

Part 36 Offers – Rules and Recent Developments

Background

Offers made pursuant to Part 36 of the Civil Procedure Rules (“CPR”) remain one of the most powerful strategic tools in English civil litigation. Properly deployed, a Part 36 offer can fundamentally alter the costs landscape of a case, creating significant pressure on the opposing party to settle and exposing them to serious adverse consequences if they fail to beat the offer at trial.

The regime is deliberately prescriptive. Unlike ordinary “without prejudice” offers, Part 36 offers must comply with strict formal requirements, but in return they carry automatic and often severe costs consequences.

In recent years, the Courts have revisited several aspects of Part 36, refining both its technical operation and its strategic implications. This article provides an overview of the requirements of a valid Part 36 offer and discusses recent developments shaping its application.

Requirements of a Valid Part 36 Offer

A compliant offer must:

- Be in writing;
- State expressly that it is made under Part 36;
- Specify a relevant period (of at least 21 days) during which it may be accepted (the “Relevant Period”);
- Identify whether it relates to the whole or part of the claim; and
- Clarify whether it includes any counterclaim.

While not expressly stated in the CPR, case law has established that a Part 36 offer must represent a genuine attempt to settle the proceedings. The Court’s role is to assess whether the offer was made with the intent to settle, not simply to shift costs. The Court of Appeal in *Huck v Robson* [2002] EWCA Civ 398 confirmed that low or tactical offers can still be valid as long as they are made in good faith to resolve the dispute.

Costs Consequences

(i) The Claimant beats its own Part 36 Offer

The principal consequences of a Claimant obtaining a judgment at least as advantageous as its Part 36 in respect of a case falling outside of the Fixed Recoverable Costs Regime are set out in CPR 36.17.

In these circumstances, the Court must (unless unjust) order:

- indemnity costs from the expiry of the Relevant Period;
- interest on those costs (up to 10% above base rate);
- interest on damages (also up to 10% above base rate); and
- an additional amount (up to £75,000).

These consequences are deliberately punitive.

(ii) The Claimant fails to beat the Defendant's Part 36 Offer

If a Defendant's Part 36 offer is not beaten, then the Claimant will typically pay the Defendant's costs from expiry of the Relevant Period and interest may be awarded on those costs.

Fixed Recoverable Costs Regime ("FRCR")

The FRCR was extended on 1 October 2023, introducing costs caps in most civil cases, including commercial and professional negligence claims. You can read our previous article on this [here](#).

While the FRCR system is designed to cap the costs recoverable in certain types of cases, Part 36 offers can still have a significant impact on the final costs recovery where a Claimant matches or beats their offer at trial. In this scenario, instead of an order for indemnity costs in respect of the costs incurred after the expiry of the Relevant Period (as with beaten Part 36 offers outside the FRCR), the Claimant will be entitled to an uplift of 35% on the difference between the costs of the stage when the Relevant Period expired and the stage applicable as at the date of judgment.

In *Attersley v UK Insurance Ltd [2026] EWCA Civ 217*, the Court of Appeal clarified the interaction between Part 36 offers and the FRCR where a Claimant accepts a Defendant's offer after the expiry of the Relevant Period and the claim has subsequently been allocated to the multi-track. The Claimant sought to rely on *Qader v Esure [2016] EWCA Civ 1109*, where the Court of Appeal held that fixed recoverable costs do not apply to claims allocated to the multi-track. However, the Court of Appeal rejected the suggestion that *Qader* operated retrospectively. It upheld the original County Court Order, ruling that the Claimant was restricted to fixed costs as the Relevant Period expired while the claim remained within the FRCR.

Court Discretion

The Court retains discretion to disapply Part 36 consequences where it would be "unjust" to impose them. Relevant factors include:

- the terms of the offer;
- the stage at which it was made;

- the information available to the parties;
- the conduct of the parties; and
- whether the offer was a genuine attempt to settle.

However, the threshold for this to be found to be “unjust” is high, and the Courts are generally reluctant to depart from the default position. The principles were aptly summarised by Briggs J (as he then was) in *Smith v Trafford Housing Trust* [2012] EWHC 3320 (Ch):

- The question is not whether it was reasonable for the Claimant to refuse the offer. Rather, the question is whether, having regard to all the circumstances and looking at the matter as it affects both parties, an order that the Claimant should pay the costs would be unjust.
- Each case will turn on its own circumstances, but the Court should be trying to assess “*who in reality is the unsuccessful party and who has been responsible for the fact that costs have been incurred which should not have been*”.
- The Court is not constrained by the list of potentially relevant factors in Part 36.14(4) to have regard only to the circumstances of the making of the offer or the provision or otherwise of relevant information in relation to it. There is no limit to the types of circumstances which may, in a particular case, make it unjust that the ordinary consequences set out in Part 36.14 should follow.
- Nonetheless, the Court does not have an unfettered discretion to depart from the ordinary cost consequences set out in Part 36.14. The burden on a Claimant who has failed to beat the Defendant's Part 36 offer to show injustice is a formidable obstacle to the obtaining of a different costs order. If that were not so, then the salutary purpose of Part 36, in promoting compromise and the avoidance of unnecessary expenditure of costs and Court time, would be undermined.

Withdrawal within the Relevant Period

CPR 36.9 provides that a Part 36 offer can be withdrawn if the offeree has not previously served notice of acceptance. However, that provision is subject to 36.10, which provides that:

“2(b): if the offeree serves notice of acceptance of the original offer before the expiry of the relevant period, that acceptance has effect unless the offeror applies to the court for permission to withdraw the offer or to change its terms—

- within 7 days of the offeree’s notice of acceptance; or*
 - if earlier, before the first day of trial.*
- (3) *On an application under paragraph (2)(b), the court may give permission for the original offer to be withdrawn or its terms changed if satisfied that there has been a change of circumstances since the making of the original offer and that it is in the interests of justice to give permission.”*

Leggatt J explained in *Jayne Ellen Evans v Royal Wolverhampton Hospitals NHS Foundation Trust* [2014] EWHC 3185 (QB) at [54]:

*“The test to be applied when the court is considering whether to give a party permission to withdraw a Part 36 offer is whether there has been a sufficient change of circumstances to make it just to permit the party to withdraw its offer. That test was set out by the Court of Appeal in relation to payments into court in *Camper v Potheary* [1941] 2 KB 58 at 70. The Court of Appeal gave as examples of such circumstances “the discovery of further evidence which puts a wholly different complexion on the case ... or a change in the legal outlook brought about by a new judicial decision”.*

This issue was considered in *Chinda v Cardiff & Vale University Health Board* [2025] EWHC 2692 (KB). The case involved a clinical negligence claim. The Claimant's solicitors made a Part 36 offer proposing a structure that included a lump sum, variable periodical payments, and a formal order. The Defendant accepted this offer within the Relevant Period. The Claimant subsequently sought to withdraw the offer following financial advice. He argued that his medical vulnerability affected his capacity to understand the proceedings and give instructions.

Senior Master Cook denied the application. It was established that the Claimant's vulnerability should have been raised earlier and did not constitute a change of circumstances allowing the withdrawal of an already accepted Part 36 offer. The Court emphasised that Part 36 is a self-contained procedural code designed to promote certainty and predictability in settlement negotiations

Non-Monetary Offers

In *Rahman v Hassan & Ors (Re Consequential Matters)* [2024] EWHC 2038 (Ch), it was determined that the consequences of a Part 36 offer would apply even when the claim was not for a monetary award. In this case, the Claimant had made a Part 36 offer to accept a house and its contents in full and final settlement of their claim that the deceased had left them all their worldly goods as a deathbed gift. The final judgment was that the Claimant should have the house but not the contents therein, as well as two flats which had been owned by the deceased. The Judge found without the need for any valuation evidence that the Claimant had obtained a judgment at least as advantageous as the Part 36 offer and the costs consequences of 36.17(4) were applied.

Similarly, in the case of *Grierson v Grierson* [2024] EWHC 3048 (Ch) the Claimant successfully beat their own non-monetary Part 36 offer, resulting in the Defendant paying indemnity costs. This case concerned an inheritance dispute between brothers regarding their late mother's estate.

Liability-Only Offers

In *Smithstone v Tranmoor Primary School* [2026] EWCA Civ 13, the Court of Appeal overturned previous uncertainty, confirming that a Part 36 offer relating only to liability (not total damages) can trigger the full costs consequences of CPR 36.17. This concerned a personal injury claim caught by the FRCR. The key issue on appeal was whether a liability-only 90:10 settlement offer could in principle be effective for the purposes of CPR 36.17. Collin-Rice J's remarks in *Mundy v TUI UK Ltd* [2023] EWHC 385 (Ch) that a 90:10 liability offer was ineffective to engage CPR 36.17 was found to be obiter and wrong. Bean LJ's reasoning is set out at [34]:

“Whether litigation is complex and of high value, or straightforward and of relatively modest value, the courts should, and the Civil Procedure Rules do, encourage settlement of specific issues where the case as a whole cannot be settled. In a case where liability is to be tried before quantum the benefits of a liability-only offer in saving costs and court time are obvious. But even in a fast track case where all contested issues will be resolved by a district judge or deputy district judge in the course of a single hearing, liability-only or quantum-only offers are still to be encouraged. The policy considerations identified in Huck v Robson and Broadhurst v Tan remain to this day. The 90:10 offer was in my view to be treated as a genuine offer to compromise, just as the 95:5 offer was treated in Huck v Robson.”

Pending Applications

In *Rigley v Zurich Insurance Co (UK) Ltd* 2026 WL 00992487, the Court upheld its ability to determine the appropriate fixed costs band even when a Part 36 offer has been accepted. A claim that is stayed is still extant and within the Court's jurisdiction and as long as the claim is in existence, stayed or otherwise, the Court has a jurisdiction to look at the matter.

CPB Comment

Practitioners must ensure offers are drafted clearly and precisely, anticipate procedural or evidential developments, and consider the broader context of the litigation, including pending applications or disputes over procedural matters. The rules are designed to promote settlement, but they are also a powerful tool for managing risk and costs, and for incentivising early compromise. The regime's flexibility accommodates non-monetary settlements and partial offers, encouraging early resolution of disputes even where full agreement is not possible. Missteps can carry significant cost implications, while carefully crafted and timely offers can create leverage, encourage realistic settlement, and avoid unnecessary litigation. Ultimately, Part 36 is not simply a procedural formality but a cornerstone of effective litigation strategy.

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Any questions

If you have any questions regarding the issues highlighted in this article, please get in touch with Dean or Lisbeth.

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