PART 32 Offers To Settle

PART 32

Scope of this Part 32.1 - 32.2

32.1

This Part contains Rules about:

(1) offers to settle; and

(2) the consequences where an offer to settle is made in accordance with Rule 32.4.

32.2

Nothing in this Part prevents a party making an offer to settle in whatever way he chooses, but if that offer is not made in accordance with Rule 32.4, it will not have the consequences specified in Rules 32.28 to 32.41, and 32.49 to 32.54.

Form and content of a Part 32 offer 32.3 - 32.6

32.3

An offer to settle which is made in accordance with Rule 32.4 is called a Part 32 offer.

32.4

A Part 32 offer must:

(1) be in writing;

(2) state on its face that it is intended to have the consequences of Part 32;

(3) specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with Rules 32.28 to 32.33 if the offer is accepted;

(4) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue; and

(5) state whether it takes into account any counterclaim .

32.5

Rule 32.4(3) does not apply if the offer is made less than 21 days before the start of the trial.

32.6

An offeror may make a Part 32 offer solely in relation to liability.

Part 32 offers — General provisions 32.7 - 32.14

32.7

In this Part:

(1) the party who makes an offer is the ‘offeror’;

(2) the party to whom an offer is made is the ‘offeree’; and

(3) ‘the relevant period’ means:

(a) in the case of an offer made not less than 21 days before trial, the period stated under Rule 32.4(3) or such longer period as the parties agree;

(b) otherwise, the period up to end of the trial or such other period as the Court has determined.

32.8

A Part 32 offer:

(1) may be made at any time, including before the commencement of proceedings; and

(2) may be made in appeal proceedings.

32.9

A Part 32 offer which offers to pay or offers to accept a sum of money will be treated as inclusive of all interest until:

(1) the date on which the period stated under Rule 32.4(3) expires; or

(2) if Rule 32.5 applies, a date 21 days after the date the offer was made.

32.10

A Part 32 offer shall have the consequences set out in this Part only in relation to the costs of the proceedings in respect of which it is made, and not in relation to the costs of any appeal from the final decision in those proceedings.

32.11

Before expiry of the relevant period , a Part 32 offer may be withdrawn or its terms changed to be less advantageous to the offeree , only if the Court gives permission.

32.12

The permission of the court must be sought:

(1) by making an application under Part 23, which must be dealt with by a Judge other than the Judge (if any) allocated in advance to conduct the trial, unless the parties agree that such Judge may hear the application;

(2) at a trial or other hearing, provided that it is not to the trial Judge or to the Judge (if any) allocated in advance to conduct the trial, unless the parties agree that such Judge may hear the application.

32.13

After expiry of the relevant period and provided that the offeree has not previously served notice of acceptance, the offeror may withdraw the offer or change its terms to be less advantageous to the offeree without the permission of the Court .

32.14

The offeror does so by serving written notice of the withdrawal or change of terms on the offeree .

Part 32 Offers — Defendant’s offers 32.15 - 32.16

32.15

A Part 32 offer by a defendant to pay a sum of money in settlement of a claim must be an offer to pay a single sum of money.

32.16

An offer that includes an offer to pay all or part of the sum, if accepted, at a date later than 14 days following the date of acceptance will not be treated as a Part 32 offer unless the offeree accepts the offer.

Time when a Part 32 offer is made 32.17 - 32.18

32.17

A Part 32 offer is made when it is served on the offeree .

32.18

A change in the terms of a Part 32 offer will be effective when notice of the change is served on the offeree .

Clarification of a Part 32 offer 32.19 - 32.23

32.19

The offeree may, within 7 days of a Part 32 offer being made, request the offeror to clarify the offer.

32.20

If the offeror does not give the clarification requested under 32.19 within 7 days of receiving the request, the offeree may, unless the trial has started, apply for an order that he does so (a clarification order).

32.21

An application for a clarification order should be made in accordance with Part 23.

32.22

The application notice should state the respects in which the terms of the Part 32 offer are said to need clarification.

32.23

If the Court makes a clarification order, it must specify the date when the Part 32 offer is to be treated as having been made.

Acceptance of a Part 32 offer 32.24 - 32.27

32.24

A Part 32 offer is accepted by serving written notice of the acceptance on the offeror and filing the notice with the Court .

32.25

Subject to Rule 32.26, a Part 32 offer may be accepted at any time (whether or not the offeree has subsequently made a different offer) unless the offeror serves notice of withdrawal on the offeree .

32.26

The Court’s permission is required to accept a Part 32 offer where:

(1) Rule 32.45 applies; or

(2) the trial has started.

32.27

Where the Court’s permission is required to accept a Part 32 offer, the permission of the Court must be sought:

(1) by making an application under Part 23, which must be dealt with by a Judge other than the Judge (if any) allocated in advance to conduct the trial, unless the parties agree that such Judge may hear the application;

(2) at a trial or other hearing, provided that it is not to the trial Judge or to the Judge (if any) allocated in advance to conduct the trial, unless the parties agree that such Judge may hear the application.

Costs consequences of acceptance of a Part 32 offer 32.28 - 32.33

32.28

Subject to Rules 32.29 and 32.31(1), where a Part 32 offer is accepted within the relevant period , the claimant will be entitled to his costs of the proceedings up to the date on which notice of acceptance was served on the offeror .

32.29

Where:

(1) a defendant's Part 32 offer relates to only part of the claim; and

(2) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim;

the claimant will be entitled to his costs of the proceedings up to the date of serving notice of acceptance unless the Court orders otherwise.

32.30

Costs under Rules 32.28 and 32.29 will be assessed on the standard basis if the amount of costs is not agreed.

32.31

Where:

(1) a Part 32 offer that was made less than 21 days before the start of trial is accepted; or

(2) a Part 32 offer is accepted after expiry of the relevant period ;

if the parties do not agree the liability for costs, the Court will make an order as to costs.

32.32

Where Rule 32.31(2) applies, unless the Court orders otherwise—

(1) the claimant will be entitled to his costs of the proceedings up to the date on which the relevant period expired; and

(2) the offeree will be liable for the offeror's costs for the period from the date of expiry of the relevant period to the date of acceptance.

32.33

The claimant's costs include any costs incurred in dealing with the defendant's counterclaim if the Part 32 offer states that it takes into account the counterclaim .

The effect of acceptance of a Part 32 offer 32.34 - 32.41

32.34

If a Part 32 offer is accepted, the claim will be stayed .

32.35

In the case of acceptance of a Part 32 offer which relates to the whole claim the stay will be upon the terms of the offer.

32.36

If a Part 32 offer which relates to only part of the claim is accepted:

(1) the claim will be stayed as to that part upon the terms of the offer; and

(2) subject to Rule 32.29, unless the parties have agreed costs, the liability for costs shall be decided by the Court .

32.37

If the approval of the Court is required before a settlement can be binding, any stay which would otherwise arise on the acceptance of a Part 32 offer will take effect only when that approval has been given.

32.38

Any stay will not affect the power of the Court:

(1) to enforce the terms of a Part 32 offer;

(2) to deal with any question of costs (including interest on costs) relating to the proceedings.

32.39

Unless the parties agree otherwise in writing, where a Part 32 offer by a defendant that is or that includes an offer to pay a single sum of money is accepted, that sum must be paid to the offeree within 14 days of the date of acceptance.

32.40

If the accepted sum is not paid within 14 days or such other period as has been agreed the offeree may enter judgment for the unpaid sum.

32.41

Where:

(1) a Part 32 offer (or part of a Part 32 offer) which is not an offer to Rule 32.39 applies is accepted; and

(2) a party alleges that the other party has not honoured the terms of the offer;

that party may apply to enforce the terms of the offer without the need for a new claim.

Acceptance of a Part 32 offer made by one or more, but not all, defendants 32.42 - 32.45

32.42

Rules 32.43 to 32.45 apply where the claimant wishes to accept a Part 32 offer made by one or more, but not all, of a number of defendants .

32.43

If the defendants are sued jointly or in the alternative, the claimant may accept the offer if:

(1) he discontinues his claim against those defendants who have not made the offer; and

(2) those defendants give written consent to the acceptance of the offer.

32.44

If the claimant alleges that the defendants have a several liability to him the claimant may:

(1) accept the offer; and

(2) continue with his claims against the other defendants if he is entitled to do so.

32.45

In all other cases the claimant must apply to the Court for an order permitting him to accept the Part 32 offer.

Restriction on disclosure of a Part 32 offer 32.46 - 32.48

32.46

A Part 32 offer will be treated as ‘without prejudice except as to costs’.

32.47

The fact that a Part 32 offer has been made must not be communicated to the trial Judge or to the Judge (if any) allocated in advance to conduct the trial until the case has been decided.

32.48

Rule 32.47 does not apply:

(1) where the defence of tender before claim has been raised;

(2) where the proceedings have been stayed following acceptance of a Part 32 offer; or

(3) where the offeror and the offeree agree in writing that it should not apply.

Costs consequences following judgment 32.49 - 32.54

32.49

Rules 32.50 to 32.54 apply where upon judgment being entered:

(1) a claimant fails to obtain a judgment more advantageous than a defendant's Part 32 offer; or

(2) judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant's Part 32 offer.

32.50

Subject to Rule 32.54, where Rule 32.49(1) applies, the Court will, unless it considers it unjust to do so, order that the defendant is entitled to:

(1) his costs from the date on which the relevant period expired; and

(2) interest on those costs.

32.51

Subject to Rule 32.54, where Rule 32.49(2) applies, the Court will, unless it considers it unjust to do so, order that the claimant is entitled to:

(1) interest on the whole or part of any sum of money (excluding interest) awarded at a rate not exceeding 10% above Base Rate for some or all of the period starting with the date on which the relevant period expired;

(2) his costs on the indemnity basis from the date on which the relevant period expired; and

(3) interest on those costs at a rate not exceeding 10% above Base Rate .

32.52

In considering whether it would be unjust to make the orders referred to in Rules 32.50 and 32.51, the Court will take into account all the circumstances of the case including:

(1) the terms of any Part 32 offer;

(2) the stage in the proceedings when any Part 32 offer was made, including in particular how long before the trial started the offer was made;

(3) the information available to the parties at the time when the Part 32 offer was made; and

(4) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated.

32.53

Where the Court awards interest under this rule and also awards interest on the same sum and for the same period under any other power, the total rate of interest may not exceed 10% above Base Rate .

32.54

Rules 32.50 and 32.51 do not apply to a Part 32 offer:

(1) that has been withdrawn;

(2) that has been changed so that its terms are less advantageous to the offeree , and the offeree has beaten the less advantageous offer;

(3) made less than 21 days before trial, unless the Court has abridged the relevant period .

Formalities of Part 32 offers and other notices under this Part 32.55 - 32.56

32.55

A Part 32 offer may be made using Form P32/01.

32.56

Where a:

(1) Part 32 offer;

(2) notice of acceptance;

(3) notice of withdrawal; or

(4) notice of change of terms;

is to be served on a party who is legally represented, the document to be served must be served on the legal representative .