <ul style="list-style-type: none"> ➤ Loss of Earnings ➤ Clothing and Personal Effects ➤ Cost of Medical Care and Expenses ➤ Cost of Care and Quasi Nursing Services ➤ Cost of DIY, Gardening and Housework Services ➤ Cost of Aids and Appliances ➤ Cost of Alternative and/or Adapted Accommodation. ➤ Travelling Costs <p>❖ <u>In RTA Cases, this may also extend to:</u></p> <ul style="list-style-type: none"> ➤ Cost of repairs/replacement to the Claimant's vehicle. ➤ Vehicle recovery and storage charges. ➤ Loss of use of a motor vehicle/hire of a substitute vehicle. ➤ Loss of No Claims Bonus </td></tr> <tr> <td>General Damages</td><td> <p>❖ General Damages are damages which cannot be calculated precisely at the date of trial, namely non-financial losses and future losses.</p> <p>❖ This will extend to:</p> <ul style="list-style-type: none"> ➤ Damages for pain, suffering and loss of amenity. ➤ The following future losses: <ul style="list-style-type: none"> ▪ <u>Future loss of earnings</u> ▪ <u>Cost of care</u>. ▪ <u>Smith v Manchester</u> Damages (reflecting handicap in the Labour Market). ▪ Loss of <u>congenial employment</u> (job satisfaction). </td></tr> </table> <p>❖ The burden of proof is on the claimant to evidence the fact of, and the extent of the losses suffered.</p>	Special Damages	<p>❖ These are financial losses that are incurred prior to trial, which can include:</p> <ul style="list-style-type: none"> ➤ Loss of Earnings ➤ Clothing and Personal Effects ➤ Cost of Medical Care and Expenses ➤ Cost of Care and Quasi Nursing Services ➤ Cost of DIY, Gardening and Housework Services ➤ Cost of Aids and Appliances ➤ Cost of Alternative and/or Adapted Accommodation. ➤ Travelling Costs <p>❖ <u>In RTA Cases, this may also extend to:</u></p> <ul style="list-style-type: none"> ➤ Cost of repairs/replacement to the Claimant's vehicle. ➤ Vehicle recovery and storage charges. ➤ Loss of use of a motor vehicle/hire of a substitute vehicle. ➤ Loss of No Claims Bonus 	General Damages	<p>❖ General Damages are damages which cannot be calculated precisely at the date of trial, namely non-financial losses and future losses.</p> <p>❖ This will extend to:</p> <ul style="list-style-type: none"> ➤ Damages for pain, suffering and loss of amenity. ➤ The following future losses: <ul style="list-style-type: none"> ▪ <u>Future loss of earnings</u> ▪ <u>Cost of care</u>. ▪ <u>Smith v Manchester</u> Damages (reflecting handicap in the Labour Market). ▪ Loss of <u>congenial employment</u> (job satisfaction).
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Step 5 – Was the loss suffered too remote?	<p>❖ In order to succeed with a claim in negligence, the loss suffered must have been reasonably foreseeable.</p> <p>❖ <u>The Wagon Mound No. 1 [1961] AC 388:</u></p>				

⁴ [Workshop 1, Prep Task](#): the Defendant alleged that the reason the Claimant had fallen from her bike was because she was going around the corner, which was slippery, too fast, and *not* because he had turned into her path/failed to clear the carriageway.

	<ul style="list-style-type: none"> ➤ Damage will be reasonably foreseeable if it is <u>of a kind which is foreseeable</u>. ➤ So, if it is foreseeable that the breach of duty could cause damage by fire, it does not matter that the <u>extent of the damage was not foreseeable</u>, for instance because the fire was much larger than may otherwise have been envisaged. <p>❖ In summary, if the damage is of a kind that is foreseeable, the defendant will be liable for the full extent of this no matter whether or not the extent of the damage is foreseeable.</p>								
Step 6 - Consider contributory negligence <i>Personal Injury and Clinical Negligence Litigation, 3.2.6</i>	<p>❖ s1(1) Law Reform (Contributory Negligence) Act 1945: “Where any person suffers damage as the result partly of his own fault” the amount of damages shall be <u>“reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility”</u>.</p> <p>❖ To show that the claimant has been contributorily negligent, the defendant must show, on the balance of probabilities:</p> <ul style="list-style-type: none"> ➤ That the claimant was at fault; ➤ That the fault was causative of the injury suffered; and ➤ That it would be just and equitable for the claimant’s damages to be reduced. <p>❖ <u>E.g., was the claimant driving carelessly/dangerously?</u></p> <ul style="list-style-type: none"> ➤ Too fast? What were the road conditions? ➤ Was the claimant wearing their seatbelt/helmet? <p>❖ Damages will <i>generally</i> be reduced by the following amounts in the following circumstances:</p> <table border="1"> <thead> <tr> <th>Circumstance</th><th>Damages will generally be reduced by...</th></tr> </thead> <tbody> <tr> <td>Where a driver/passenger fails to wear a seat belt</td><td> <ul style="list-style-type: none"> ❖ 25% if the injury would not have happened at all. ❖ 15% where the injuries would have been less severe. ❖ Froom v Butcher [1976] QB 286. </td></tr> <tr> <td>Where a motorcyclist fails to wear a crash helmet</td><td> <ul style="list-style-type: none"> ❖ 15% (O’Connell v Jackson [1972] 1 QB 270). ❖ 10% where the helmet’s chin strap is not fastened, (Capps v Miller [1989] 1 WLR 839). </td></tr> <tr> <td>Where a passenger allows himself to be carried in a vehicle when he knows the driver is drunk and should not be driving</td><td> <ul style="list-style-type: none"> ❖ 20% (Owens v Brimmell [1977] QB 859). </td></tr> </tbody> </table>	Circumstance	Damages will generally be reduced by...	Where a driver/passenger fails to wear a seat belt	<ul style="list-style-type: none"> ❖ 25% if the injury would not have happened at all. ❖ 15% where the injuries would have been less severe. ❖ Froom v Butcher [1976] QB 286. 	Where a motorcyclist fails to wear a crash helmet	<ul style="list-style-type: none"> ❖ 15% (O’Connell v Jackson [1972] 1 QB 270). ❖ 10% where the helmet’s chin strap is not fastened, (Capps v Miller [1989] 1 WLR 839). 	Where a passenger allows himself to be carried in a vehicle when he knows the driver is drunk and should not be driving	<ul style="list-style-type: none"> ❖ 20% (Owens v Brimmell [1977] QB 859).
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Claims Against the Highway Authority¹

❖ *Personal Injury and Clinical Negligence Litigation, Chapter 3.5*

Overview	❖ A claimant may have a claim against the Local Highway Authority (normally the local council) where they suffer damage as a result of that Authority's a failure to maintain the public highway .	
Potential causes of action against the Highway Authority	❖ There are two potential causes of action against the Highway Authority:	
	Breach of statutory duty of s41(1) of the Highways Act 1980	<ul style="list-style-type: none">❖ A Highway Authority has a duty to maintain (includes a duty to repair) any highway which is maintainable at the public expense.❖ The duty is non-delegable:<ul style="list-style-type: none">➢ Therefore, the Highway Authority will be liable even where the condition of the road is caused by a third party e.g., a contractor.➢ However, in such circumstances it is possible that a defence under s58 Highways Act 1980 will be successful (see below).
	Negligence under common law	❖ The Highway Authority has a similar duty to maintain highways under common law (Dabinett v Somerset County Council [2006] LTL 20/4/200).
Scope of duty.	<ul style="list-style-type: none">❖ The duty to maintain is not confined to the surface of the highway:<ul style="list-style-type: none">➢ The Local Authority is also obliged to keep drains in good repair.➢ (Department of Transport, Environment and the Regions v Mott Macdonald Ltd & Others [2006] EWCA Civ 1089).❖ The duty includes:<ul style="list-style-type: none">➢ <u>Removal of obstructions of the highway</u>:<ul style="list-style-type: none">▪ s150: requires authorities to remove any obstruction of the highway resulting from 'accumulation of snow or from the falling down of banks on the side of the highway, or from any other cause'.➢ <u>Removal of snow and ice</u>:<ul style="list-style-type: none">▪ s41(1A): requires highway authorities to ensure 'so far as is reasonably practicable, that safe passage along a highway is not endangered by snow and ice'.	
Breach of duty	❖ To demonstrate breach of duty, the claimant must prove that the condition of the highway: <ul style="list-style-type: none">➢ Made it a foreseeable danger to road users; and➢ Was due to the failure of the highways authority to maintain it; and➢ The damage was caused by the dangerous condition of the highway.	

¹ [Workshop 9, Prep Task](#)

	<ul style="list-style-type: none"> ▪ The test of “dangerousness” is one of “reasonable foresight of harm to users of the highway”. Each case will turn on its own facts: Mills v Barnsley MBC [1992] PIQR P 291. <p>❖ In support of a claim, reference should be made to:</p> <table border="1" data-bbox="337 365 1513 1281"> <tr> <td data-bbox="337 365 548 1003"> The Well-Maintained Highway Infrastructure Code of Practice 2018 (2018 Code): </td><td data-bbox="548 365 1513 1003"> <ul style="list-style-type: none"> ❖ This requires highway authorities to adopt a risk-based approach and a risk-based management regime for highway maintenance. ❖ This includes “<i>safety and condition inspections, and determining repair priorities...</i>”. ❖ This is guidance only, however the court will expect highway authorities to justify their decisions and action or inaction by reference to the recommendations in the 2018 Code and the risk-based approach. ❖ As a rule of thumb, highway authorities will be expected to carry out safety inspections to identify defects: <ul style="list-style-type: none"> ➤ Were these done? ➤ What was their frequency? ➤ What was done in response to noted risks? </td></tr> <tr> <td data-bbox="337 1003 548 1281"> Safety at Street Works and Road Works - A Code of Practice (2013) </td><td data-bbox="548 1003 1513 1281"> <ul style="list-style-type: none"> ❖ Deals with best practice for roadworks e.g. appropriate distance of warning signs etc. </td></tr> </table>	The Well-Maintained Highway Infrastructure Code of Practice 2018 (2018 Code) :	<ul style="list-style-type: none"> ❖ This requires highway authorities to adopt a risk-based approach and a risk-based management regime for highway maintenance. ❖ This includes “<i>safety and condition inspections, and determining repair priorities...</i>”. ❖ This is guidance only, however the court will expect highway authorities to justify their decisions and action or inaction by reference to the recommendations in the 2018 Code and the risk-based approach. ❖ As a rule of thumb, highway authorities will be expected to carry out safety inspections to identify defects: <ul style="list-style-type: none"> ➤ Were these done? ➤ What was their frequency? ➤ What was done in response to noted risks? 	Safety at Street Works and Road Works - A Code of Practice (2013)	<ul style="list-style-type: none"> ❖ Deals with best practice for roadworks e.g. appropriate distance of warning signs etc.
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Safety at Street Works and Road Works - A Code of Practice (2013)	<ul style="list-style-type: none"> ❖ Deals with best practice for roadworks e.g. appropriate distance of warning signs etc. 				
Defence	<ul style="list-style-type: none"> ❖ A highway authority may defend the claim by proving that it had taken such care as was reasonably required in the circumstances to ensure that the highway was not dangerous for traffic (s58 Highways Act 1980). ❖ This is an objective test. ❖ The court will have regard to the following factors in assessing whether the defence is made out: <ul style="list-style-type: none"> ➤ The character of the highway, and the traffic which was reasonably to be expected to use it; ➤ the standard of maintenance appropriate for a highway of that character and used by such traffic; ➤ The state of repair in which a reasonable person would have expected to find the highway; 				

	<ul style="list-style-type: none">➤ Whether the highway authority <u>knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;</u>➤ Where the highway authority <u>could not reasonably have been expected to repair that part of the highway before the cause of action arose,</u> what warning notices of its condition had been displayed. <p>❖ Essentially, this can provide a defence where an accident occurs <u>shortly after</u> a defect in the highway arises.</p>
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LPC BUDDY

Pre-Action Protocols - Overview❖ *Personal Injury & Clinical Negligence Litigation, Chapter 21*

Overview	<ul style="list-style-type: none"> ❖ Pre-action protocols explain the conduct and set out the steps the court expects parties to take before commencing proceedings. ❖ There are six pre-Action protocols that are relevant to personal injury claims, summarised as follows:
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The pre-action protocol for...	Type of claim	Detail
Personal Injury Claims below the Small Claims Limit in Road Traffic Accidents¹ (“The RTA Small Claims Protocol”)	Arises from an RTA. Up to £10k. Damages for injury up to £5k.	<ul style="list-style-type: none"> ❖ The protocol applies where (para 4.2): <ul style="list-style-type: none"> ➤ A claim arises from a road traffic accident which occurred in England and Wales on or after 31 May 2021; which ➤ Includes damages for injury; and ➤ The claimant values: <ul style="list-style-type: none"> ▪ The overall claim at no more than £10,000; and ▪ The claim for damages for injury at no more than £5,000. ➤ Unless one of the narrow exceptions applies in para 4.3 (for example, where the claimant was a vulnerable road user at the time of the accident). ❖ It is to be used in, but is not limited to, claims for whiplash (para 2.1). ❖ This protocol was introduced alongside the Whiplash Injury Regulations 2021, which introduced fixed damages tariffs for whiplash claims.
Low Value Personal Injury Claims in Road Traffic Accidents²	Arises from and RTA. More than £10k. Under £25k	<ul style="list-style-type: none"> ❖ Applies where: <ul style="list-style-type: none"> ➤ <u>There is a claim for damages for personal injury arising from an RTA.</u> ➤ <u>Made on or after 31 May 2021</u> (para 4.1(1)). <ul style="list-style-type: none"> ▪ The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents applies to <i>all</i> low

¹ <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-personal-injury-claims-below-the-small-claims-limit-in-road-traffic-accidents-the-rta-small-claims-protocol>. See notes on [The RTA Small Claims Protocol](#) and [The Whiplash Injury Regulations 2021](#).

² <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-low-value-personal-injury-claims-in-road-traffic-accidents-31-july-2013>. See notes on [The Pre-Action Protocol for Low Value RTA Claims](#).

The pre-action protocol for...	Type of claim	Detail
<p><u>(“The Low Value RTA Protocol”)</u></p>	<p>Damages for injury £5k+</p>	<p>value claims where the accident occurred before 31 May 2021 (para 4.2).</p> <ul style="list-style-type: none"> ➤ The value of the claim is no more than “the upper limit” of £25k (para 4.1(3)). ➤ If proceedings were started, the small claims track would not be the normal track for the claim (para 4.1(4)). This will be the case where: <ul style="list-style-type: none"> ▪ The claim is worth more than £10,000; or ▪ The claim arises from a road accident on or after 31 May 2021, and claimed damages for injury exceed £5,000; or ▪ The claim arises from a road accident before 31 May 2021, or the claimant is a child or vulnerable user, and claimed damages for injury exceed £1,000. <p>❖ Claims which do not meet these criteria which are started in the Portal will, unless admitted by the insurer, exit the Portal and proceed under the Pre-Action Protocol for Personal Injury Claims.</p>
<p>Low Value Personal Injury (Employers’ Liability and Public Liability) Claims³</p> <p><u>(“The Low Value EL/PL Protocol”)</u></p>	<p>An EL / PL claim (e.g., an accident at work)</p> <p>More than 10k</p> <p>Under 25k</p> <p>Damages for injury £1.5k+</p>	<p>❖ This Protocol is very similar to the Low Value RTA Protocol but is used for EL/PL Claims (e.g., accidents in a workplace).</p> <p>❖ It applies where:</p> <ul style="list-style-type: none"> ➤ <u>The accident occurred on or after 31 July 2013.</u> ➤ <u>The value of the claim does not exceed £25,000.</u> ➤ <u>If proceedings were started the small claims track would not be the normal track for that claim:</u> <ul style="list-style-type: none"> ▪ For an EL/PL claim (per CPR 26.9), the small claims track would not be the normal track for that claim if: <ul style="list-style-type: none"> • The claim is worth more than £10,000; and • The claim for personal injuries exceeds £1,500.

³ <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-low-value-personal-injury-employers-liability-and-public-liability-claims>. See notes on [The Pre-Action Protocol for Low Value EL/PL Claims](#).

The pre-action protocol for...	Type of claim	Detail
Personal Injury Claims ⁴ (“The PI PAP”)	PI claims over £25k Claims which exit the Low Value PAPs	<ul style="list-style-type: none"> ❖ Applies to claims: <ul style="list-style-type: none"> ➤ Where the claim exceeds the upper limit of the fast track (currently £25,000) (para 1.1.2); or ➤ Which exit the Low Value Protocol (para 1.2). <ul style="list-style-type: none"> ▪ (This will occur <u>unless</u> the insurer admits liability in response to the CNF). ❖ It is intended to apply to fast track claims (para 1.1.2). <ul style="list-style-type: none"> ➤ However, if the claim is likely to be allocated to the intermediate track, or the multi-track, the “<i>spirit, if not the letter of the Protocol should still be followed</i>”. ❖ See notes on The Pre-Action Protocol for Personal Injury Claims.
Disease and Illness Claims ⁵	Industrial disease / illness claims	<ul style="list-style-type: none"> ❖ Used where the injury takes the form of an illness or disease e.g., asthma, dermatitis, mesothelioma. ❖ Such claims tend to be complex, so use a specialist protocol.
Resolution of Clinical Disputes ⁶	Clinical negligence claims	<ul style="list-style-type: none"> ❖ Used for claims against hospitals, GPs, dentists and other healthcare providers etc. ❖ I.e., for clinical negligence claims. ❖ See notes on the Clinical Negligence Pre-action Protocol.

⁴ https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_pic

⁵ [Workshop 2, Task 2, Question 2](#); https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_dis

⁶ https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rcd