
STATUTORY INSTRUMENTS

2023 No. 572

The Civil Procedure (Amendment No. 2) Rules 2023

Amendment of Part 36

12.—(1) In the table of contents of this Part, for the entries for rule 36.20 to the end substitute—

“Deduction of benefits and Lump sum payments Rule 36.20

MISCELLANEOUS

Cases in which the offeror’s costs have been limited to court fees Rule 36.21

Section II - Claims to which Sections VI, VII or VIII of Part 45 Apply

Scope of this Section Rule 36.22

Costs consequences of acceptance of a Part 36 offer Rule 36.23

Costs consequences following judgment Rule 36.24

Section III - RTA Protocol and EL/PL Protocol offers to settle

Scope of this Section Rule 36.25

Form and content of a Protocol offer Rule 36.26

Time when a Protocol offer is made Rule 36.27

General provisions Rule 36.28

Restrictions on disclosure of a Protocol offer Rule 36.29

Costs consequences following judgment Rule 36.30

Deduction of benefits Rule 36.31”.

(2) In rule 36.1—

(a) after paragraph (2) insert—

“(3) Section II of this Part contains rules about Part 36 offers where a claim is one to which Section VI (fixed costs in the fast track), Section VII (fixed costs in the intermediate track) or Section VIII (claims for noise-induced hearing loss) of Part 45 applies.”;

(b) in the paragraph which, going forward, follows paragraph (3)—

(i) renumber that paragraph, paragraph (4); and

(ii) for “Section II” substitute “Section III”.

(3) In rule 36.2, for paragraph (1), substitute—

“(1) This Section—

- (a) applies to an offer to settle to which Section II of this Part applies, unless otherwise stated; but
 - (b) does not apply to an offer to settle to which Section III applies.”.
- (4) In rule 36.5—
- (a) in paragraph (1)(c), for “36.20” substitute “36.23”; and
 - (b) in paragraph (3), for “36.22” substitute “36.20”.
- (5) In rule 36.11(3), in—
- (a) sub-paragraph (b); and
 - (b) after sub-paragraph (d), in the second set of parentheses,
- for “36.22”, in both places it appears, substitute “36.20”.
- (6) In rule 36.13, after paragraph (1), omit the words in parentheses.
- (7) In rule 36.17(1)—
- (a) for “36.21” substitute “36.24”; and
 - (b) after sub-paragraph (b), omit the words in parentheses.
- (8) Omit rule 36.20 and rule 36.21.
- (9) Renumber—
- (a) rule 36.22, rule 36.20; and
 - (b) rule 36.23, rule 36.21.
- (10) After what, going forward, will be rule 36.21 insert—

“SECTION II

Claims to Which Sections VI, VII, or VIII of Part 45 Apply

Scope of this Section and definitions

36.22.—(1) This Section applies where a claim is one to which Section VI, Section VII or Section VIII of Part 45 applies.

- (2) In this Section—
- (a) “fixed cost medical report” and “soft tissue injury claim” have the meaning ascribed by paragraph 1.1(10A) and (16A) respectively of the RTA Protocol;
 - (b) for the purposes of rules 36.23 and 36.24, a defendant’s Protocol offer is either—
 - (i) defined in accordance with rules 36.26 and 36.27; or
 - (ii) if the claim leaves the Protocol before the Court Proceedings Pack Form is sent to the defendant—
 - (aa) the last offer made by the defendant before the claim leaves the Protocol; and
 - (bb) deemed to be made on the first business day after the claim leaves the Protocol; and
 - (c) reference to—
 - (i) the “Court Proceedings Pack Form” is a reference to the form used in the Protocol; and
 - (ii) “business day” is a reference to a business day as defined in rule 6.2.

Costs consequences of acceptance of a Part 36 offer

36.23.—(1) Where a Part 36 offer is accepted within the relevant period, the claimant is entitled to—

- (a) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date on which notice of acceptance was served on the offeror; and
- (b) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII of Part 45 incurred in any period for which costs are payable to them.

(2) Where—

- (a) a defendant's Part 36 offer relates to part only of the claim; and
- (b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim,

the claimant is entitled to the fixed costs in paragraph (1).

(3) Subject to paragraphs (4) and (5), where a defendant's Part 36 offer is accepted after the relevant period—

- (a) the claimant is entitled to—
 - (i) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date on which the relevant period expired; and
 - (ii) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them; and

(b) the claimant is liable for the defendant's costs in accordance with paragraph (8).

(4) Where a claim no longer continues under the RTA or EL/PL Protocol, then, subject to paragraph (5), where the claimant accepts the defendant's Protocol offer after the date on which the claim leaves the Protocol—

- (a) the claimant is entitled to the applicable Stage 1 and Stage 2 fixed costs in Table 10 or Table 11 in Practice Direction 45; and
- (b) the claimant is liable for the defendant's costs in accordance with paragraph (8).

(5) In a soft tissue injury claim, if the defendant makes a Part 36 offer before the defendant receives a fixed cost medical report, paragraphs (3) and (4) shall only have effect if the claimant accepts the offer more than 21 days after the defendant received the report.

(6) Fixed costs shall be calculated by reference to the amount of the offer which is accepted.

(7) Where the parties do not agree the liability for costs, the court must make an order as to costs.

(8) Subject to paragraph (9) where the court makes an order for costs in favour of the defendant, the defendant is entitled to—

- (a) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date of acceptance; and
- (b) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them,

less the fixed costs to which the claimant is entitled under paragraph (3)(a)(i) or (4).

(9) Where—

- (a) an order for costs is made pursuant to paragraph (3); and

(b) the stage applicable at the date on which the relevant period expires and the stage applicable at the date of acceptance are the same,
the defendant is entitled to the fixed costs applicable to that stage.

(10) The parties are entitled to disbursements allowed in accordance with Section IX of Part 45 incurred in any period for which costs are payable to them.

Costs consequences following judgment

36.24.—(1) Rule 36.17 applies with the following modifications.

(2) Subject to paragraphs (3), (4) and (5), where an order for costs is made pursuant to rule 36.17(3)—

(a) the claimant is entitled to—

- (i) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date on which the relevant period expired; and
- (ii) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them; and

(b) the claimant is liable for the defendant’s costs in accordance with paragraph (9).

(3) Where rule 36.17(1)(b) applies, the claimant is entitled to—

- (a) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date of judgment; and
- (b) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them.

(4) Where the court makes an order pursuant to rule 36.17(4), instead of costs awarded on the indemnity basis under rule 36.17(4)(b), the claimant is entitled to additional costs in accordance with paragraph (5).

(5) The additional costs are an amount equivalent to 35% of the difference between the fixed costs for—

- (a) the stage applicable when the relevant period expires; and
- (b) the stage applicable at the date of judgment,

to which the claimant is entitled under paragraph (3)(a) and (b).

(6) Where a claim no longer continues under the RTA or EL/PL Protocol, then, subject to paragraph (7), where the claimant fails to obtain a judgment more advantageous than the defendant’s Protocol offer—

- (a) the claimant is entitled to the applicable Stage 1 and Stage 2 fixed costs in Table 10 or Table 11 in Practice Direction 45; and
- (b) the claimant is liable for the defendant’s costs in accordance with paragraph (9); and
- (c) in this rule, the amount of the judgment is less than the Protocol offer where the judgment is less than the offer once deductible amounts identified in the judgment are deducted.

(“Deductible amount” is defined in rule 36.20(1)(d).)

(7) In a soft tissue injury claim, if the defendant makes a Part 36 offer or Protocol offer before the defendant receives a fixed cost medical report, paragraphs (2) and (6) shall only have effect in respect of costs incurred by either party more than 21 days after the defendant received the report.

- (8) Fixed costs must be calculated by reference to the amount which is awarded.
- (9) Where the court makes an order for costs in favour of the defendant, the defendant is entitled to—
 - (a) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 applicable at the date of judgment; and
 - (b) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them, less the fixed costs to which the claimant is entitled under paragraph (2)(a) or (6).
- (10) The parties are entitled to disbursements allowed in accordance with Section IX of Part 45 incurred in any period for which costs are payable to them.”.
- (11) Renumber Section II, Section III.
- (12) In rule 36.24—
 - (a) renumber that rule 36.25; and
 - (b) in paragraph (1), for “does not” substitute “and Section II do not”;
- (13) Renumber—
 - (a) current rule 36.25, rule 36.26;
 - (b) current rule 36.26, rule 36.27; and
 - (c) current rule 36.27, rule 36.28.
- (14) In what, going forward, will now be rule 36.28, in paragraph (b), for “45.18” substitute “45.29”.
- (15) Renumber—
 - (a) current rule 36.28, rule 36.29; and
 - (b) current rule 36.29, rule 36.30.
- (16) In what, going forward, will now be rule 36.30—
 - (a) in paragraph (2)—
 - (i) in sub-paragraph (a), for “45.26” substitute “45.37”; and
 - (ii) in sub-paragraph (b), for “36.26” substitute “36.27”; and
 - (b) in paragraph (3), for “45.20” substitute “45.30” ; and
 - (c) in paragraph (4)—
 - (i) in sub-paragraph (a), for “36.26” substitute “36.37”; and
 - (ii) in sub-paragraph (b), for “45.20” substitute “45.30”.
- (17) In current rule 36.30—
 - (a) renumber that rule 36.31;
 - (b) in that rule, for “36.29” substitute “36.30”; and
 - (c) in the words in parentheses which follow that rule, for “36.22” substitute “36.20”.