

Costs & settlement offers

EXAM STUDY GUIDE • ONE-PAGE PREVIEW

SAMPLE PAGE

WHAT IS BEING TESTED

Costs rules, Calderbank offers versus Order 26 offers, indemnity costs, security for costs and access to justice.

CALDERBANK OFFER

Without prejudice save as to costs. The court considers whether rejection was unreasonable (Hazeldene).

ORDER 26 OFFER

A formal offer under the rules, with prescribed costs consequences (r 26.08).

REVISION CHECKLIST

- ☐ Costs usually follow the event; the court retains broad discretion.
- ☐ Contrast indemnity costs with party-party costs.
- ☐ If Order 26 requirements are not met, consider a Calderbank offer.
- ☐ CPA ss 28-29: costs sanctions for breaches of overarching obligations (Yara v Oswal).
- ☐ SCR r 63.23: wasted costs orders against lawyers personally.
- ☐ SCR r 62.02: security for costs and its access to justice implications.
- ☐ Self-represented litigants: time is not recoverable, only disbursements (McKechnie v Ma'a).
- ☐ Thurin v Krongold: costs may be apportioned by issue.

EXAM TIP

If a party rejects an offer and does worse at trial, work through both regimes. Consider Order 26 first, then Calderbank as an alternative. Address indemnity costs and whether the rejection was unreasonable.

KEY CASES TO RECOGNISE

Calderbank v Calderbank

Discretionary costs consequences after unreasonable rejection.

Hazeldene

Factors for assessing the reasonableness of rejecting an offer.

Yara v Oswal

Costs sanctions for breaching overarching obligations.