

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 2: Litigation funding and costs

Offers to settle

Section 55: Payment of additional amount to successful claimant

316. The costs sanctions against a defendant for failing to accept a claimant's offer to settle generally amount to considerably less than the sanctions against a claimant for failing to beat a defendant's offer to settle. Consequently, there is less incentive for a defendant to accept a reasonable offer from the claimant than for a claimant to accept a reasonable offer by the defendant.
317. *Section 55* enables rules of court to be made in relation to cases involving a claim for money which permit a court to order an additional amount to be paid to a claimant by a defendant who does not accept a claimant's offer to settle where the court gives judgement for the claimant that is at least as advantageous as an offer the claimant made to settle the claim. It also confers power by order to provide that rules of court may provide that in non-monetary claims a defendant may be required to pay an amount to a claimant where the court gives judgment in favour of the claimant which is at least as advantageous as an offer the claimant made to settle the claim. These provisions will be in addition to the current sanctions that the court may order and which are available under Part 36 of the Civil Procedure Rules (namely the payment of interest on damages, interest on costs and the payment of costs on an indemnity rather than a standard basis).
318. *Subsection (1)* makes provision for rules of court to be made in respect of monetary claims so that courts may order a defendant to pay an additional sum to a claimant where the court awards the claimant a benefit the value of which is at least as advantageous as an offer the claimant made to settle the claim, which the claimant has made in accordance with Part 36 of the Civil Procedure Rules. *Subsection (2)* provides that rules made under *subsection (1)* may include provision as to the assessment of whether a judgment is at least as advantageous as an offer to settle.
319. The effect of *subsection (3)* is to enable the Lord Chancellor to prescribe, as a percentage of the value of the benefit awarded to the claimant, the maximum additional sum that the court may order. The Lord Chancellor may prescribe different percentage values for different values of claim (by virtue of *subsection (10)*).
320. *Subsection (4)* enables the Lord Chancellor to provide, by order, that rules of court may be made to enable a court to make an order in non-monetary claims (or mixed non-monetary and monetary claims) requiring a defendant to pay an amount to a claimant where the court gives judgment in favour of the claimant which is at least as advantageous as an offer the claimant made to settle the claim.

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

321. *Subsection (5)* provides that in claims to which *subsection (4)* applies, an order made by the Lord Chancellor must provide for the amount payable to be calculated in one or more of three specified ways, namely by reference to costs ordered to be paid to the claimant, or any amount of money that is awarded to the claimant in the proceedings, or the value of any non-monetary benefit awarded to the claimant.
322. *Subsection (6)* additionally requires that any order made under *subsection (4)* must provide that rules of court made under the order may include provision as to the assessment of whether a judgment is at least as advantageous as an offer to settle, and may provide that such rules may make provision as to the calculation of the value of any non-monetary benefit awarded to a claimant.
323. *Subsection (7)* provides that conditions prescribed by the Lord Chancellor which must be satisfied before an additional amount can be ordered to be paid may, in particular, relate to the nature of the claim, the amount of money awarded to the claimant and the value of the non-monetary benefit awarded to the claimant. The effect of *subsections (8) and (9)* is that any order made by the Lord Chancellor under this section must be made by statutory instrument subject to the negative resolution procedure.
324. *Subsection (10)* provides that rules of court made under section 55 may make different provision in relation to different cases.
325. *Subsection (11)* defines “civil proceedings”, for the purposes of this section as proceedings to which rules of court made under the Civil Procedure Act 1997 apply.