

Offers and Settlement

It is unlikely that your case will proceed all the way to trial but it is still possible. Consequently, all cases must be prepared on the basis that they could end up being decided by a Judge at a trial.

In order to progress your claim it may well be that legal proceedings need to be commenced in the Court. That would prompt the Court to issue various directions culminating in a trial. Statistically even where proceedings do need to be issued, the case is more likely to be resolved by negotiation between solicitors and barristers representing both parties than at a trial.

At any time either party is able to make an offer to the other side setting out the basis upon which they will settle a claim. In most cases the offer that is made is known as a Part 36 Offer, taking its name from the Civil Procedural Rule which governs this type of settlement. In spinal injuries cases it is difficult, if not impossible, to begin to properly assess the value of the claim until around two years post injury. That is when the medical experts are able to provide a definitive final prognosis upon which other experts can then provide their evidence. That in turn allows us to quantify your claim. Nonetheless, Defendants can and sometimes do make offers earlier in the course of the claim and obviously each offer would need to be considered on its merits. It is more likely that offers will be exchanged later on in a case.

The desired effect of an offer is to pressure an opponent into accepting a sum of money that essentially avoids the need to run the risk of getting a lower amount at a trial which itself would involve further time and cost. The penalty for declining to accept an offer that you then fail to beat at trial is that with less money being awarded as compensation, you also face having to pay the opponent's costs incurred after making the offer to the point of settlement or Judgment. Clearly these can often be substantial. The rules on offers and acceptance in the context of litigation are complex and self-contained within the Civil Procedure Rules of Court. Insurance arrangements can be put in place to protect your position here. In the event an offer is made it is vitally important to consider all of its potential consequences before deciding whether to accept it.

There could be circumstances where it may be sensible to make an offer to your opponent. It is rare in a spinal injuries claim to make an offer until after all evidence needed to quantify the claim has been gathered in and properly analysed. Almost certainly at that point you will be advised to explore the possibilities for settlement and indeed if proceedings have been issued, the Court will order a Joint Settlement Meeting before a trial takes place.

There could be circumstances where it may be sensible to make an offer to your opponent and indeed there are a number of advantages to Claimants in making such offers. For example, if the Defendant fails to beat the offer which you have made then you could be entitled to an additional amount of compensation being awarded. Please see our factsheet on Part 36 Offers.

A Joint Settlement Meeting will involve both parties and their representatives attending a venue (perhaps our offices or barrister's Chambers). The parties themselves do not necessarily need to meet although barristers (typically in a spinal injuries claim this will be Queen's Counsel) will meet in a third room in order to try and narrow the issues in dispute and essentially try to negotiate a settlement so that the matter does not need to be

advanced to a point where ultimately a Judge needs to make a decision about how much compensation (if any) should be awarded.

Typically claims will settle at the conclusion of Joint Settlement Meetings but the strongest position to be in is one that allows you to confidently walk away from a Joint Settlement Meeting. That is where the opponent's offer is so insufficient and your case is so strong that the likelihood is you will get a better result before a Judge than the opponent is willing to settle the case for at the Joint Settlement Meeting.

If the case is not settled at a Joint Settlement Meeting almost inevitably there will be a trading of offers subsequently and negotiations can continue. To be able to make a Part 36 Offer at that stage with the opponent knowing that the costs of a trial are likely to start being incurred (and the consequences of failing to beat any offer currently on the table will apply) will often focus the mind and promote settlement.

If the claim has been settled in a Joint Settlement Meeting or otherwise and involves an element of periodical payments into the future. It will still be necessary to issue formal legal proceedings in order to secure the protection of what amounts to a government guarantee on periodical payments. This guarantee is vitally important if, in the unlikely event at some point in the future, the paying party (insurer) ever defaulted in its ability to make periodical payments. Recent guidance from the Financial Services Compensation Scheme administrators made it clear that for the guarantee to operate it was necessary to secure a Judgment. This little known point of interpretation became an issue in an eight figure settlement we negotiated relatively recently. Ours was the first case that had taken heed of the point. Many cases involving periodical payments have been concluded without securing a Judgment. There are potentially catastrophic consequences for Claimants and their legal advisors in those cases in the event that the paying party insurers ever defaulted. Whilst that is unlikely it remains a possibility and is not without precedent.

If you would like to find out more about **offers and settlement** please do not hesitate to [contact us](#).

You might also like to read other notes we have made available via our website such as **Conditional Fee Agreements, Legal Expenses Insurance, The Other Side – Defendant, Insurers and Solicitors, Issuing Proceedings and Directions, Split/Preliminary Issue Trials, Form of Award, Lump Sums and PPOs and Trials.**

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