

# QOCS and Part 36 offers

**JACK HOLBORN**

**Barrister**

**39 ESSEX CHAMBERS**

# Qualified One-Way Costs Shifting

44.14

(1) Subject to rules 44.15 and 44.16, orders for costs made against a claimant may be enforced without the permission of the court but only to the extent that the aggregate amount in money terms of such orders does not exceed the aggregate amount in money terms of any orders for damages and interest made in favour of the claimant.

(2) Orders for costs made against a claimant may only be enforced after the proceedings have been concluded and the costs have been assessed or agreed.

# Effect of the QOCS rules

- QOCS concerns the enforcement of costs orders only
- Costs orders may still be made in the normal way
- May be prudent to include provision that order “not be enforced without leave of the Court

# Potential problems?

- **Multiple defendants**
- **Form of settlement**
- **Other litigation**

# *Cartwright v Venduct Engineering Ltd* [2018] 1 WLR 6137

- Six defendants
- Claim settled with D4-6 by way of a Tomlin Order
- D3 sought costs from damages
  
- Held that nothing to prevent a defendant enforcing order for costs out of damages paid by another defendant
- BUT a Tomlin Order was not an “order for damages and interest made in favour of the Claimant”

## Part 36

- CPR 36.13 provides for costs consequences upon acceptance of an offer
- Refers to an “entitlement to costs”
- CPR 36.14(1) provides that “the claim will be stayed upon acceptance”
- CPR 36.14(5) Any stay arising under this rule will not affect the power of the court—
  - (a) to enforce the terms of a Part 36 offer; or
  - (b) to deal with any question of costs (including interest on costs) relating to the proceedings.
- CPR 36.15(7) If such sum is not paid within 14 days of acceptance of the offer, or such other period as has been agreed, the claimant may enter judgment for the unpaid sum.
- Suggest acceptance of Part 36 offer not sufficient to allow enforcement
- BUT routes around this

## Judgment in separate proceedings

- What happens if C owes D money under an order in separate proceedings?
- *Lockely v National Blood Transfusion Service* [1992] 1 WLR 492
- May be other means of set-off that allow quasi-enforcement