



Read with “interest” – Part 36 offers

August 2016

In many cases it will be easy to determine whether a claimant has beaten their Part 36 offer and accordingly whether they are entitled to the additional benefits provided for under CPR 36.17(4). Sometimes, however, because of the interest accruing on damages between the date of the Part 36 offer and the judgment date, the judgment sum only exceeds the Part 36 offer by a small amount. If this happens, what are the consequences?

The Court considered this question in *Purrunsing v A'Court & Co and anor*, where the underlying claim was for losses the claimant had suffered arising out of his purchase of a property from a fraudster who claimed to be, but was not, the owner of that property. The claimant had paid £470,000 for the property, the whole of which sum he lost when the monies were paid over to the fraudster before the fraud was discovered.

The claimant brought a claim for his losses against both the conveyancers who had acted for him and the solicitors who had acted for the fraudster (mistakenly believing they were acting for the true owner). The claimant succeeded against both defendants, the defendants being found equally liable for the claimant's loss.

Having found for the claimant, the Court had to consider whether the judgment in his favour was at least as advantageous to him as his Part 36 offer to the defendants.

The claimant's Part 36 offer was to settle his claim for £516,000 inclusive of interest. That offer was made in a letter dated 20 May 2015, with the last date for acceptance of it without

the Court's permission being 10 June 2015 (the relevant date). Judgment was handed down on 14 April 2016, the claimant being awarded damages of £470,000 plus interest from the date he paid over those monies. The interest came to £48,983, making a total payable under the judgment of £518,983.

The claimant submitted that, as the judgment sum exceeded the amount for which he had offered to settle in his Part 36 offer, he was entitled to enhanced costs from the relevant date. The defendants submitted that the claimant had not beaten his Part 36 offer as the judgment sum only exceeded the Part 36 offer because of the interest that had accrued after the relevant date, which interest should be deducted when determining whether the claimant had obtained a judgment that was at least as advantageous to him as his Part 36 offer.

In accepting the defendants' submissions, the Court noted that CPR 36.5(4) states that an offer to pay or accept a sum of money is deemed to include all interest up to the date when the relevant period for acceptance of the offer expires. In the light of this, in order to work out whether a judgment is at least as advantageous as a Part 36 offer, it is necessary to adjust the

Any comments or queries?

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judgment sum to eliminate interest accruing after the relevant date, otherwise the Court is not comparing like with like. The contrary conclusion could lead to uncertainty, as whether a judgment was at least as advantageous as a Part 36 offer may depend on when the claim proceeded to trial and when judgment was handed down. It was highly unlikely that it was intended that the consequences under CPR 36.17(4) (which are draconian) should depend on such a random event.

This is the first decision on this issue under Part 36 in its current form. The issue has been considered by the Court of Appeal under a previous version of Part 36, in the case of *Blackham v Entrepose UK*, which was not cited in this case, but in which the Court of Appeal reached a similar conclusion. It is therefore clear that the relevant date is the cut-off point for interest when assessing the value of a Part 36 offer, and any interest accruing subsequently will not be taken into account.

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