

SETTLEMENT

It is always sensible, if at all possible, to settle a claim out of court rather than pursue it to a full court trial. A settlement will result in you receiving your compensation more quickly, will remove the uncertainty of a trial and will reduce the costs that will need to be incurred. Therefore the court can refuse to order a Defendant to pay costs to a successful Claimant who has unreasonably refused to try to settle the claim without court proceedings. For this reason we will make every effort to settle your claim but only on sensible terms.

It is possible for a Claimant to make a formal offer to the Defendants to accept a particular sum in settlement of the claim and this offer can be made at any stage, even before proceedings are issued. There can be advantages in making such an offer (which is known as a Part 36 offer after the part of the court rules that makes provision for them) firstly because it can lead to an early settlement and secondly because if the offer is refused and the Claimant goes on to be awarded a greater sum by the judge at the trial, the Defendants may be ordered to pay a higher than usual rate of interest on the award of compensation. We will keep the possibility of making a Part 36 offer constantly under review and if at any time we believe that you should make such an offer we will advise you accordingly.

Similarly the Defendants can make an offer to you in an effort to settle your claim before the case gets to trial. They can do this at any time although in our experience Defendants do not always make a sensible and reasonable offer in advance of proceedings being issued and the evidence being exchanged so that they have seen full details of your claim and have been able to assess the strength of the case that has been prepared against them.

If the Defendants should make an offer to settle they can do so in one of two ways:

Firstly, it can be an informal offer, which may or may not stipulate the time within which you have to respond. There will be no particular consequences following a refusal to accept an informal offer except of course that you may go on to be awarded a lower sum or nothing at all.

Alternatively, they can make the offer on a formal basis stipulating that it is made in accordance with the provisions of Part 36 of the court rules. This is known as a Part 36 offer and the Defendants can make such an offer at any time.

If the Defendants make a Part 36 offer you will have twenty one days in which to decide whether or not to accept it in full and final settlement of your claim. If you do accept it, the case will proceed no further and the Defendants will be obliged to pay your legal costs. If, however, you choose not to accept the offer, the case will proceed in the usual way and when it comes on for trial the Judge will not be aware that a formal Part 36 offer or payment has been made and rejected. If the claim is then successful the Judge will award compensation in the usual way. However, if the amount that is awarded by the Judge is equal to or less than the Part 36 offer or payment, then the Judge will usually make an Order requiring the Defendants to pay your legal costs up to the date when the offer or payment was made but requiring you to pay the Defendant's legal costs thereafter. As these costs could be substantial, you will have to think very carefully about accepting any Part 36 offer or payment which is made. This is a somewhat complex matter which we will explain to you in more detail should a Part 36 offer be made.

Obviously, we will advise you fully about every offer that is made and will give you our advice as to how to respond. It is also always possible to take a second opinion from a barrister. Before any offer or payment made by the Defendants is accepted or refused, or indeed before we make any offer to them, we will always discuss it with you. We will only act on your instructions.

Although under normal circumstances the parties are entitled to agree to a settlement on whatever terms they choose, there are exceptions to this. In particular, there are five circumstances where the approval of a judge must be obtained:-

- Firstly, if the Claimant is under the age of eighteen years at the date of the settlement. If the judge approves the settlement the compensation will have to be paid into a special account held by the court until the Claimant becomes eighteen when it is paid out with accrued interest.



GADSBY WICKS
SOLICITORS

- Secondly, if the Claimant is unable to manage his or her own affairs because of some severe learning disability. If the judge approves the settlement the compensation will have to be paid over to the Court of Protection which is a special but separate court that looks after the financial affairs of people who are not capable of managing their own affairs. The Court of Protection will supervise the investment of the money and its use for the benefit of the Claimant. They will require a friend or relative to be appointed as a Deputy (i.e. a Trustee) to work with them to ensure that the Claimant's financial needs are met.
- Thirdly, if all or part of the compensation is to be paid in the form of periodical payments rather than as a lump sum. This might be the case where the claim includes a substantial sum for anticipated future financial losses e.g. the cost of nursing care which might continue for the rest of the Claimant's life. In these circumstances, because of the difficulty in predicting life expectancy, a periodic payment award might be sensible.
- Fourthly, if the claim relates to someone who has died as a result of clinical negligence and the award includes compensation for the loss of financial support to the deceased's dependants and either one or more of those dependants is aged under eighteen or the dependants (despite all being adults) cannot agree how to apportion the award.
- Fifthly, if there is a recognised risk that at some time in the future the Claimant might develop some significant deterioration in his/her physical or mental condition, the court may give him/her the right to return to court to obtain further compensation for that deterioration, should it occur.

In these five circumstances there will have to be a court hearing before the settlement can be concluded but in other cases it will not be necessary.

If we are working for you under a Conditional Fee Agreement and an offer is made that we feel that you should accept, we will have the right to stop working for you if you reject our advice.

If you are in receipt of public funding, we will need to report all offers of settlement that the Defendants may make to the Legal Services Commission. They will then have the right to withdraw financial support from your claim if they feel that any offer that has been made to you is one that should be accepted.

If the Defendants indicate that they are not going to dispute the claim so that the only remaining issue is the amount of the compensation that they should pay, we will be able to ask them to make an interim payment on account of the full award of compensation that you are to receive. If the Defendants refuse the request, or are very slow to respond, we can ask the court to make the award.

If your claim is not settled it will proceed to a trial before a Judge. In fact, only a very small percentage of cases ever reach a full trial because most cases settle before then. However, we always assume that every claim will go to trial and we always prepare all claims accordingly.