

CONSEQUENCES & WITHDRAWAL OF CPR PART 36 OFFERS & PAYMENTS

1. Acceptance - when court permission required

- P36 Offer not accepted in 21 days & no agreement reached on costs (36.5, 36.11, 36.12; Capital Bank v Stickland, 2004).
- P36 Offer less than 21 days before trial & no agreement reached on costs (36.5, 36.11).
- Pre-action offer to be accepted after proceedings started (36.10).
- P36 Payment to be accepted in money claim which D offered before proceedings started (36.10).
- P36 Offer/Payment by one of several Ds sued jointly or in the alternative who won't agree to C accepting & discontinuing against them (36.17).
- Claims within CPR 21.10 (by/against children/patients) (36.18).
- P36 Payment to be accepted after a defence of tender before claim (36.18).

2. Acceptance - when court permission not required

- If C accepts D's P36 Offer/Payment or D accepts C's P36 Offer:
 - C is entitled to costs of the proceedings to the date of serving NOA (36.13, 36.14)
 - Claim stayed (36.15)
 - In case of P36 Offer, stay is on the terms of the P36 Offer which can be enforced without a new claim (36.15).
- If the P36 Offer/Payment relates to part of claim & C abandons the rest when serving NOA, as above but C is only entitled to costs unless the court otherwise orders (36.13).
- If P36 Offer/Payment relates to part of claim only (36.15):
 - Claim stayed as to that part only
 - Unless parties agree, the court decides costs
- If the P36 Offer/Payment is made by one but not all Ds sued severally, C may continue against the other Ds "if he is entitled to do so" (36.17).

3. Rejection - C fails to beat D's P36 Offer/Payment

- Court will order C to pay D's costs from date D's Offer/Payment could have been accepted without permission, unless unjust to do so (36.20).
- In normal circumstances D's costs are payable on the standard basis; indemnity costs can be awarded if other circumstances justify it (Excelsior Commercial Holdings v Salisbury Hamer, 2002).
- C will not necessarily get all of his costs up to the date D's Offer/Payment could have been accepted (eg Allison v Brighton & Hove City Council [2005] EWCA Civ 548).

4. Rejection - C beats his own P36 Offer

- Any time from date C's offer could have been accepted without permission the court will order:
 - interest @ up to 10% OBR on sums awarded to C
 - C's costs on indemnity basis
 - interest on those costs @ up to 10% OBR.

unless unjust to do so in all the circumstances, including any P36 Offer, timing of any P36 Offer/Payment, parties' conduct in giving information to enable any P36 Offer/Payment to be made/evaluated (36.21).

5. Rejection - C beats D's P36 Offer/Payment

- Not covered by Part 36.
- Beating the Offer/Payment is a factor, but not conclusive; the court will have regard to all the circumstances (Painting v University of Oxford, 2005).

6. Offers/Payments which do not have CPR Part 36 consequences unless the court so orders

- Offers not made in accordance with Part 36 (36.1).
- Offers/payments made whilst a claim is allocated to small claims track (36.2).
- Offer (rather than Payment) by D to settle a money claim (36.3).

7. Offers not having CPR Part 36 consequences

- Offers made before proceedings do not have CPR Part 36 consequences but are taken into account (36.10).
- Offers made but withdrawn do not have CPR Part 36 consequences (36.5(8)).
- Where the order at trial matches the offer (Read v Edmed, 2004) or is no more favourable than the offer (Petrograde Inc v Texaco, 2002).
- But the court must have regard to the above and any payment in or admissible offer to settle when exercising its discretion as to costs (44.3; Trustees of Stokes Pension Fund v Western Power, 2005) & may award indemnity costs & interest if C has matched or beaten his own offer (Read v Edmed, 2002).

8. Withdrawal

- Court permission required to withdraw/reduce a P36 Payment (36.6); there is no equivalent provision for P36 Offers.
- P36 Offers & can be withdrawn any time before acceptance (Scammell v Dicker, 2001).
- The making of an application to withdraw a P36 Payment does not stay time for acceptance; but the court retains power to entertain application to withdraw a P36 Payment even after NOA served (Flynn v Scougall, 2004).
- If the offer should have been accepted before withdrawal, the offer may still have costs consequences (Trustees of Stokes Pension Fund v Western Power, 2005).

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