

News flash

Part 36 - All Change Please

On Friday 6 April 2007 a new Part 36 CPR comes into force. Broadly speaking offers made before 6 April will be subject to the old rules and offers made from 6 April onwards subject to the new rules. Bearing in mind the Easter holiday break, there should be a smooth transition between the two sets of provisions.

This newsflash is merely intended to inform our clients about the change and bring some of the more notable consequences for insurers and their clients to the market's attention. It is not intended to be a comprehensive analysis of the new Part 36 CPR.

1. Payments into court are abolished.

The original position under the old Part 36 was that a Defendant's Part 36 Offer to settle a claim must be accompanied by the corresponding payment into court. This became somewhat complicated by the Court of Appeal's decision in *Trustees of Stokes Pension Fund v Western Power Distribution (South West) Plc [2005] EWCA Civ 854*. That case provided that a Part 36 offer may be treated as having the same effect as a payment into court, if the Defendant was obviously good for the money when the offer was made.

The position from 6 April will be that every Defendant will make a simple paper offer to settle regardless of their financial standing. The 'flip side' to this relaxation of the rules is that if an offer is accepted, payment must be made within 14 days, failing which judgement can be entered for the unpaid sum and the offer will lose its Part 36 consequences.

Insurers and particularly brokers will have to act with alacrity in making settlement collections from the market in order to avoid their client having judgement entered against them. Where settlement monies are transferred to a panel solicitor's client account by cheque 4 days need to be allowed for clearing. Immediate electronic transfer is best.

2. Acceptance at any time.

Apart from certain specific instances provided for by the new rules, a Claimant can ►

- ▶ accept a Part 36 Offer at any time. This is so even if the Claimant has subsequently made a counter offer, or if the time for acceptance has expired.

The cost consequences of a Claimant accepting out of time are that they are entitled to their costs up to the last date for acceptance, and the Defendant is entitled to its costs from the date of expiry to the date of actual acceptance. Therefore expressly withdrawing an offer needs careful thought.

This is a departure from the old rules where offers could only be accepted out of time if the parties could agree liability for costs, or with the courts' permission. This generally resulted in a larger degree of compromise by the Defendants than the Claimants.

3. Rules apply to 'judgements at least as advantageous as the offer'

There are really two points to note here:

3.1 The new rules apply to 'judgements' rather than awards at trial as was the case under the old rules. This clearly is intended to include 'summary judgements' but may also include 'judgements in default' and

possibly 'judgements by consent'.

3.2 The result need only be as favourable as their offer in order for a party to gain an entitlement to the usual Part 36 rewards.

In conclusion, it appears that the new rules cut both ways for insurers. It may be that insurers and brokers will want to review their arrangements for making urgent payments as it will surely become more common that those arrangements are called upon. Panel solicitors may seek funds from insurers at the time of recommending a Part 36 Offer. In practice the resulting effect of the new rules will be that 'payments in' will be made to the solicitor's client account rather than into court.

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We can put together a seminar/talk or panel discussion on the issue above, or any of the issues featured in Inversions to be held at any of our offices, or yours. If you are interested, please contact any one of our lawyers or **David Simon at david.simon@robinsimonllp.com.**

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