

## Second six: an insight into a typical hearing

I am now just over a month into my second six as a common law pupil. The time has flown by. I've been kept nicely busy with a wide range of hearings, conferences and written work and feel that every day is presenting an opportunity for me to develop my skills further and to learn from more experienced colleagues.

In a slight departure from the format of previous entries, I thought it would be useful to use my second six diary to give a flavour of the kinds of hearings I have been involved in. I hope this will give candidates with an interest in a common law pupillage at Exchange a better insight into what to expect.

This month, I am going to summarise what is involved in a 'Stage 3' hearing. I thought this would be a good hearing to start with as, to be totally honest, I hadn't even heard of a 'Stage 3' hearing before starting pupillage...

In short, a Stage 3 hearing is the final step the parties can take in the slightly wordily-named Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (for short, the RTA Protocol). The Protocol exists to encourage parties to resolve a claim which arises out of a road traffic accident as efficiently and as cheaply as possible.

In very rough summary (and noting that the Protocol is in fact surprisingly complex for a pre-action process designed to streamline matters), the previous stages leading up to a Stage 3 hearing are:

1. Stage 1, in which the Claimant sends details of their claim to the Defendant. If the Defendant admits liability, the claim proceeds to...
2. Stage 2, in which the Claimant obtains medical reports on their injuries, collates all of their supporting evidence, quantifies their claim (including both general damages for pain, suffering and loss of amenity and special damages for pecuniary losses) and sends a Settlement Pack to the Defendant containing an offer for settlement of the claim.

Once the Defendant receives the Settlement Pack, the clock starts running on the 'consideration period', during which the Defendant considers the Claimant's offer and either accepts it or (more usually) makes a counter-offer. At the end of this period of negotiation, if the parties cannot reach agreement, the Claimant will send to the Defendant a Court Proceedings Pack. Practically speaking, this is the key document for a barrister instructed in a Stage 3 hearing.

The Court Proceedings Pack has a table setting out the heads of loss for which the Claimant is seeking damages, together with the final offers made by both parties in respect of those heads of loss. You might, for example, see the Claimant seeking £4000 for pain, suffering and loss of amenity (PSLA) and the Defendant counter-offering £2000. In essence, this pack gives the judge an overview, on one page, of where the negotiation between the parties has got to at the end of Stage 2. The purpose of a Stage 3 hearing is for a judge to decide on the quantum of damages. Whilst a judge can do this on the papers, it is more common for a barrister to be instructed for each party, in order to make submissions as to the value of the claim.

Regarding general damages, pupils will quickly become familiar with the *Judicial College Guidelines*, which sets out guidance for judges as to how to value claims for PSLA for different injuries. Given the financial limit on claims within the RTA Protocol, the injuries tend to fall towards the bottom of the scale, comparatively speaking. As an example, the entry for a modest foot injury reads as follows:

Simple metatarsal fractures, ruptured ligaments, puncture wounds, and the like. Where there are continuing symptoms, such as a permanent limp, pain, or aching, awards between **£8,560** and **£16,770** would be appropriate. Straightforward foot injuries such as

fractures, lacerations, contusions, etc. from which complete or near complete recovery is made would justify awards of **£8,560** or less. Modest injuries that resolve within a short space of time will attract lower awards. Awards for minor foot injuries resolving within a few months, with little impact on lifestyle or day to day activities, are unlikely to exceed **£2,990**.

Usually, a big part of preparing for a Stage 3 hearing involves analysing the medical evidence against the *Guidelines* and preparing submissions on why the judge ought to award PSLA at or close to the Claimant's offer. There is an art to this, both in valuing the injuries against the *Guidelines* and in pitching submissions at the right level so that they advance the Claimant's best interests whilst also being realistic. I should also note that, for whiplash injuries sustained after 31 May 2021, a simple tariff applies instead of the *Guidelines*.

There is frequently also a dispute about special damages, e.g. the extent of a claim for loss of earnings or travel to treatment. Paying close attention to the documentary evidence provided by the Claimant is important here. If, by the point a claim reaches a Stage 3 hearing, there is no evidence of a particular loss included in the Court Proceedings Pack (e.g. no receipts to indicate travel costs incurred), the rules specifically prohibit the Claimant from introducing fresh evidence unless the court orders otherwise (see Practice Direction 49F).

The other practical point to note about Stage 3 hearings is that it assists everyone involved, including the judge, if both advocates can have a quick discussion prior to the hearing. Not infrequently, your opponent might attend court having just received instructions to make a concession on a head of loss, or you might be in the same position yourself. Confirming the latest position with your opponent before you go in narrows the issues in dispute and saves the court valuable time. It is always worth bearing in mind that, in some courts, judges might have a dozen or more Stage 3 hearings in the course of a morning. Submissions must be focused and concise.

Once the judge makes their ruling as to the damages the Claimant is to be awarded, the parties need to do some rapid maths. They will need to work out the amount of interest on general damages, as well as giving the court the agreed figure on costs and disbursements. The rules on all of this are a little complex, but again it pays to discuss the detail with your opponent beforehand. My top tip would be to go through the rules and prepare a spreadsheet which calculates the key figures for you. This saves a lot of scrabbling about with a calculator in front of a busy judge. The process of creating the spreadsheet also really helps ensure you understand the rules in detail.

Finally, Part 36 of the CPR applies to Stage 3 hearings, so if the damages awarded by the judge equal/exceed the Claimant's Stage 2 offer, or if they are less than the Defendant's Stage 2 offer, there are additional consequences as to costs and (for claimants) damages/interest. If a Claimant has beaten their own offer, these can be substantial. I attended a hearing a couple of weeks ago where the effect of the Part 36 provisions was to increase the overall award to the Claimant by several thousand pounds. Again, it pays to ensure you have a spreadsheet to hand to calculate these additional figures as the maths can be complex.

Overall, Stage 3 hearings are a great opportunity for new barristers to hone their advocacy skills in a short, focused hearing. I have enjoyed those I have attended so far and look forward to continuing to develop my experience in this area.