LITIGATION

When does a liability-only Part 36 offer affect costs?

A Court of Appeal decision explains when an offer to settle responsibility for a civil claim can affect the costs the claimant recovers.



Smithstone v Tranmoor Primary School [2026] EWCA Civ 13

Court of Appeal (Civil Division) / Judgment 16 January 2026

> **PRACTICAL POINT**
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> A liability-only Part 36 offer can affect costs if the judgment establishes an outcome at least as favourable on the issue covered by the offer. An agreed sum that leaves liability unresolved did not do so in Smithstone.

The offer and the settlement

A child brought a personal injury claim after an accident at school. Before proceedings began, the claimant proposed that the school accept liability for 90 per cent of the full value of the claim. The offer left the amount of compensation to be agreed or assessed. The school did not accept it, denied liability and alleged contributory negligence. The case was allocated to the fast track under the fixed costs regime that applied to the claim (paragraphs 2-5).

The parties agreed to settle the claim for £2,650 on the day listed for trial. Because the claimant was a child, the settlement required court approval under rule 21.10 of the Civil Procedure Rules (CPR). The court approved the settlement, directed payment and awarded fixed costs. The claimant appealed the costs decision, relying on the earlier offer on liability (paragraphs 8-14 and 22-23).

When does a liability-only Part 36 offer affect costs?

A valid offer can deal with liability alone

Part 36 of the Civil Procedure Rules allows a formal offer on the whole claim, part of it or a particular issue. Rule 36.17 compares the judgment with the claimant's offer. The costs consequences depend on the applicable rules and whether the court considers them unjust.

Lord Justice Bean, with whom Lord Justices Phillips and Stuart-Smith agreed, held that giving up 10 per cent of the claim's value could be a genuine compromise without a specified sum. Settling an issue can save work even when all issues are listed for one hearing. The court overruled Mundy v TUI UK Ltd [2023] EWHC 385 (Ch) on this point (paragraphs 31-35 and 39-40).

What the claimant actually obtained

The approval and payment order was a judgment for this purpose. The court compared it with the 90:10 liability offer. The school had made no admission and the court had made no finding of liability. The agreed sum therefore established no division of responsibility for comparison (paragraphs 28-30 and 36).

The appeal was dismissed and the fixed costs award stood. The school's refusal to admit liability or negotiate before trial did not, by itself, justify departing from fixed costs (paragraphs 36-38).

Why the scope of an offer matters

A liability offer can resolve responsibility while leaving compensation open. A later settlement recording only payment may give no reliable indication of liability. A finding of full liability after an offer to accept 90 per cent would address the same issue as the offer and provide a basis for comparison.

For claims within the specified fixed costs regimes in Part 45, current rule 36.24 modifies rule 36.17. Where it applies, additional costs calculated by reference to fixed costs replace an award of indemnity costs.

JUDGMENT AND SOURCES

Court of Appeal judgment in Smithstone v Tranmoor Primary School (approved copy)

Civil Procedure Rules Part 36

This case note provides general information. Its application depends on the facts and law in force.