

## The Implications of Part 36 Settlement Offers

Harminder Sandhu, managing director and head of Dispute Resolution at Hawkins Hatton provides some guidance on the consequences of using Part 36 of the Civil Procedure Rules to settle claims.

A Part 36 offer is one of the most powerful tools available to resolve an expensive litigation claim. Generally costs are a matter for the Court's discretion, however, a Part 36 offer will have prescribed cost consequences.

If the judgement provides that a valid Part 36 offer should have been accepted then the declining party will be penalised on costs for proceeding to trial. The range of penalties depends on:

- (i) the outcome at trial; and
- (ii) whether the Part 36 offer was made by a Claimant or a Defendant.

If a Claimant made the Part 36 offer, there are three possible outcomes:

- The Claimant loses at trial - usually the Claimant would be liable for a proportion of the Defendant's legal costs and their own.
- The Claimant succeeds at trial and is awarded a sum less than their own Part 36 offer – the Claimant would receive damages and generally a proportion of their costs.
- The Claimant succeeds at trial and is awarded a sum more than their Part 36 offer – the Defendant would be penalised for not accepting the Part 36 offer by having to pay the Claimant:
  - Interest on the sum awarded at a rate not exceeding 10% above base rate ("Interest Rate") from the end of 21 days after the offer was made up to trial ("Relevant Period");
  - Costs on an indemnity basis for the Relevant period;
  - Interest on those costs at the Interest Rate; and
  - An additional sum not exceeding £75,000.

If a Defendant made the Part 36 offer, the consequences are:

- The Defendant succeeds at trial – they would recover a proportion of their costs from the Claimant.
- The Defendant loses at trial and Claimant is awarded a sum more than the Defendant's Part 36 offer – the Claimant would receive damages and a proportion of their costs.
- The Defendant loses at trial and Claimant is awarded a sum less than the Defendant's Part 36 offer - Claimant will have to pay the Defendant's costs during the Relevant Period and interest on those costs as a penalty for not accepting the offer.

The costs sanctions associated with rejecting a Part 36 offer and subsequently losing at trial makes this a key weapon to resolve claims. Equally a party who carefully considers the level at which to pitch a Part 36 offer affords itself considerable costs protection.

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