

# The power and cost of a Part 36 offer

One of the most effective mechanisms for driving settlement. Unlike a Calderbank offer, Part 36 is a self-contained procedural code, made “without prejudice save as to costs” — the judge sees it only after judgment, when deciding who pays.

## 21 days

Minimum acceptance period — the “relevant period”

## 14 days

To pay, in one lump sum, once an offer is accepted

## £10,000

Claims below this are small claims — Part 36 does not apply

## +10%

Uplift on damages a claimant may win by beating its own offer

## A valid offer must

- ✓ Be in writing (form N242A optional)
- ✓ Say if it covers all or part of the claim
- ✓ Carry clear terms, capable of acceptance
- ✓ State that it is made under Part 36
- ✓ Say whether it accounts for a counterclaim
- ✓ Allow at least 21 days to accept
- ✓ Be a genuine offer to settle

### TIMING

Any time before judgment — including before proceedings are issued.

### WITHDRAWING OR CHANGING IT

By written notice before acceptance. Within the relevant period, a withdrawal or less advantageous change takes effect only on expiry of that period, unless the offeror obtains the court’s permission after the offeree has accepted the original offer. After expiry, no permission is needed.

### A “REJECTED” OFFER IS STILL LIVE

It can be accepted at any time until withdrawn. Once trial starts, the court’s permission is needed.

## If it isn’t accepted: four outcomes Worked on a £25,000 claim

**CLAIMANT** OFFERS  
£20,000

**Awarded £18,000 offer not beaten**

No Part 36 consequences — the defendant pays the claimant’s costs in the usual way.

**CLAIMANT** OFFERS  
£20,000

**Awarded £25,000 offer beaten**

The court may order a 10% uplift on damages, indemnity-basis costs from expiry, and up to 10% interest.

**DEFENDANT** OFFERS  
£12,500

**Awarded £15,000 offer beaten**

Usual rules apply — the defendant generally pays costs on the standard basis.

**DEFENDANT** OFFERS  
£12,500

**Awarded £10,000 offer not beaten**

The claimant usually pays the defendant’s costs from expiry of the relevant period, with interest.

## Part 36

Signals genuine willingness to settle, and puts real costs pressure on the other side.  
Costs recoverable to the date of acceptance; enhanced costs and interest if the offer is refused unreasonably.  
Certainty in place of an unpredictable trial.  
But: strict procedural rules — a defect can invalidate the offer, and a misjudged figure can be expensive.

## Calderbank

Purely contractual, so far more flexible — no prescribed form.  
Suits non-monetary terms: confidentiality, undertakings, structured settlements.  
But: none of the automatic costs consequences — only weighed in the court’s discretion under CPR 44.

## Talk to us before you make or accept an offer

We work through the timing, the figure and the costs risk with you — so a Part 36 offer works in your favour, not against it.