



## **Withdrawing Stage 2 Offers (Or Not)**

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**Samantha Openshaw**

**Barrister**

**St John's Buildings**

In 2 recent cases, Samantha Openshaw has dealt with the importance of withdrawing stage 2 offers in MOJ Portal cases.

In both cases the claims had been submitted via the Portal and had proceeded to Stage 2 in the ordinary course. Medical evidence was submitted and the Claimants put forward their offers. The offers were not accepted and the Defendants contended for lower offers in respect of general damages.

However, sometime later, the Claimants asserted that their symptoms were continuing (despite having confirmed the accuracy of their respective medical reports before submitting them at Stage 2).

In the first case, before any Stage 3 hearing had been listed, the Claimant applied for and was granted permission to obtain additional medical evidence. The matter was then transferred to Part 7 and a stay was imposed. In the second case, the application for additional medical evidence was made at a Stage 3 hearing. The Judge granted the application and adjourned the Stage 3 hearing.

Thereafter long delays ensued. Difficulties obtaining final medical reports and preparing Schedules of Loss meant that months passed before either case progressed.

In the meantime, the respective Defendants reviewed both matters and decided to accept the Claimants earlier Stage 2 offers. Those offers, having been made on the basis of the original medical evidence, were considerably lower than the Claimants indicated they would be seeking based on the new medical evidence. Perhaps unsurprisingly, the Claimant's representatives disputed acceptance of the offers.

Both cases returned to Court (Nottingham County Court and Manchester County Court respectively) for determination of the issue of acceptance of the Stage 2 offers.

Samantha acted for the Defendant's in both cases and persuaded the Judges that the acceptance of the Stage 2 offers was binding notwithstanding the permission granted for additional medical evidence or the transfer to Part 7.

In considering the cases, the Judges considered first the wording of the Portal rules. Paragraph 7.39 provides:

“Where a party withdraws an offer made in the stage 2 settlement pack form after the total consideration period or further consideration period , the claim will no longer continue under this protocol and the claimant may start proceedings under part 7 of the CPR.”

Accordingly, there is provision within the rules for a party to withdraw a Stage 2 offer after the total consideration period has expired. The consequences for doing so mean leaving the Portal and the claim moving to Part 7.

Even if the case progressed to Stage 3, practice direction 8B paragraph 10.1 provides,

“A party may only withdraw an RTA protocol offer after proceedings have started, with the court’s permission”.

The fact that those rules provided for the power to withdraw Stage 2 offers, suggested that Stage 2 offers remained open for acceptance unless specifically withdrawn.

Consideration was also given to the cases of *Purcell v McGarry* and *Akinroydoye v Esure*.

In *Purcell*, HHJ Gore held that a Stage 2 offer is open for acceptance even after the end of the Stage 2 negotiation unless specifically withdrawn. He also held that, like Part 36 offers, a later offer does not make an earlier offer incapable of acceptance.

In *Akinroydoye*, the court extended the principle established in *Purcell v McGarry* to find that Portal offers are capable of acceptance even after Part 7 proceedings have been issued.

Accordingly, in both cases, the Judges determined that the acceptance of the Stage 2 offers was binding. This yielded a reduction in the damages paid to the Claimant (when compared to the figures that would have been sought on the basis of the further medical evidence) and also a saving in costs. In the first matter (which had been transferred to Part 7) the Defendant paid the lower fixed costs applicable on allocation. In the second case, the Defendant saved the costs of a stage 3 hearing. Further, as both cases had settled before any final hearing, the Claimants were ordered to pay the costs of the application hearings held to determine the issue of settlement.

For Defendants, the above cases underline the importance of keeping offers under review, particularly where additional medical evidence is sought.

For Claimants, whenever additional medical evidence is sought, consideration should be given to withdrawing any Stage 2 offers at the same time.

**Samantha Openshaw**

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**clerk@stjohnsbuildings.co.uk**