

update

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Friday Facts: Understanding offers of compromise

Offers of compromise can be used as an effective tool to settle a proceeding on foot or at least to protect a party on costs. Offers of compromise are the successor to what used to be a payment into Court.

The main purpose of making an offer of compromise is to avoid the necessity of adjudication by the Court of the dispute and provide the use of the offer to bring a conclusion to the litigation, thereby avoiding the risk and uncertainties of attending a trial and the incurring of costs.

Unlike a Calderbank offer which is made on an "all in" basis, an offer of compromise is an offer made to settle the proceeding for a monetary sum together with all costs associated of the party accepting the offer up to the date of the service of the offer of compromise. If those costs can not be agreed then they can be taxed by the Court in accordance with the Court Rules.

The offer can be made by any party to the proceeding, at any time before judgment, in respect of any matter the subject of the proceeding. Therefore the offer can take into account any counterclaim between the parties to the proceeding.

There are no formal requirements of the form of the offer of compromise apart from that it must comply with the Court Rules in that:

- it must be in writing
- it must not refer to costs of the proceeding
- it must clearly and precisely state the

terms of the offer of compromise

- it must state that if the party on whom the offer is served accepts the offer and then fails to comply with the terms of the offer, the party serving the offer can obtain judgment in the terms of the offer for the purpose of enforcing the compromise
- it must be capable of being translated into a judgment
- it must be open for acceptance for not less than 14 days after service of the offer
- it must state when the amount of the offer will be paid otherwise it will be taken as being an offer to pay within 14 days of acceptance

Unlike a Calderbank offer, once an offer of compromise is made it can not be withdrawn without leave of the Court. It has been determined by the Courts that leave will be given if it is established that there has been a sufficient change in circumstances since the offer was made. If, however, the offer is accepted after it has expired, it can be accepted but only with the consent of the party who served the offer.

The offer of compromise can not be communicated to the Court unless the offer is accepted or the offer is sought to be relied upon by the party who made the offer should

the party who received the offer, but did not accept it, obtain a judgment on the claim which is less favourable than the offer provided. In the case of the latter, the offer can be relied upon in support of an application for indemnity costs from the date of the offer.

For more information

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