

How does Mediation fit in now that Part 36 unequivocally applies to costs assessments?

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Anyone unsure about Part 36 applying to costs assessments?

CPR 47.20(4):

The provisions of Part 36 apply to the costs of detailed assessment proceedings with the following modifications—

- (a) “claimant” refers to “receiving party” and “defendant” refers to “paying party”;**
- (b) “trial” refers to “detailed assessment hearing”;**
- (c) a detailed assessment hearing is “in progress” from the time when it starts until the bill of costs has been assessed or agreed;**
- (d) for rule 36.14(7) substitute “If such sum is not paid within 14 days of acceptance of the offer, or such other period as has been agreed, the receiving party may apply for a final costs certificate for the unpaid sum.”;**
- (e) a reference to “judgment being entered” is to the completion of the detailed assessment, and references to a “judgment” being advantageous or otherwise are to the outcome of the detailed assessment.**

The Frills

CPR Part 36.17(4):

- interest at not more than 10% plus BoEBR from the end of the relevant period;
- costs on the indemnity basis from the end of the relevant period;
- interest on those costs at not more than 10% plus BoEBR; and
- prescribed percentage of 10% up to £500k and 5% on any figure above that.

Receiving Party

Paying Party

CPR 36.17(3):

Costs from 21 days after the offer

AND.....

Interest on those costs!

Default Orders unless UNJUST

- CPR Part 36.17(5)

Consider all of the circumstances of the case including-

(a) The terms of any Part 36 offer

(b) The stage at which any offer was made and how long before trial

(c) The information available to the parties at the time of the offer

(d) The conduct of the parties with regard to the giving or refusal of information for the purposes of enabling an offer to be made or evaluated; and

(e) Whether the offer was a genuine attempt to settle the proceedings.

Tuesday...

- Block rated ATE (ARAG)
- *McMenemy*
- 36.17(5)(e) - Not a genuine attempt to settle
- *JMX v Norfolk & Norwich Hospitals NHS Foundations Trust*
- *Huck v Robson [2002] - CA*
- *R (MVN) v London Borough of Greenwich [2015] – Picken J.*

CPR 44.11 –
unreasonable
or improper

Calderbanks

Mediation

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