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Part 36 Offers: What you need to know

What is a Part 36 Offer?

- Part 36 is a provision in the Civil Procedure Rules which governs the conduct of litigation.
- It aims to encourage parties to try to settle their disputes and can be made by either a claimant or defendant.
- Basically, if a party fails to accept a realistic Part 36 Offer (an "offer"), it risks being penalised in costs and interest at the end of the case.
- Making such an offer is designed to put pressure on the opponent to settle and should not be seen as a sign of weakness.
- If you decide to make an offer, it has to specify a period of at least 21 days, within which there will be a liability for costs if the offer is accepted.

Withdrawing or varying a Part 36 Offer

- An offer can be time-limited to automatically be withdrawn by a set date. This can increase pressure on an opponent.
- Offers can be withdrawn or varied by serving a separate written notice, but you may need the court's permission, depending upon when this is done.
- However, withdrawing or varying an offer risks your losing the costs and consequences set out in the initial offer.
- It is very important to keep any offers made under review at all times and, if circumstances change, to consider whether they need to be withdrawn or varied.

Part 36 costs consequences on acceptance

- If you make an offer and your opponent accepts it within the relevant period, they will have to pay the settlement sum and your legal costs, to be assessed if not agreed up to the date of service of the notice of acceptance.
- If your opponent accepts the offer after the relevant period has expired, then unless the parties can agree to the liability for costs, the court will make a costs order, usually being that the opponent pays your legal costs to the date of acceptance.

Part 36 costs consequences on rejection

- If your opponent fails to accept or rejects your offer and the matter proceeds to trial, the trial judge will not be told about the offer until the case has been decided.
- If you obtain a judgment which is equal to or more advantageous than your offer at trial, your opponent will have to pay you whatever the court awards you, and unless it considers it unjust, the court will also order them to pay:
    - Interest on the whole or part of any award at a rate of up to 10% above the base rate from the date on which the relevant period expires.
    - Your legal costs, with those costs incurred after the expiry of the relevant period, are assessed on what is called the "indemnity basis". This means that your opponent would have to pay all of your reasonable costs for that period, with any doubt in relation to those costs being resolved in your favour.
    - Interest on those costs at a rate of up to 10% above the base rate for the same period.
    - An additional amount of 10% of the damages awarded for awards of up to £500,000.
    - For awards above £500,000, 10% of the first £500,000 of damages awarded and 5% of any damages awarded above that figure, up to an overall limit of £75,000.
- If your opponent rejects your offer and you go on to do less well at trial, costs will be decided in the usual way, which normally means that the unsuccessful party will be ordered to pay the successful party's costs.
- However, costs are always at the court's discretion, and it may consider the conduct of all of the parties and whether a party has succeeded on the part of its case, even if it has not been wholly successful when making any order.
- This means that if you lose your case, you will be liable to pay our costs, and you will probably also be ordered to pay your opponent's costs. Your Part 36 Offer will be of no assistance in these circumstances.