Know Your Limits: MOJ Portal Claims, Protective Issuing and the Decision in MH Site Maintenance Services Limited and Another V James Watson [2025] EWCA CIV 775

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Does the Court have jurisdiction over compliance with the Pre-Action Protocol for Low Value RTA Claims ("the Protocol")? In its decision of 24 June 2025, the Court of Appeal decided in *MH Site Maintenance Services Limited and another v James Watson* [2025] EWCA Civ 775 that, when proceedings have been issued, the answer is "yes."

Claims Under the Protocol – A Reminder on the Key Law

Claims under the Protocol follow "stages". Stage 1 involves the submission of a claims notification form ("CNF") by the Claimant to the claims "portal", after which the Defendant is required to provide a liability response. If liability is admitted, the claim proceeds to "Stage 2", where quantum is negotiated via the submission of a settlement pack. If quantum cannot be agreed, then usually claims move to Stage 3, where damages are assessed by a judge.

Evidence of losses must be submitted to the Defendant at Stage 2, with their settlement pack. *Paragraph 7.32 of the Protocol* provides that:

> *'The Stage 2 Settlement Pack must comprise –*

(1) The Stage 2 Settlement Pack Form;

(2) A medical report or reports;

(3) Evidence of pecuniary losses

(4) Evidence of disbursements (for example the cost of any medical report);

(4A) In a soft tissue injury claim, the invoice for the cost of obtaining the fixed cost medical report and any invoice for the cost of obtaining medical records;

(5) Any non-medical expert report;

(6) Any medical records/photographs served with medical reports; and

(7) Any witness statements'.

Where compliance with this process is not possible before limitation expires, then in line with *Paragraph 5.7 of the Protocol* a claimant '*may start proceedings and apply to the court for an order to stay (i.e. suspend) the proceedings while the parties take steps to follow this protocol*'.

Practice Direction ("PD") *49F* governs the procedure for claims issued pursuant to the Protocol. A modified Part 8 procedure is followed. Protective issuing of proceedings is addressed in *Paragraph 16 of PD 49F*. In particular, *Paragraph 16.2* requires that:

'*The claimant must –*

(1) start proceedings under this Practice Direction; and

(2) state on the claim form that-

(a)the claim is for damages; and

(b)a stay of proceedings is sought in order to comply with the relevant Protocol'.

Paragraph 16.4 disapplies various provisions of *PD 49F* where proceedings are issued protectively, and *Paragraph 16.5* requires claimants to apply to lift the stay and request directions, where the Protocol has been complied with and the matter needs to proceed to a Stage 3 hearing.

Factual Background

The original claim was founded on a road traffic accident in September 2019. The Claimant pursued a claim for personal injury by sending a CNF. The Defendant insurer admitted liability, taking the claim to Stage 2 of the Protocol.

However, for Stage 2 to effectively proceed, the Claimant's "settlement pack" needed to be submitted. This was never done. Indeed, whilst the CNF was submitted in July 2020, the Claimant's first medical examination did not take place until 11 January 2023, with the corresponding medical report being received in May 2023. Both these dates came after the expiry of limitation.

Before limitation expires, the Claimant issued proceedings protectively under *Part 8 of the Civil Procedure Rules* ("CPR").

Shortly thereafter, a one-year stay was granted. Later, in June 2023, the Defendant grew tired of the Claimant's inactivity and sought an order lifting the stay and compelling the submission of a Stage 2 settlement pack within 21 days. They applied under (what is now) CPR r. 3.1(2)(p), under which the Court may '*Take any other step to make any other order for the purpose of managing the case and furthering the overriding objective*'.

The Defendants' application was dismissed by DJ Baldwin, who held that, in the context of the extant stay, '*I am singularly unpersuaded that I have the power to order anyone to do anything within the proceedings governed by the protocol, as opposed to the proceedings as they currently stand at court*'.

The Defendants' first appeal of this decision was dismissed by HHJ Wood KC. The Defendants appealed further to the Court of Appeal.

The Decision

Giving the lead judgment, Coulson LJ firstly held that the appeal was not academic, recognising that it would be uncommon for any complaint about Protocol non-compliance to be heard when the claim was still in the Protocol given the time which would need to elapse before an appeal could practically be heard. In treating this as an important question for the Court of Appeal to decide, Coulson LJ said (at paragraph 36 of his decision) that:

'*It is plain from DJ Baldwin's observations that he is regularly asked to make directions that reach back into the PAP process but he never does so. All other things being equal, I consider that this court should decide that significant point of practice/procedure*'.

In any event, Coulson LJ ruled that the appeal raises a point of general importance and that both sides of the argument were fully and properly ventilated, in line with the principles from *Hutcheson v Popdog Limited (News Group Newspapers Limited, third party)* [2012] 1WLR 782.

On the central issue of the Court's jurisdiction, Coulson LJ placed heavy emphasis on the fact that, by the time of the Defendant's application, proceedings had been issued. Whilst recognising that the Protocol process was designed to avoid court proceedings at all, at Paragraph 49 he said:

'*… when the claimant expressly invokes the jurisdiction of the court by issuing a claim form, the position changes. Once that has happened, the court has the jurisdiction to deal with the Part 8 claim in accordance with the CPR. That demonstrates why Judge Wood's fifth reason (paragraph 16 above) was wrong: the Part 8 claim was 'the case' for the purposes of CPR 3.1(2)(p) and, as explained below, that case may require a consideration of the progress of the claim in the PAP, and the making of consequential directions*'.

The Court of Appeal also rejected any argument that, because stays are often granted administratively on an *ex parte* basis, there is limited scope for the Court to act any differently. Harking back to the 'liberty to apply' provisions, the Court found (at paragraph 51) that '*… whilst the initial form of order is made ex parte for administrative convenience, the order for a stay itself will, in an appropriate case, be the subject of proper debate and reconsideration*'. The Court acknowledged the role of arguments about non-compliance with the Protocol in any such debates about the merits of a

stay.

The reference to *'the Court may…'* in the Protocol reinforced Coulson LJ's view that courts have jurisdiction over claims under the Protocol process when proceedings are issued. A link was drawn with *Paragraph 5.7* of the Protocol's comment that the Court may stay proceedings *'while the parties take steps to follow this protocol'*.

The Claimant's argument that a 'conditional stay' was impermissible was rejected by the Court, who found that *PD 49F* does not exclude any such power and that such orders are envisaged by *CPR r. 3.1(2)(g)*. Further, the Court of Appeal did not agree that allowing the appeal would greatly add to the workload of District Judges, and that seeking such directions would undermine the cost effectiveness of cases like this.

Coulson LJ readily dismissed the Claimant's argument that the Court had no power to order disclosure of privileged material (i.e. a draft medical report), stating at Paragraph 63 that *'The claimant's obligations under the PAP were clear … All that the defendants were seeking to do was to get the claimant to comply with those obligations'*.

Ultimately, the Defendant's appeal was allowed.

Comment

The Court has drawn a clear line between claims under the Protocol pre-issue, which are not under the Court's jurisdiction, and those for which a submission to the Court's jurisdiction has been made by issuing proceedings.

From the perspective of defendants, this decision will likely encourage challenge of stays being granted for long periods, particularly where there has been taciturnity from claimants in the build-up to limitation expiring. On the claimant side, this decision should prompt claimants to be ready to back up their need for a stay when one is requested.

In a brief concurring judgment, Andrews LJ expressed disapproval that, in practice, *'stays granted under paragraph 16.2 of PD 49F are often renewed as a matter of course, sometimes more than once, and that some district judges even grant indefinite stays'*. She stated clearly that judges *'should not be doing this'*. Going forward, hesitance by the courts to awarding automatic renewed stays and indefinite stays can probably be expected. Instead, claimants wishing renewed stays should be prepared to justify their need for one in each specific case.

As an aside, readers of the judgment will no doubt have noticed the Court's reaction to the Claimant raising other issues beyond the central question of jurisdiction. Coulson LJ considered (at paragraph 2 of his decision) *'that these satellite issues have tended to obscure the straightforward point at the heart of the appeal'*. This should serve as a warning to the unwary: focused, concise appeals and responses are likely to find greater favour with the courts than a proliferation of issues beyond the key legal question up for debate.

All in all, this decision has made clear the Court's jurisdiction to scrutinise compliance with the Protocol when proceedings are protectively issued and stays are sought to allow such compliance to take place.

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