

INSIGHT

Pursuer's Offers in Scottish Courts

A Pursuer's Offer aims to bring about earlier settlement in a litigated case. Timings, tactics and procedures are important, and our specialist team can guide you through your options

A "Pursuer's Offer" is a formal offer made by a Claimant to try to expedite settlement of a civil case. It is the equivalent of a "Part 36 Offer" in England. Broadly speaking it is the equivalent of a Defender's [Tender](#).

The Offer can be made at any point after a court action has begun, and until the point where:

- in a case heard by a judge, the judge takes the case away to make a decision, or
- in a case decided by jury, the jury retires to consider its verdict.

How to make an offer

Offers can be made in cases where there is a claim for payment of money, and this includes personal injury cases where there is a claim for damages.

There are formal requirements for lodging the Pursuer's Offer with the [Court of Session](#) and the [Sheriff Court](#) – for example, the offer must state the sum the Claimant would accept in settlement of the case, and state the applicable Court Rule under which the Offer is made.

Our experienced solicitors will guide you through these and other requirements, always looking to make the process as streamlined as possible for both clients based in Scotland and those in another jurisdiction.

Pursuer's Offers in Scottish Courts

Timing and tactics of making a Pursuer's Offer

The timing of a Pursuer's Offer is key. Making it too early can lead the Defender's legal team to think your case is weak; making it too late can be ineffective.

Also key is the level of the Offer, which should be pitched so that the Defender has an incentive to accept it or at least seriously consider it.

All these decisions will depend on the circumstances of the case, and are best made by experienced solicitors who can 'read' the situation.

The Dispute Resolution and Litigation team at Lindsays has long experience in this area, and is known for its tactical skill and judgement as well as its legal expertise.

Should you accept a Pursuer's Offer?

Again, this will depend on your own case, but our specialist team can advise. Ultimately, the decision for a Defender will come down to whether it is cheaper to accept the offer or reject it.

Factors to take into account include:

- the merits of the Offer
- the value of the claim
- the possible penalties for rejecting the Offer or accepting it late
- the amount of Court [expenses](#) potentially saved by accepting the Offer quickly.

The penalty for rejecting a Pursuer's Offer is 50% of the taxed (audited) expenses incurred by the Claimant's solicitors from the date of the Offer until the conclusion of the case. This penalty is paid to the Claimant.

A Defender who rejects a Pursuer's Offer therefore has to be reasonably confident that the Court will not award the same amount as the Offer, or a higher amount.

Timings for accepting a Pursuer's Offer

The offer can be accepted at any time until:

- it is withdrawn
- the Court has heard the evidence and takes the case away for decision, or
- the jury retires to consider its verdict.

How quickly it is accepted will depend on the circumstances of the case, and our solicitors will advise you.

If a Pursuer's Offer is made at a stage where the claim is fully valued and there are no other circumstances to justify late acceptance, it should be accepted as soon as reasonably possible.

However, if the Offer is made at a stage when the claim has not been fully valued or some material evidence is outstanding, the Defender can argue that they were not in a position to make a considered decision on the Offer until the evidence became available. In this situation, it is up to the Court to decide if the acceptance was late.

Tactics around Pursuer's Offers and Tenders

One tactic for avoiding late acceptance is for the Defender to respond to a Pursuer's Offer with a slightly lower offer. The Defender can back this up with a Tender. This puts pressure back on the Claimant, as they could then face their own possible penalty if the Tender is rejected or accepted late.

Clearly, tactical acumen is essential in all this, and our experienced team can advise you on the best course of action.

June 2018

