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**10 THINGS TO KNOW ABOUT PART 36**

Part 36 is tricky. It’s a crucial part of the CPR for all litigators, but it’s complex and full of little points which can easily be overlooked. Here are 10 of the less well-known things you should know:

1. **The form of the offer is prescribed** and getting it wrong may well mean that your offer is not a valid one. That could have a real effect when it comes to costs. Use Form 242A and you will always get it right, and will have the costs protection which Part 36 offers. There’s also a Notice of Acceptance attached. (CPR 36.5 and 36.6). (Just remember to ensure that the offer is not included in the trial bundle - even though it’s on an official form, it’s still a without prejudice document CPR 36.16(1) and (2)).
2. **You can request clarification of the terms of a Part 36 offer** within 7 days of it being made. If clarification is not provided within 7 days of the date of the request, you can apply to court for an order that it be done. (CPR 36.8)
3. **If a Part 36 offer is accepted, the claim will be stayed** (CPR 36.14(1)). If the offer is/includes an offer to pay or accept a single sum of money, then this must be done within 14 days of acceptance otherwise the receiving party can enter judgment for the sum. (CPR 36.14).
4. **A consent order is not required** – but that doesn’t mean that you don’t need one. For example, if you wish to agree different dates for payment, or make arrangements to cover ongoing interim payments until the date of an approval hearing, or agree confidentiality provisions, then these can all be covered in a consent order. If your case is a straightforward damages claim where payment will be made swiftly though, there is no need for a consent order (and if your case is subject to fixed costs, it is probably a waste of money).
5. **The question of whether a judgment is more advantageous is one of money** – even if you only beat the offer by £1, it is still beaten. (CPR 36.17(2)).
6. **Interest on damages and costs is up to 10% above base rate** so if base rate is 2%, the interest on costs could be 12%. This could have a big impact on the paying party. (CPR 36.17)
7. **The court must apply the costs consequences of Part 36 except where it considers it unjust to do so.** The question of whether it is unjust is a very broad enquiry and will look at a number of discretionary points like the terms of the offer; the stage in proceedings when it was made; the information available to the parties at the time; the conduct of the parties; and whether the offer amounted to a genuine attempt to settle. (CPR 36.17(5)).
8. **If there is an offer which might result in the costs consequences of Part 36 being invoked, make sure that you provide a costs schedule** even if the case is a fixed costs one. Ideally, there should be 2 schedules – one covering the period up to the date of expiry of the offer and one for the period afterwards. That makes it really easy for the judge to see what you are claiming (and therefore hopefully to award it!) The easiest way of producing a costs schedule is on Form N260.
9. **Don’t forget interest** otherwise any offer will be treated as being inclusive of interest. However, bear in mind that interest might be deducted from the judgment sum when determining whether an offer is beaten or not for the purposes of the costs consequences.
10. **When fixed recoverable costs are introduced, there will be a greater emphasis on penalising delays.** There will be a 35% uplift on fixed costs when a Part 36 offer is beaten (and 50% uplift for unreasonable behaviour). To reduce the risks, an early, realistic Part 36 offer is sensible.

**Our civil team advise on whether to make Part 36 offers, what offer to make, whether to accept, and represent clients in hearings where Part 36 offers have been rejected. Contact us on 020 7632 7862.**