

# PRACTICE DIRECTION – OFFERS TO SETTLE AND PAYMENTS INTO COURT

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 36

### PART 36 OFFERS AND PART 36 PAYMENTS

- 1.1 A written offer to settle a claim<sup>1</sup> or part of a claim or any issue that arises in it made in accordance with the provisions of Part 36 is called:
  - (1) if made by way of a payment into court, a Part 36 payment<sup>2</sup>, or
  - (2) if made otherwise, a Part 36 offer<sup>3</sup>.
- 1.2 A Part 36 offer or Part 36 payment has the costs and other consequences set out in rules 36.13, 36.14, 36.20 and 36.21.
- 1.3 An offer to settle which is not made in accordance with Part 36 will only have the consequences specified in that Part if the court so orders and will be given such weight on any issue as to costs as the court thinks appropriate<sup>4</sup>.

### PARTIES AND PART 36 OFFERS

- 2.1 A Part 36 offer, subject to paragraph 3 below, may be made by any party.
- 2.2 The party making an offer is the ‘offeror’ and the party to whom it is made is the ‘offeree’.
- 2.3 A Part 36 offer may consist of a proposal to settle for a specified sum or for some other remedy.
- 2.4 A Part 36 offer is made when received by the offeree<sup>5</sup>.
- 2.5 An improvement to a Part 36 offer is effective when its details are received by the offeree<sup>6</sup>.

### PARTIES AND PART 36 PAYMENTS

- 3.1 An offer to settle for a specified sum made by a defendant<sup>7</sup> must, in order to comply with Part 36, be made by way of a Part 36 payment into court<sup>8</sup>.

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1 Includes Part 20 claims.

2 See rule 36.2(1)(a).

3 See rule 36.2(1)(b).

4 See rule 36.1(2).

5 See rule 36.8(1).

6 See rule 36.8(3).

7 Includes a respondent to a claim or issue.

8 See rule 36.3(1).

- 3.2 A Part 36 payment is made when the Part 36 payment notice is served on the claimant<sup>9</sup>.
- 3.3 An increase to a Part 36 payment will be effective when notice of the increase is served on the claimant<sup>10</sup>.
- (For service of the Part 36 payment notice see rule 36.6(3) and (4).)
- 3.4 A defendant who wishes to withdraw or reduce a Part 36 payment must obtain the court's permission to do so.
- 3.5 Permission may be obtained by making an application in accordance with Part 23 stating the reasons giving rise to the wish to withdraw or reduce the Part 36 payment.

## **MAKING A PART 36 PAYMENT**

- 4.1 To make a Part 36 payment the defendant must file the following documents:
- (1) where that court is a county court or a district registry –
    - (a) the Part 36 payment notice, and
    - (b) the payment, usually a cheque made payable to Her Majesty's Paymaster General,
 with the court, and
  - (2) where that court is the Royal Courts of Justice –
    - (a) the Part 36 payment notice with the court, and
    - (b) the payment, usually a cheque made payable to the Accountant General of the Supreme Court, and
    - (c) a sealed copy of the Claim Form,
    - (d) the Court Funds Office form 100 with the Court Funds Office.

## **PART 36 OFFERS AND PART 36 PAYMENTS – GENERAL PROVISIONS**

- 5.1 A Part 36 offer or a Part 36 payment notice must:
- (1) state that it is a Part 36 offer or that the payment into court is a Part 36 payment, and
  - (2) be signed by the offeror or his legal representative<sup>11</sup>.
- 5.2 The contents of a Part 36 offer must also comply with the requirements of rule 36.5(3), (5) and (6).

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<sup>9</sup> See rule 36.8(2).

<sup>10</sup> See rule 36.8(4).

<sup>11</sup> For the definition of legal representative see rule 2.3.

- 5.3 The contents of a Part 36 payment notice must comply with rule 36.6(2) and, if rule 36.23 applies, with rule 36.23(3).
- 5.4 A Part 36 offer or Part 36 payment will be taken to include interest unless it is expressly stated in the offer or the payment notice that interest is not included, in which case the details set out in rule 36.22(2) must be given.
- 5.5 Where a Part 36 offer is made by a company or other corporation, a person holding a senior position in the company or corporation may sign the offer on the offeror's behalf, but must state the position he holds.
- 5.6 Each of the following persons is a person holding a senior position:
  - (1) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation, and
  - (2) in respect of a corporation which is not a registered company, in addition to those persons set out in (1), the mayor, chairman, president, town clerk or similar officer of the corporation.

## **CLARIFICATION OF PART 36 OFFER OR PAYMENT**

- 6.1 An offeree may apply to the court for an order requiring the offeror to clarify the terms of a Part 36 offer or Part 36 payment notice (a clarification order) where the offeror has failed to comply within 7 days with a request for clarification<sup>12</sup>.
- 6.2 An application for a clarification order should be made in accordance with Part 23.
- 6.3 The application notice should state the respects in which the terms of the Part 36 offer or Part 36 payment notice, as the case may be, are said to need clarification.

## **ACCEPTANCE OF A PART 36 OFFER OR PAYMENT**

- 7.1 The times for accepting a Part 36 offer or a Part 36 payment are set out in rules 36.11 and 36.12.
- 7.2 The general rule is that a Part 36 offer or Part 36 payment made more than 21 days before the start of the trial may be accepted within 21 days after it was made without the permission of the court. The costs consequences set out in rules 36.13 and 36.14 will then come into effect.
- 7.3 A Part 36 offer or Part 36 payment made less than 21 days before the start of the trial cannot be accepted without the permission of the court unless the parties agree what the costs consequences of acceptance will be.

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<sup>12</sup> See rule 36.9(1) and (2).

- 7.4 The permission of the court may be sought:
- (1) before the start of the trial, by making an application in accordance with Part 23, and
  - (2) after the start of the trial, by making an application to the trial judge.
- 7.5 If the court gives permission it will make an order dealing with costs and may order that, in the circumstances, the costs consequences set out in rules 36.13 and 36.14 will apply.
- 7.6 Where a Part 36 offer or Part 36 payment is accepted in accordance with rule 36.11(1) or rule 36.12(1) the notice of acceptance must be sent to the offeror and filed with the court.
- 7.7 The notice of acceptance:
- (1) must set out –
    - (a) the claim number, and
    - (b) the title of the proceedings,
  - (2) must identify the Part 36 offer or Part 36 payment notice to which it relates, and
  - (3) must be signed by the offeree or his legal representative (see paragraphs 5.5 and 5.6 above).
- 7.8 Where:
- (1) the court's approval, or
  - (2) an order for payment of money out of court, or
  - (3) an order apportioning money in court –
    - (a) between the Fatal Accidents Act 1976 and the Law Reform (Miscellaneous Provisions) Act 1934, or
    - (b) between the persons entitled to it under the Fatal Accidents Act 1976, is required for acceptance of a Part 36 offer or Part 36 payment, application for the approval or the order should be made in accordance with Part 23.
- 7.9 The court will include in any order made under paragraph 7.8 above a direction for;
- (1) the payment out of the money in court, and
  - (2) the payment of interest.
- 7.10 Unless the parties have agreed otherwise:
- (1) interest accruing up to the date of acceptance will be paid to the offeror, and
  - (2) interest accruing as from the date of acceptance until payment out will be paid to the offeree.

- 7.11 A claimant may not accept a Part 36 payment which is part of a defendant's offer to settle the whole of a claim consisting of both a money and a non-money claim unless at the same time he accepts the offer to settle the whole of the claim. Therefore:
- (1) if a claimant accepts a Part 36 payment which is part of a defendant's offer to settle the whole of the claim, or
  - (2) if a claimant accepts a Part 36 offer which is part of a defendant's offer to settle the whole of the claim,

the claimant will be deemed to have accepted the offer to settle the whole of the claim<sup>13</sup>.

(See paragraph 8 below for the method of obtaining money out of court.)

## PAYMENT OUT OF COURT

- 8.1 To obtain money out of court following acceptance of a Part 36 payment, the claimant should file a request for payment with the court<sup>14</sup>.
- 8.2 The request for payment should contain the following details:
- (1) where the party receiving the payment –
    - (a) is legally represented –
      - (i) the name, business address and reference of the legal representative, and
      - (ii) the name of the bank and the sort code number, the title of the account and the account number where the payment is to be transmitted, and
  - (2) where the party is acting in person –
    - (a) his name and address, and
    - (b) his bank account details as in (ii) above.
- 8.3 Where the request for payment is made to the Royal Courts of Justice, the claimant should also complete Court Funds Office form 201 and file it in the Court Funds Office.
- 8.4 Subject to paragraph 8.5(1) and (2), if a party does not wish the payment to be transmitted into his bank account or if he does not have a bank account, he may send a written request to the Accountant-General for the payment to be made to him by cheque.
- 8.5 Where a party seeking payment out of court has provided the necessary information, the payment:

13 See rule 36.4.

14 In practice form N243.

- (1) where a party is legally represented, must be made to the legal representative,
- (2) if the party is not legally represented but is, or has been, in receipt of legal aid in respect of the proceedings and a notice to that effect has been filed, should be made to the Legal Aid Board by direction of the court,
- (3) where a person entitled to money in court dies without having made a will and the court is satisfied –
  - (a) that no grant of administration of his estate has been made, and
  - (b) that the assets of his estate, including the money in court, do not exceed in value the amount specified in any order in force under section 6 of the Administration of Estates (Small Payments) Act 1965,

may be ordered to be made to the person appearing to have the prior right to a grant of administration of the estate of the deceased, e.g. a widower, widow, child, father, mother, brother or sister of the deceased.

## FOREIGN CURRENCY

- 9.1 Money may be paid into court in a foreign currency:
  - (1) where it is a Part 36 payment and the claim is in a foreign currency, or
  - (2) under a court order.
- 9.2 The court may direct that the money be placed in an interest bearing account in the currency of the claim or any other currency.
- 9.3 Where a Part 36 payment is made in a foreign currency and has not been accepted within 21 days, the defendant may apply for an order that the money be placed in an interest bearing account.
- 9.4 The application should be made in accordance with Part 23 and should state:
  - (1) that the payment has not been accepted in accordance with rule 36.11, and
  - (2) the type of currency on which interest is to accrue.

## COMPENSATION RECOVERY

- 10.1 Where a defendant makes a Part 36 payment in respect of a claim for a sum or part of a sum:
  - (1) which falls under the heads of damage set out in column 1 of Schedule 2 of the Social Security (Recovery of Benefits) Act 1997 in respect of recoverable benefits received by the claimant as set out in column 2 of that Schedule, and

- (2) where the defendant is liable to pay recoverable benefits to the Secretary of State, the defendant should obtain from the Secretary of State a certificate of recoverable benefits and file the certificate with the Part 36 payment notice.
- 10.2 If a defendant wishes to offer to settle a claim where he has applied for but not yet received a certificate of recoverable benefits, he may, provided that he makes a Part 36 payment not more than 7 days after he has received the certificate, make a Part 36 offer which will have the costs and other consequences set out in rules 36.13 and 36.20.
- 10.3 The Part 36 payment notice should state in addition to the requirements set out in rule 36.6(2):
- (1) the total amount represented by the Part 36 payment (the gross compensation),
  - (2) that the defendant has reduced this sum by £ , in accordance with section 8 of and Schedule 2 to the Social Security (Recovery of Benefits) Act 1997, which was calculated as follows:
 

Name of benefit	Amount
and	
  - (3) that the amount paid in, being the sum of £ is the net amount after the deduction of the amount of benefit.
- 10.4 On acceptance of a Part 36 payment to which this paragraph relates, a claimant will receive the sum in court which will be net of the recoverable benefits.
- 10.5 In establishing at trial whether a claimant has bettered or obtained a judgment more advantageous than a Part 36 payment to which this paragraph relates, the court will base its decision on the gross sum specified in the Part 36 payment notice.

## GENERAL

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- 11.1 Where a party on whom a Part 36 offer, a Part 36 payment notice or a notice of acceptance is to be served is legally represented, the Part 36 offer, Part 36 payment notice and notice of acceptance must be served on the legal representative.
- 11.2 In a claim arising out of an accident involving a motor vehicle on a road or in a public place:
- (1) where the damages claimed include a sum for hospital expenses, and
  - (2) the defendant or his insurer pays that sum to the hospital under section 157 of the Road Traffic Act 1988, the defendant must give notice of that payment to the court and all the other parties to the proceedings.
- 11.3 Money paid into court:

- (1) as a Part 36 payment which is not accepted by the claimant, or
- (2) under a court order,

will be placed after 21 days in a basic account<sup>15</sup> (subject to paragraph 11.4 below) for interest to accrue.

11.4 Where money referred to in paragraph 11.3 above is paid in in respect of a child or patient it will be placed in a special investment account<sup>16</sup> for interest to accrue.

(A practice direction supplementing Part 21 contains information about the investment of money in court in respect of a child or patient.)

(Practice directions supplementing Part 40 contain information about adjustment of the judgment sum in respect of recoverable benefits, and about structured settlements.)

(A practice direction supplementing Part 41 contains information about provisional damages awards.)

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15 See rule 26 of the Court Funds Office Rules 1987.

16 See rule 26 as above.