

During the course of proceedings you may wish to reach a settlement with the other party. This can be by way of a Part 36 offer. A Part 36 offer can be an offer to settle the whole or part of any claim or any issue that arises in a claim. Either party can make a Part 36 offer.

FORM AND CONTENT OF A PART 36 OFFER

A Part 36 offer must:

- be in writing
- make it clear that the offer is made pursuant to Part 36
- state whether it relates to the whole of the claim or a part of the claim or any issue,
- state whether it takes into account any counterclaim; and
- state that it is open for acceptance for a period of not less than 21 days (“Period of Acceptance”)

DEFENDANT’S PART 36 OFFER

A defendant’s Part 36 offer must:

- be an offer to pay a single sum of money, and not an offer to pay by installments
- be paid within 14 days of acceptance, unless the claimant agrees at the time that the offer is made that payment can be at a later date.

A Defendant who is also pursuing a counterclaim is able to make a Part 36 offer in respect of the counterclaim. The counterclaim will be treated as a claim for the purposes of Part 36.

MAKING PAYMENT

If a defendant fails to make payment within 14 days of acceptance, or such longer period as the parties agree in writing, judgment for the unpaid sum can be entered. The defendant will also lose the costs protection of Part 36.

TIME FOR ACCEPTANCE

A Part 36 offer is capable of acceptance at any time before the start of the trial, unless it has been properly withdrawn.

Part 36 offers can be time limited and are automatically withdrawn when a specific date is reached. Such an offer, once lapsed would not have the consequences provided for by Part 36.

WITHDRAWING AN OFFER

A party can amend or withdraw a Part 36 offer before the Period of Acceptance expires by serving a notice on the other side.

Once a notice is served, the receiving party can either:

- Allow the original offer to lapse in which case amendments will take effect from expiry of the original Period of Acceptance.
- Accept the original offer within the original Period of Acceptance. This means the offeror would have to apply to the court (within 7 days of acceptance) for permission to amend or withdraw its original offer. The court has discretion to allow the offer to be amended or withdrawn, but would have to be satisfied there has been a change of circumstances since making the original offer and that the interests of justice are served.

Once withdrawn, an offer will not have the beneficial costs consequences provided by Part 36.

THE EFFECT OF ACCEPTANCE OF A PART 36 OFFER

If the offer relates to the whole of the claim, and it is accepted, the claim will be stayed. In this case either party may apply to enforce the terms of settlement without needing to issue new proceedings.



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COST CONSEQUENCES OF ACCEPTING A PART 36 OFFER

Where an offer is accepted within the Period of Acceptance, the claimant will be entitled to his costs of the proceedings up to the date of serving notice of acceptance.

Where:

- a Part 36 offer that is made less than 21 days before the start of the trial is accepted ; or
- a Part 36 offer is accepted after the expiry of the Period of Acceptance,

if the parties do not agree the liability for costs, the court will make an order as to costs.

Where an offer has been accepted outside of the Period of Acceptance, unless the court orders otherwise, the claimant will be entitled to his costs of the proceedings to the date when the Period of Acceptance expired, and the offeror will be entitled to his costs for the period from the expiry of the Period of Acceptance.

Costs will be payable on a standard basis, which means that the court will resolve any doubt as to whether the costs were reasonably incurred or were reasonable in amount in favour of the paying party.

COSTS CONSEQUENCES FOLLOWING JUDGMENT

If, at trial:

- The defendant is held to be liable for a greater amount; or
- The judgment against the defendant is at least as advantageous to the claimant as the proposals contained in the claimant's Part 36 offer;

then unless it considers it unjust to do so, the court may order the defendant to pay:

- Interest on any award at up to 10% above base rate.
- The claimant's costs on the (more generous) indemnity basis from the date the Period of Acceptance expired,
- Interest on those costs at up to 10% above base rate.
- An additional amount will be added, calculated as 10% of the judgment amount for judgments up to £500,000 and for judgments over £500,000 10% of the first £500,000 and 5% of any amount above that figure, subject to a limit of £75,000.

If at trial, a claimant fails to do better than a defendant's Part 36 offer or fails to obtain a judgment which is more advantageous than a defendant's Part 36 offer, then unless it considers it unjust to do so, the court will order the claimant to pay any costs incurred by the defendant from the date on which the Period of Acceptance expired together with interest on those costs.

THIS LEAFLET HAS BEEN PRODUCED TO PROVIDE GENERAL GUIDANCE ONLY. IF YOU REQUIRE SPECIFIC ADVICE THAT WILL BE TAILORED TO YOUR CASE, PLEASE SPEAK TO A MEMBER OF THE TEAM.