

GUIDE

Significant changes to Part 36 of the Civil Procedure Rules

Civil Procedure Rule Part 36 and Practice Direction 36A specify the procedure to be followed when a party makes an offer to settle a claim, or part of a claim, and the consequences of making such an offer.

From 6 April 2015 this legislation will be updated to reflect case law and to simplify the rules to make them more accessible to court users. This table summarises the changes and provides an overview of issues determined by case law which will also be incorporated into the new legislation.

The main changes to Civil Procedure Rule Part 36 relate to the following issues:

- Time-limited offers
- Split trials
- High claimant offers
- Counterclaims
- Improved offers
- Late acceptance of offers
- Cost budgets
- Codifying case law.

March 2015

	Current Part 36 Regime	Part 36 Regime From 6 April 2015
Time-limited offers	A time-limited offer is not capable of being a valid Part 36 offer.	A time-limited offer can be automatically withdrawn after expiry of the relevant period. The Part 36 costs consequences do not apply to an offer that has been withdrawn.
Split trials	Parties are not able to reveal to the Court details of any Part 36 offer in split trials and cases relating to multiple courses of action until the case has been decided.	Any Part 36 offers relating only to concluded issues may be revealed to the Court. The parties cannot reveal to the Court the terms of any Part 36 offers which relate to the remaining unresolved issues, though they can confirm that such offers were made.
High claimant offers	A claimant can make a very high Part 36 offer in order to obtain the benefits of Part 36 costs consequences but in the expectation that the offer would never be accepted.	The Court can decide whether the claimant's offer was a genuine attempt to settle the proceedings and, if it was not, decline to award the costs consequences of Part 36.
Counterclaims	A defendant making a counterclaim can be deemed to have made a "claimant's Part 36 offer" where the offer was for the defendant to receive a net payment.	An offer may be made in respect of a counterclaim or other additional claim, which are treated as claims and "claimant" and "defendant" include a party bringing or defending an additional claim. This allows defendants/counterclaimants to take advantage of the favourable costs consequences of claimants' Part 36 offers.



	Current Part 36 Regime	Part 36 Regime From 6 April 2015
Improved offers	When an offeror wishes to improve the terms of their offer, it is not clear whether the later offer stands alongside, or replaces, the earlier offer.	An improved offer shall be treated, not as the withdrawal of the original offer; but as the making of a new Part 36 offer on the improved terms. The improved offer can rely on the date of the relevant period of the original Part 36 offer in calculating enhanced interest and costs.
Late acceptance of offers	A party accepting a Part 36 offer outside of the relevant period must pay the other side's costs from the end of the relevant period to the date of acceptance, unless the court orders otherwise.	A party accepting a Part 36 offer outside of the relevant period must pay the other side's costs from the end of the relevant period to the date of acceptance, unless the court deems it would be unjust to do so.
Costs budgets	If a party has failed to file a costs budget in time, it is treated as having filed a budget limited to court fees. There is therefore no incentive to submit to a Part 36 offer from the party in default, as the costs risk if it fails to beat the offer may be minimal.	If a party has failed to file a costs budget in time, their recoverable costs will be 50% of the costs from expiry of the relevant period onwards, but will not be limited to court fees. When the claimant is in default and their Part 36 offer is accepted within the relevant period, the costs will be limited to court fees.
Codifying case law	A valid Part 36 offer must state on its face that it is intended to have the consequences of Section One of Part 36.	A valid Part 36 offer need only make clear that it is made pursuant to Part 36.
	Where a Part 36 offer is accepted within the relevant period the claimant will be entitled to the costs of the proceedings up to the date on which notice of acceptance was served on the offeror.	Where a Part 36 offer is accepted within the relevant period, a claimant will be entitled to recover the costs of the proceedings, including their recoverable pre-action costs, up to the date on which notice of acceptance was served on the offeror.

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