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The New RTA Claims Process

Contents

1. What claims are included in the process?
2. How are claims valued to determine if they are included?
3. What claims are excluded?
4. Stage 1
5. Stage 2 Complicating factors
6. Stage 3
7. The Stage 3 assessment process
8. The CNF (RTA1)
9. The CNF Defendant's response section (RTA1)
10. The Settlement Pack (RTA5)
11. Children
12. What happens if the initial estimate of the value of the claim was wrong?
13. Rehabilitation
14. Claimants with limitation problems
15. Withdrawal of a Stage 2 offer

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THE NEW RTA CLAIMS PROCESS

[These notes are based on the draft *Practice Direction for Low Value Personal Injury Claims in Road Traffic Accidents*; the consequential amendments to CPR Parts 36 and 45; and the specimen "forms" that have been issued. There are material differences between the "final drafts" of this material and the earlier outline of the proposed process, as set out in the Ministry of Justice paper "*Low Value Personal Injury Claims in Road Traffic Accidents*". The notes are subject to such further amendments as may arise before the process is formally introduced.]

1. What claims are included in the process?

The process is intended to deal with road accident claims arising in England and Wales where the value of the claim is between £1,000 and £10,000 on a full liability basis and contains an element of personal injury.

The accident must have occurred on or after the implementation date (which is intended to be 30 April 2010) for the process to apply.

2. How are claims valued to determine if they included?

This is potentially quite complex and requires the claimant's solicitor to carry out a careful assessment of the potential value of the claim at a very early stage.

The bracket of £1,000 to £10,000 (defined for later purposes as *the original damages*) must include a claim for pain, suffering and loss of amenity ("PSLA") of at least £1,000, plus other special damages but *excluding* "vehicle related damages". Thus if the claim is one where if proceedings were started the small claims track would be the normal track, the process will not apply.

The rule of *res judicata* dictates that the claimant's solicitor must ensure that any vehicular damage* and hire costs (*additional damages*) are dealt with within the claim if not settled separately. As indicated above, these do not form part of the valuation of the *original* claim for the purposes of the process. Any details of these separate heads that cannot be sent with the CNF must be sent to the insurer/MIB as soon as possible and at the latest at the end of Stage 2 to be dealt with at the Stage 3 assessment (see below).

Interest is not added to any head of damage until after the total for damages has been agreed or adjudicated upon by the Court.

* Vehicular damage includes the pre-accident value of the vehicle; repair costs; and insurance excess.

3. What claims are excluded?

Contrary to the original intention the process relates only to RTA claims and not to any other types of accident. The process does not apply to RTA claims which do not satisfy the financial criteria set out above. Existing procedures and costs regimes continue to apply to such claims.

Also excluded are:

- Claims brought under the MIB *Untraced Drivers' Agreement*, although claims brought under the *Uninsured Drivers' Agreement* fall within the scheme subject to some minor differences in timescales;
- Claims where the Claimant and/or Defendant is/are deceased;
- Claims where the Claimant is bankrupt;
- Claims where the Claimant and/or Defendant s/are a Protected Party. Claims by children *can* be dealt with under the process, subject to certain special provisions (see later).

4. Stage 1

All claims will start off with the completion by the Claimant's solicitor of a *Claims Notification Form ("CNF": Form RTA1)* (See section 8 below). In the paper version this is a seventeen page form but the intention is that it will be filled in "on screen", as a key feature of the process is that it takes place electronically, using a "secure electronic exchange" or portal. Each insurer will have an electronic address to which the form should be sent.

Certain fields in the CNF are mandatory and others are optional. Mandatory fields must be completed (see later) and the Claimant must make a reasonable attempt to complete the optional boxes. For example, the Claimant *must* provide his address but not necessarily that of the Defendant. Of particular significance is question 5.3 in section F, which requires the Claimant to indicate whether or not he was wearing a seatbelt. (This is a mandatory field).

The CNF should indicate whether or not the Claimant's solicitor is also dealing with any vehicle related damages and should either attach the relevant documentary evidence or indicate when it is likely to be sent.

The form must be verified by a statement of truth although as the process is electronic the printed name of the Claimant, or his solicitor suffices for this purpose.

Once the CNF is completed it is sent to the insurer/or MIB and at the same time a modified version, *Form RTA2*, (omitting certain information about the Claimant) is sent to the Defendant by first class post. The insurer/MIB should acknowledge receipt on the next day after receipt.

A potential source of conflict will arise immediately if the insurer/MIB takes the view that the CNF has not been adequately completed. What this will mean in practice is that the information provided is not sufficient to enable the insurer to reach a view on liability in the time allowed for its response (**15 business days** excluding the day on which the CNF was sent), which cannot be extended even by agreement (**30 days** in MIB cases)). If the view taken is that the CNF is not adequately completed, the insurer/MIB will notify the Claimant and the claim will leave the process and revert to the pre-action protocol. However, if it later emerges that there was avoidable default on the part of the Claimant in completing the CNF, the solicitor will recover only the fixed costs referable to the process.

Time starts to run for the insurer on the business day after the CNF was sent by the Claimant's solicitor. Within the **15** (or MIB **30**) day period the insurer must respond by completing and returning, electronically, the response section of the CNF which occupies pages 15 to 17 in the paper form of the document. (See section 9 below).

4. Stage 1 (Cont'd)

If the insurer/MIB admits liability subject only to the Claimant's admitted seatbelt contributory negligence the claim remains in the process. Stage 1 comes to an end and costs of **£400** are payable **within 10 business days**. (Any CFA uplift is fixed at 12.5% but is not yet payable).

The claim will leave the process and re-enter the pre-action protocol if:

1. The insurer/MIB fails to respond;
2. Liability is admitted but subject to an allegation of contributory negligence other than "seat belt" (details of which must be provided in the CNF).
3. Liability is denied (reasons for the denial must be provided in the CNF).
4. It is alleged that the CNF was inadequately completed;
5. It is alleged that the claim has been overvalued and would fall to be dealt with on the small claims track;
6. Fraud is alleged (this applies at any stage of the process).
7. The fixed costs are not paid within the 10 day period, *unless* the Claimant fails to give written notice of the default to the insurer/MIB within **a further 10 days**.

If the claim leaves the process at this stage for any of these reasons it falls back into the pre-action protocol for personal injury at the beginning of the three month period for investigating the claim, *unless* the view is taken that the CNF was inadequately completed. The insurer/MIB will request a properly completed letter of claim. No Stage 1 costs are paid. After that costs are payable under the existing rules.

5. Stage 2

It follows that Stage 2 is triggered only if liability for the accident is admitted (subject to seatbelt contributory negligence) and the Stage 1 fixed costs have been paid within the time permitted.

On receipt of the insurer's/MIB's admission the Claimant's solicitor will complete the details in a *Medical Report Form* which is sent to an appropriate expert. The form, which is completed without notes except where requested by the medical expert(s), directs the expert to fill in a series of "boxes" leading to a diagnosis, opinion and prognosis section. This is followed by sections addressing the affect of any failure to wear a seatbelt; and the benefits of treatment/rehabilitation. The report is verified by a statement of truth under CPR 35.3. [However, the expert may, if he wishes, provide the report in a different format i.e. not use the form]

Where it is apparent that a report is needed from a second discipline, an expert in that field may be instructed at the same time. However, a third or fourth report may only be obtained if recommended by one of the existing experts. There is **no time limit** for obtaining the first (and if needed additional) medical report(s).

Once a report has been received by the Claimant's solicitor he must ensure that the Claimant agrees that it is factually correct and it should not be served until that is the case. Once served the claimant may not challenge factual details in the report.

Within 15 business days of the Claimant confirming that the report is factually accurate (it is difficult to see how this timescale can be "policed") the Claimant's solicitor completes the Stage 2 Settlement Pack Form ("SPF": *Form RTA5*). (See section 10 below). If there is more than one report the time runs from when the final report is approved by the Claimant. The SPF sets out in detail how the Claimant's claim is calculated (with supporting evidence) and the total sum for which the Claimant offers to settle the claim. There is a column for deducting a percentage of each head of damage for seatbelt contributory negligence. Details of disbursements claimed are sent at the same time.

The insurer has **15 business days** from the date of receiving the SPF (excluding the date on which it was sent by the Claimant's solicitor) within which to:

5. Stage 2 (Cont'd)

- accept the Claimant's offer; or
- make a counter-offer using the Defendant's section of the SPF. The insurer also has the opportunity to suggest a percentage reduction against each head of damage to reflect the seatbelt contributory negligence. This is known as the "*initial consideration period*".

The claim will leave the process if:

1. The insurer fails to respond in time, unless the parties have agreed an extension;
2. Having seen the medical evidence the insurer/MIB wishes to question or deny causation.
3. The insurer/MIB considers the claim to have been overvalued.

If the claim leaves the process at this stage it falls back into existing procedures but the pre-action protocol period is deemed to have come to an end. The fixed recoverable costs for Stage 2 are not payable.

If a counter offer is made (within the 15 day period) the Defendant is required to break down the offer and highlight areas of disagreement by completing in detail the initial defendant response section in the SPF. A global offer may be made of a higher figure than the sum of the individual heads allowed. A period of **20 business days** (*the negotiation period*) is then allowed for the Claimant to respond to the Defendant's counter-offer or for further negotiations to take place. This period may be varied by agreement. However, where one party makes an offer **5 days or less** before the end of the negotiation period (whether or not extended) there is an automatic further but final extension of that period by **5 days** (*the further consideration period*) during which no more offers may be made.

If settlement is **concluded** within any of the periods for negotiation the insurer/MIB must **within 10 days*** of the end of that period pay:

- the damages agreed net of any deductible CRU liability and any interim payment;
- any unpaid Stage 1 costs (**£400**)
- Stage 2 costs (**£800**) plus (if applicable) a CFA uplift on the costs for both Stages 1 and 2 (**12.5%**)
- the Claimant's disbursements provided they fall within the list of approved payments i.e. medical records; medical report(s); an engineer's report; DVLA and/or MID searches; any additional liabilities such as an ATE premium.

* This timescale is increased to **30 days** where at the date of settlement there is no CRU certificate in force for at least 10 days.

If settlement **cannot be achieved** Stage 2 ends and **within 15 business days** of receiving the Court Proceedings Pack (*CPP* or *RTA6*), the insurer/MIB must pay to the Claimant the full amount of the Defendant's final offer, net of CRU and any interim payment. The Stage 2 fixed costs of **£800** are also payable, together with any unpaid Stage 1 costs (**£400**) and also a payment for agreed disbursements and such sum as the Defendant considers to be reasonable where any disbursements are not agreed.

Where the insurer/MIB defaults in making these payments the claimant is entitled to commence proceedings in the usual way i.e. outside of the process.

Complicating factors

1. Subsequent medical reports and interim payments

It is accepted that in a limited number of cases follow-up medical reports may be needed. In these circumstances, following service of the initial medical report(s) and an Interim Settlement Pack Form ("ISPF" or RTA4) the parties will agree what amounts to a stay in the process until the further medical evidence is available. At this point the Claimant may request an interim payment of **£1,000** in respect of **PSLA only** which the Defendant is obliged to pay **within 10 days** of receiving the ISPF.

The Claimant may request an interim payment of more than £1,000 but must specify in the ISPF how much is requested, in respect of which heads of damage and why. (Any interim payment in excess of £1,000 cannot be on account of PSLA but must relate to some other head(s) of claim. The insurer/MIB then has three options, one of which must be adopted **within 15 days*** of receiving the ISPF:

1. Pay the full amount requested net of CRU;
2. Pay only the obligatory £1,000;
3. Pay a sum greater than £1,000 but less than the amount requested, giving reasons in the Defendant section of the ISPF for refusing the higher sum.

* The 15 day period is extended to **30 days** where there is no CRU certificate in force for at least 10 days.

If the insurer/MIB fails to make payment at all or refuses the higher interim payment the Claimant may give notice that the claim will leave the process and proceedings may be commenced. However, the Claimant's solicitor must give notice that the claim is to leave the process on these grounds **within 10 days** of the insurer/MIB's default or refusal to pay the higher amount requested, or the claim remains within the process.

Where the claim leaves the process to enable the Claimant to pursue a higher interim payment an application may be made but if the Court does not award a sum greater than that offered by the insurer/MIB the Claimant's costs will be limited to those payable at the end of Stage 2.

2. Where agreement can be reached on the original or additional damages claims but not both

There is a broad assumption within the draft rules that *additional damages* (i.e. those relating to vehicular damage) will be dealt with and settled by the by insurers, by the end of Stage 2, outside of the process. However, where that has not happened the two claims need to be unified in the hopes that they can be determined by an assessment within the process. Where by the end of Stage 2 (i.e. the end of all negotiations) the Claimant's solicitor has not already provided full details of the *additional damages* he must now do so by amending the SPF. There is no time limit on this exercise but when the amended SPF is re-served the Claimant must also make an amended settlement offer. The insurer must **within 15 days** agree the offer or make a counter offer, detailing why a particular head of damage has been reduced. The following timescales then apply:

1. Original and additional damages agreed – insurer pays all damages and costs **within 10 days***
2. Original damages not agreed but additional damages are agreed – insurer pays agreed *additional damages* **within 10 days*** and Claimant proceeds to Stage 3 of the process.
3. Original damages are agreed but additional damages are not agreed – insurer pays agreed *original damages* **within 10 days*** and Claimant is at liberty to commence proceedings outside of the process to recover the *additional damages*.

Where the insurer makes a payment in accordance with any of the above that payment should include, in addition to the damages (net of CRU and any interim payment) any unpaid Stage 1 costs (**£400**); Stage 2 costs (**£800**); disbursements; the CFA success fee on the Stages 1 and 2 costs, if applicable (**12.5%**).

Complicating factors (Cont'd)

If the payment is in accordance with 3, the uplift of 12.5% is not payable.

* The 10 day period is extended to **30 days** where there is no CRU certificate in force for at least 10 days.

3. Stage 2 settlements involving children

As with any claim involving a child no settlement is binding unless approved by the Court. The process does not permit interim payments to be made to infants, save by way of payment direct to a *treatment provider*. Should an infant Claimant require an interim payment the claim will fall outside the process and proceedings will be required to facilitate the necessary application.

The process provides for various outcomes where settlement is agreed, subject to Court approval, during Stage 2.

Where application is made to approve the settlement and:

1. The Court approves the settlement – the insurer/MIB will pay the agreed damages as directed by the Court and Stage 1 and 2 fixed costs (**£400 + £800**); Stage 3 fixed costs (solicitor's costs **£250**); advocate's costs (**£250**); costs for the advice in support of the settlement (**£150**); disbursements; a success fee where a CFA is in place of **12.5%** on the fixed fees for all stages.
2. The Court does not approve the settlement – the insurer pays only the fixed fees for Stages 1 and 2 (**£400 + £800**) but no disbursements or CFA uplift.
3. Having refused approval at a first hearing, the Court does so at a second hearing – the insurer/MIB pays the damages as directed by the Court; and: the disbursements; the solicitor's costs (**£250**); the advice fee (**£150**); and an advocate's fee for one of the hearings (**£250**); and where a CFA is in place a success fee on all of the fixed costs (**12.5%**).

But: in addition the Court has discretion either:

- to order the insurer/MIB to pay an additional sum or sums in respect of solicitor's fees (**£250**) and/or advocate's fees (**£250**); and a success fee of **12.5%**; or
- to order the Claimant to pay to the Defendant solicitor's costs of **£250** and/or advocates fees of **£250**.

6. Stage 3

If all timescales have been adhered to but the parties cannot agree quantum an assessment of damages by the Court is required. **Within 15 business days** of the end of Stage 2 (including any extension brought about by the amendment to include *additional damages*), the Claimant's solicitor should send to the insurer/MIB the Stage 3 Court Proceedings Pack ("*CPP*" or *RTA6*).

Part A of the CPP requires the parties to insert figures against the same set of sub-headings as in the SPF and ISPF but neither set of figures is totalled. Part B of the CPP (*RTA7*) provides for each party to record its final offer to the other but this part of the form goes to the Court in a sealed envelope. There is also provision in the CPP for the insurer/MIB to indicate why it disputes certain disbursements.

The insurer/MIB has **5 business days** in which to complete and return the CPP to the Claimant's solicitor, in default of which the Claimant's solicitor may proceed to apply for a Court assessment of damages.

If it becomes apparent that technical arguments have arisen, for example, about credit hire agreements the claim will leave the process.

7. The Stage 3 assessment process

The proceedings are commenced by the Claimant issuing a modified Part 8 Claim Form which confirms that the claim has been conducted under the process. It is filed with the Court with copies of the CPP Parts A and B; the medical report(s); the evidence to support the special damages claimed; evidence of the disbursements claimed; and any notice of a CFA. No evidence may be relied upon that has not previously passed between the parties during the process. On the claim form the Claimant indicates whether the assessment is to be on paper or whether a hearing is requested.

The claim form and supporting documents are served on the insurer/MIB which is required **not more than 14 days** after service of the claim form to file an Acknowledgment of Service, together with any notice of a CCFA. The insurer/MIB should also file with the Form of Acknowledgment, *or as soon as possible thereafter*, a valid CRU certificate. The Form of Acknowledgment may be completed by the insurer/MIB or by an appointed solicitor.

Unless the insurer/MIB disputes (on a variety of grounds) that the claim should continue under the process, the primary concern when completing the Form of Acknowledgment will be whether or not to agree to the form of assessment suggested by the Claimant (i.e. paper only or at a hearing).

It is anticipated that save where an infant is involved this will mostly be a paper only procedure unless the Judge orders otherwise.

Where seatbelt contributory negligence is in issue the percentage deduction to be made will be determined by the Judge but if factual evidence is required the claim will leave the process.

The Court will notify the parties of its decision with written reasons. As the offers made by the parties and the award made by the Court are exclusive of interest it will be for the parties to calculate and agree the interest payable. Each party's final offer has the status of a **Part 36 offer** and becomes effective for the purposes of Part 36 **on the first business day after** the CPP has been sent to the insurer/MIB.

Stage 3 costs are payable of **£250** where it is a paper only assessment; and an additional advocate's fee of **£250** where it is an oral hearing; with a CFA uplift of **100%** if the Defendant fails to "beat" the Claimant's offer. The 100% uplift applies only to the Stage 3 fixed costs and not to Stages 1 or 2. In addition the Court may award interest on the damages awarded at up to **10% above base rate** for some or all of the relevant period and interest on the fixed costs awarded also at **10% above base rate**. Any outstanding disbursements are also payable.

Where the Claimant "beats" the Defendant's offer but recovers less than his own offer the Defendant pays the fixed costs of **£250** or **£500** with an uplift of **100%** if a CFA is in place. Any outstanding disbursements are also payable.

In the event that the Claimant fails to "beat" the Defendant's final offer Stage 3 costs of **£250** or **£500** are payable by the Claimant's solicitor to the insurer/MIB with an uplift of **100%** if a CCFA is in place. Any relevant disbursements are payable in addition plus interest on the costs from the relevant date i.e. **the first business day after** the CPP has been sent to the insurer/MIB.

Children's claims in Stage 3

The permutations here are even greater than for Stage 2. The rules deal with a variety of possibilities after Stage 3 proceedings have been issued for quantum to be assessed.

1. Settlement after service of the CPP but before the assessment hearing and the Court approves the settlement

7. The Stage 3 assessment process (Cont'd)

The insurer/MIB pays the damages as directed plus the fixed costs for stages 1 and 2 (**£400 + £800**); the solicitor's, advocates and advice fees (**£250 + 250 + 150**); disbursements; and where a CFA is in place an uplift of **12.5%**.

2. The Court does not approve the settlement – the insurer pays only the fixed fees for Stages 1 and 2 (**£400 + £800**) but no disbursements or CFA uplift.
3. Having refused approval at a first hearing, the Court does so at the Stage 3 hearing – the insurer/MIB pays the damages as directed by the Court; and: the disbursements; the solicitor's costs (**£250**); the advice fee (**£150**); and an advocate's fee for one of the hearings (**£250**); and where a CFA is in place a success fee on all of the fixed costs (**12.5%**).

But: in addition the Court has discretion either:

- to order the insurer/MIB to pay an additional sum or sums in respect of solicitor's fees (**£250**) and/or advocate's fees (**£250**); and a success fee of **12.5%**; or
 - to order the Claimant to pay to the Defendant solicitor's costs of **£250** and/or advocates fees of **£250**.
4. Where the settlement is not approved at the Stage 3 hearing – the insurer/MIB will be ordered to pay the solicitor's costs of **£250** but the claim is likely then to leave the process.
 5. Where at an approval or Stage 3 hearing the Court deems the claim unsuitable for the process

The claim will leave the process and directions will be given for it to continue on the fast track. The insurer/MIB will pay the Stage 1 and 2 fixed cost (**£400 + £800**); the Stage 3 fixed costs of the solicitor's fees, advocates fees, and advice fee (**£250 + £250 + £150**) but no disbursements or CFA uplift where appropriate.

8. The CNF (RTA1)

The CNF requires the Claimant's solicitor to provide comprehensive details about the claim, including details relating to vehicle damage and any requirement for a replacement vehicle. It is divided into the following sections:

Representatives details

- A: Claimant's details;
- B: Injury and medical details;
- C: Rehabilitation – the Claimant's solicitor is required to address any need for rehabilitation;
- D: (Vehicle) Repairs and insurance details
- E: Alternative vehicle provision i.e. the need for a replacement vehicle;
- F: Accident details – relating to Claimant's status as driver or passenger (with or without seatbelt), pedestrian or cyclist;
- G: Accident time, location and description;
- H: For MIB claims only
- I: Other party details i.e. parties other than the Claimant and Defendant
- J: For accidents involving buses or coaches;
- K; The Claimant's views on liability;
- L: Funding – relating to any CFA, ATE insurance or other third party funding;
- M: Other relevant information
- N: Statement of Truth.

9. The CNF Defendant's response section (RTA1)

This is divided into the following sections:

Confirmation of the capacity in which the insurer is handling the claim – contractual insurer, RTA insurer, Article 75 insurer or MIB.

- A: Liability/causation – admission or denial (with reasons)
- B1: Insurer's attitude to rehabilitation
- B2: Insurer's actions (if any) in relation to provision of a replacement vehicle
- C. Response information – relevant dates and contact details

10. The Settlement Pack (RTA5)

As indicated above, there are two settlement packs: the Settlement Pack Form ("SPF") for when the medical evidence is complete and the Interim Settlement Pack Form ("ISPF"/RTA4) for when further medical evidence is indicated. Half of each form is for completion by the claimant and the other is for the Defendant's response.

The forms provide for the following heads of damages to be entered:

- Policy excess
- Loss of use
- Car Hire
- Repair costs
- Fares (taxi, buses, tube, etc)
- Medical expenses
- Clothing
- Care/services
- Loss of earnings (claimant and/or employer)
- Other losses
- General damages.

The Claimant is required to indicate whether or not a claim is made under each sub-heading; the evidence attached in support; the rate of interest claimed (although there is no requirement to calculate the interest); and the amount claimed. There is a column in which the Claimant is invited to indicate the percentage discount to be applied for seatbelt contributory negligence.

On its half of the CPP the insurer/MIB is required to indicate if each item is agreed; if not, what alternative sum is offered; and the amount in dispute. There is room for comments to be added.

On the SPF the Claimant then totals his items claimed, discounts it by any deduction for seatbelt contributory negligence and the resulting figure constitutes the Claimant's opening offer. Correspondingly, if the Defendant does not accept the Claimant's offer, the (net) total of its figures constitute its counter offer.

The ISPF is very similar save that each side of the form records the parties' figures to date but there is no offer or counter offer, although the Defendant's figures are shown as "losses offered to date".

11. Children

As with any case involving a minor the Claimant's solicitor must be satisfied that the person providing instructions is a suitable person to do so.

Otherwise the process is different from a claim involving an adult in the following respects:



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Page 10 of 10

11. Children (Cont'd)

- The CNF must indicate that the Claimant is an infant
- No interim payments may be made. If an interim payment is required the claim leaves the process.

Any settlement must be approved by the Court

12. What happens if the initial estimate of the value of the claim was wrong?

This primarily concerns the assessment of PSLA. If it becomes apparent that the value of PSLA will not exceed £1,000 the claim will leave the process. The rules provide that in all cases the Stage 1 and 2 fixed recoverable costs will be paid where it was reasonable for the Claimant's solicitor to believe that PSLA would exceed £1,000.

Where it becomes apparent that the value of PSLA will take the claim above the £10,000 limit the claim will exit the process on the Claimant notifying the Defendant of the revaluation. However, if it later proves to be the case that the revaluation was not reasonable the Claimant's solicitor's costs will be restricted to the maximum fixed costs available under the scheme.

13. Rehabilitation

The Claimant and Defendant sections of the CNF require the parties to consider whether the Claimant has any need for rehabilitation that has not already been met. This should be considered in the light of the *Code of Best Practice for Rehabilitation*.

14. Claimants with limitation problems

Where a Claimant is faced with limitation problems the rules permit the Part 8 Claim Form to be issued but with a request that the proceedings are stayed. The Claim Form and Order imposing the stay are served on the insurer/MIB and the process is then engaged. The stay is subsequently lifted if a Part 3 assessment is required.

15. Withdrawal of a Stage 2 offer

This is permitted only when the overall (extended) negotiation period comes to an end. The affect is that the claim leaves the process but the Claimant is then at liberty to commence proceedings under the existing procedural rules.