



Neutral Citation Number: [2026] EWCA Civ 217

Case No: CA-2025-001039

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Mrs Justice Stacey
[2025] EWHC 884 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/03/2026

Before :

LORD JUSTICE LEWISON
LADY JUSTICE FALK
and
LORD JUSTICE MILES

Between :

Laura Attersley

Claimant/
Respondent

- and -

UK Insurance Limited

Defendant/
Appellant

Andrew Roy KC (instructed by **Clyde & Co**) for the **Appellant**
Alexander Hutton KC and Thomas Mason (instructed by **HCC Solicitors**) for the
Respondent

Hearing date : 24 February 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 4 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Miles :

1. The claim in this case was originally brought under the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”) but, after it had left the Protocol, a claim form was issued under Part 7 of the CPR in the County Court. The Defendant made an offer under Part 36 of the CPR, which the claimant accepted well after the expiry of the 21 day period stated in the offer (“the relevant period”). As at the end of that period the case had not been allocated to any track but by the date the offer was accepted it had been allocated to the multi-track. The question is whether the Claimant is restricted to fixed costs under Part 45 or alternatively to costs on the standard basis. HHJ Duddridge decided that the Claimant was restricted to fixed costs. On appeal Stacey J decided that she was entitled to standard basis costs. The Defendant now appeals to this court.

The facts

2. The Claimant was involved in a road traffic accident on 9 March 2018. She was driving her car when an oncoming vehicle driven by the Defendant’s insured turned right across her path and collided with her car.
3. On 19 March 2018 solicitors instructed by the Claimant submitted a Claim Notification form (RTA1) under the RTA Protocol. The value of the claim was stated as being up to £10,000 and the injuries were identified as soft tissue, whiplash and others.
4. On 9 April 2018 the claim exited the RTA Protocol following the Defendant’s request under para 6.15(3) thereof, since it disputed liability pending further enquiries.
5. On 29 April 2019 the Defendant admitted liability.
6. On 13 February 2021, shortly before the end of the limitation period, the Claimant issued a Part 7 claim form. The particulars of claim stated that she now expected to recover up to £150,000 in damages with ongoing physical and psychological issues. Three medical reports were attached, from a psychologist, an oral maxillofacial expert and an ENT expert.
7. On 4 March 2021 a defence was filed admitting liability and, on the same day, the Defendant made a Part 36 offer of £45,000. The offer was not accepted by the Claimant within the relevant period, i.e. by 25 March 2021.
8. At a CMC on 5 January 2022 the case was allocated to the multi-track, the Claimant was granted permission to rely on six medical experts, and the Defendant was permitted to rely on four experts. Directions were given for a five-day trial. A costs management order was made.
9. It was agreed by the parties at the CMC that the case was suitable for the multi-track and not for the fast track, given the quantum claimed, the expert evidence required, and the time estimate for trial.
10. On 18 May 2022 the Defendant applied to amend its defence to allege fundamental dishonesty and on 14 July 2022 the court listed the application to be heard on 1 August 2022. The alleged dishonesty related to quantum, not liability. The application was

never heard, as on 8 July 2022 the Claimant accepted the Part 36 offer, which had not been withdrawn.

11. It was common ground that notwithstanding the wording of a covering letter that made the acceptance of the Part 36 offer conditional on the Claimant receiving its reasonable assessed costs (rather than fixed costs), the acceptance of the offer was unequivocal and was a binding compromise as to the damages that the Defendant had agreed to pay to the Claimant.
12. A hearing was fixed to determine the consequences of the Claimant's acceptance of the offer. It was common ground at that hearing that if the Claimant had accepted the offer within the relevant period, i.e. by 25 March 2021, she would only have been entitled to fixed costs, subject to rule 45.29J (described in the heading to the rule as "claims for an amount of costs exceeding fixed recoverable costs in exceptional circumstances").
13. It was also common ground that ordinarily a claimant should pay the defendant's costs from the end of the relevant period onwards but that, since this was a claim for personal injuries, under the rules as they then stood, such entitlement would be unenforceable because of Qualified One-Way Costs Shifting.
14. The Claimant did not explain why she had not accepted the offer within the relevant period.

The relevant rules

15. The relevant rules were amended by the Civil Procedure (Amendment) Rules 2023 for cases commenced after 1 October 2023. The rules referred to below are in their pre-amended form.
16. Rule 36.1(1) provided that Part 36 was a self-contained procedural code about offers to settle made pursuant to the procedure set out in that part ("Part 36 offers").
17. Rule 36.3 contained definitions, including that "the relevant period" meant (i) in the case of an offer made not less than 21 days before a trial, the period specified under rule 36.5(1)(c) or such longer period as the parties agree; (ii) otherwise, the period up to the date of the end of the trial.
18. Rule 36.5(1) provided that a Part 36 offer must (a) be in writing; (b) make clear that it is made pursuant to Part 36; (c) specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with rules 36.13 or 36.20 if the offer is accepted; (d) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue; and (e) state whether it takes into account any counterclaim.
19. Rule 36.11(1) provided that a Part 36 offer is accepted by serving written notice of acceptance on the offeror.
20. Rule 36.13 provided:

"Costs consequences of acceptance of a Part 36 offer

36.13—(1) Subject to paragraphs (2) and (4) and to rule 36.20, where a Part 36 offer is accepted within the relevant period the claimant will be entitled to the costs of the proceedings (including their recoverable pre-action costs) up to the date on which notice of acceptance was served on the offeror.

(Rule 36.20 makes provision for the costs consequences of accepting a Part 36 offer in certain personal injury claims where the claim no longer proceeds under the RTA or EL/PL Protocol.)

(2) Where—

(a) a defendant's Part 36 offer relates to part only of the claim; and

(b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim,

the claimant will only be entitled to the costs of such part of the claim unless the court orders otherwise.

(3) Except where the recoverable costs are fixed by these Rules, costs under paragraphs (1) and (2) are to be assessed on the standard basis if the amount of costs is not agreed.

(Rule 44.3(2) explains the standard basis for the assessment of costs.)

(Rule 44.9 contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007.)

(Part 45 provides for fixed costs in certain classes of case.)

(4) Where—

(a) a Part 36 offer which was made less than 21 days before the start of a trial is accepted; or

(b) a Part 36 offer which relates to the whole of the claim is accepted after expiry of the relevant period; or

(c) subject to paragraph (2), a Part 36 offer which does not relate to the whole of the claim is accepted at any time,

the liability for costs must be determined by the court unless the parties have agreed the costs.

(5) Where paragraph (4)(b) applies but the parties cannot agree the liability for costs, the court must, unless it considers it unjust to do so, order that—

(a) the claimant be awarded costs up to the date on which the relevant period expired; and

(b) the offeree do pay the offeror's costs for the period from the date of expiry of the relevant period to the date of acceptance.

(6) In considering whether it would be unjust to make the orders specified in paragraph (5), the court must take into account all the circumstances of the case including the matters listed in rule 36.17(5).

(7) The claimant's costs include any costs incurred in dealing with the defendant's counterclaim if the Part 36 offer states that it takes it into account."

21. Rule 36.20 provided as far as material:

"Costs consequences of acceptance of a Part 36 offer where Section IIIA of Part 45 applies

36.20—(1) This rule applies where—

(a) a claim no longer continues under the RTA or EL/PL Protocol pursuant to rule 45.29A(1); or

(b) the claim is one to which the Pre-Action Protocol for Resolution of Package Travel Claims applies.

(2) Where a Part 36 offer is accepted within the relevant period, the claimant is entitled to the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 for the stage applicable at the date on which notice of acceptance was served on the offeror.

(3) Where—

(a) a defendant's Part 36 offer relates to part only of the claim; and

(b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim, the claimant will be entitled to the fixed costs in paragraph (2).

(4) Subject to paragraphs (5), (6) and (7), where a defendant's Part 36 offer is accepted after the relevant period—

(a) the claimant will be entitled to the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 for the stage applicable at the date on which the relevant period expired; and

(b) the claimant will be liable for the defendant's costs for the period from the date of expiry of the relevant period to the date of acceptance.

[...]

(12) Where the court makes an order for costs in favour of the defendant—

(a) the court must have regard to; and

(b) the amount of costs ordered must not exceed,

the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 applicable at the date of acceptance, less the fixed costs to which the claimant is entitled under paragraph (4) or (5).”

22. CPR Part 45 contained provisions concerning fixed costs. Section IIIA of Part 45 (which ran from rules 45.29A to 45.29L) was headed “Claims which no longer continue under the RTA and/or EL/PL Pre-Action Protocols and claims to which the Pre-Action Protocol for the Resolution of Package Travel Claims applies – Fixed Recoverable Costs.”

23. Rule 45.29A provided:

“Scope and interpretation

45.29A—(1) Subject to paragraph (3), this section applies—

(a) to a claim started under—

(i) the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”); or

(ii) the Pre-Action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims (“the EL/PL Protocol”),

where such a claim no longer continues under the relevant Protocol or the Stage 3 Procedure in Practice Direction 49F; and

(b) to a claim to which the Pre-Action Protocol for Resolution of Package Travel Claims applies.

(2) This section does not apply to a disease claim which is started under the EL/PL Protocol.

(3) Nothing in this section shall prevent the court making an order under rule 45.24.”

24. Rule 45.29B provided:

“Application of fixed costs and disbursements—RTA Protocol

45.29B Subject to rules 45.29F, 45.29G, 45.29H and 45.29J, and for as long as the case is not allocated to the multi-track, if, in a claim started under the RTA Protocol, the Claim Notification Form is submitted on or after 31st July 2013, the only costs allowed are—

- (a) the fixed costs in rule 45.29C;
- (b) disbursements in accordance with rule 45.29I.”

25. Rule 45.29C contained Table 6B, setting out the amounts of fixed costs. Materially, Part B identified the amounts payable if proceedings were issued under Part 7 but the case settled before trial.

The decisions of the courts below

26. In an impressive *ex tempore* judgment given on 26 September 2023 HHJ Duddridge decided that the issue was ultimately determined by the wording of rule 36.20. He concluded that the case was one to which Section IIIA of Part 45 applied, being a claim which was originally made but which no longer continued under the RTA Protocol; and it also fell within rule 36.20(4) because the Defendant’s Part 36 offer was accepted after the relevant period. He decided that the Defendant’s construction of the rules accorded with the overall justice of the case as it reflected the broad intention of Part 36 offers, i.e. that claimants who accept offers by the end of the relevant period are entitled to their costs on the basis of the regime which applied as at that date. It would be arbitrary if a claimant who accepted the offer later than that date should be entitled to a different amount of costs depending on the date on which allocation to the multi-track happened. He considered that it was undesirable that the consequences of the offer and acceptance of Part 36 offers should be subject to circumstances outside the parties’ control.

27. In a closely reasoned and thoughtful judgment given on 11 April 2025 ([2025] EWHC 884 (KB)) Stacey J allowed the Claimant’s appeal. She considered that the Claimant’s construction gave effect to the decision of this court in *Qader v Esure Services Ltd* [2016] EWCA Civ 1109; [2017] 1 WLR 1924 (“*Qader*”) which, in her judgment, established that the fixed costs rules in Section IIIA of Part 45 ceased to apply to a case allocated to the multi-track. She held that where a case was so allocated it no longer fell within the scope of rule 36.20 but, instead, fell within rule 36.13. She rejected the Defendant’s argument that the Claimant’s construction would lead to an absurd outcome by perversely rewarding a tardy claimant, who could game the system. She noted that there was no suggestion that the Claimant had gamed the system by delaying her acceptance of the offer. She observed that there may well be cases where a claimant had reasonably rejected an offer but, owing to a change of circumstances, later decided to accept it. There was nothing absurd about a claimant being entitled to recover standard costs in such a case, at least where the claim had always been one which was appropriate for the multi-track.

28. Stacey J also rejected the Defendant's alternative case that the court should exercise its discretion to assess the Claimant's costs at a level equivalent to fixed costs so as to apply that regime indirectly. That argument was advanced on the basis of the approach taken by this court in *Williams v Secretary of State for Business Energy and Industrial Strategy* [2018] EWCA Civ 852; [2018] 4 WLR 147 ("*Williams*"). Stacey J decided that *Williams* was concerned with a claimant's unreasonable failure to follow a relevant pre-action protocol. In the present case, there had been no finding of unreasonable conduct by the Claimant accepting the Part 36 offer when she did and it was not open to the court to apply the fixed costs ceiling by analogy.

Grounds of appeal and submissions of the parties

29. The grounds of appeal are that the judge misinterpreted the relevant rules or, in the alternative, that the relevant costs should be assessed at a level equivalent to fixed costs in accordance with *Williams*.
30. In essence the Defendant submitted as follows. As with any statutory provisions, the rules in the CPR are to be given a purposive construction. There is a general interpretive presumption against absurdity. CPR 1.2 specifically provides that the court must seek to give effect to the overriding objective when it interprets any rule. Where there is a tension between a general and a specific rule, the former must yield to the latter (see e.g. *Solomon v Cromwell Group Plc* [2011] EWCA Civ 1584; [2012] 1 WLR 1048 ("*Solomon*"). The Claimant's interpretation would create a perverse reward for claimants to delay acceptance of Part 36 offers. This would give claimants a windfall and unjustly deprive defendants of the benefits of making a well-judged offer. Creating an incentive for delayed acceptance of offers would be contrary to the overriding objective. It would also create an absurd outcome in a case where a claimant failed to better a defendant's offer at trial since rule 36.21, which governs such cases, contains provisions similar to those in rule 36.20.
31. Part 36 works as a carrot and a stick to encourage early settlements: see *OMV Petrom SA v Glencore International AG* [2017] EWCA Civ 195; [2017] 1 WLR 3465. It does so by putting the offeree on risk as to costs. It makes sense in a case such as the present to restrict the claimant to fixed costs as this incentivises early settlement. On the Defendant's construction, late acceptance of the Part 36 offer puts the parties in the same position regarding the Claimant's costs as they would have been in if the offer had been accepted within time. The Claimant's construction relies on a contingent event (allocation of the case to the multi-track) which arose after the period in which the offer should have been accepted. That event would not have occurred had the offer been accepted within time.
32. The Defendant's interpretation is also preferable by reference to the plain wording of the rules. Rule 36.20(1) states that the rule applies where a claim no longer continues under the RTA Protocol pursuant to rule 49.29A. It thus applies to ex-Protocol claims such as the present one. The scope of the rule is not subject to rule 49.29B or to anything else. Rule 36.20 provides unambiguously that only fixed costs are recoverable. It is incorrect to suggest that rule 45.29B disapplies Section IIIA entirely or otherwise overrides rule 36.20 upon allocation of the claim to the multi-track. In any event, rule 36.20 specifically governs fixed costs on acceptance of Part 36 offers in ex-Protocol cases. Rule 45.29B (on the Claimant's case) governs ex-Protocol cases as a whole. The

specific rule should prevail over the more general one to resolve any conflict between them: see *Solomon* at paras 20-21.

33. The Defendant submitted in the alternative that (a) if the fixed costs rules do not apply directly, but (b) fixed costs would have applied had the Claimant acted as she should have done by accepting the offer within the relevant period, then (c) the Claimant's costs should be assessed with reference to Part 44 at a level equivalent to fixed costs: see *Williams*.
34. The Claimant argued that Stacey J was right for the reasons she gave. In essence the Claimant submitted that the allocation of the case to the multi-track meant that the rules providing for fixed costs were automatically and completely disapplied (see *Qader*). Accordingly, when the Claimant accepted the Part 36 offer, rule 36.13 applied because the recoverable costs "were not fixed by these Rules". The default position in rule 36.13 therefore applied and the relevant costs fell to be assessed on the standard basis if not agreed. The Defendant's construction is flatly against the decision in *Qader* that the fixed costs regime should never have applied to a case which has been allocated to the multi-track. Once such allocation occurs, the rules concerning fixed recoverable costs cease to apply for all purposes, including for those of rule 36.20.
35. The Claimant emphasised HHJ Duddridge's finding that, once the claim form had been issued under Part 7, the present claim was always likely to be allocated to the multi-track. The Claimant was seeking to recover the costs which were appropriate to such a case and was not looking to obtain a windfall. There was nothing absurd, or even surprising, about the interpretation reached by Stacey J: as she held, there may well be cases where a claimant decides to accept a Part 36 offer after the relevant period has elapsed but where the claim was always suitable for the multi-track and in which the claimant would be fairly treated by recovering standard costs.
36. The Claimant submitted, in the alternative, that if rule 36.20 (rather than rule 36.13) applies, rule 36.20 must be interpreted in the light of the whole of Section IIIA of Part 45, including rule 45.29B, reflecting the legislative intention that fixed costs should never apply to a case allocated to the multi-track.
37. The Claimant contended that *Williams* was concerned with unreasonable conduct and that, on the findings of the courts below, it had no application here.

Discussion and analysis

38. As noted above, the Claimant's arguments were largely based on the decision of this court in *Qader*, which concerned Section IIIA of Part 45 in its then form, so it is best to start by considering what that case decided. Claims for damages for personal injuries arising from road traffic accidents had been started under the RTA Protocol, but had left the Protocol when the defendants had denied liability, and been followed by Part 7 proceedings which had subsequently been allocated to the multi-track. The question was whether the fixed costs regime in Part 45 applied to the claims. The version of rule 45.29B then in force did not contain the phrase "and for as long as the case is not allocated to the multi-track". This court held that the rule was to be read as if it contained that phrase.

39. Briggs LJ, with whom Tomlinson and Gross LJJ agreed, concluded that, having regard to the history of Part 45 and the consultations that had led to its design, it had never been the legislative intention that the fixed costs regime in Part 45 should apply to multi-track cases. The drafting of Part 45 therefore contained an error which the court could and should properly correct under the principles illustrated by *Inco Europe v First Choice Distribution* [2000] 1 WLR 586.
40. In paras 16 to 18 Briggs LJ explained that there were a number of situations where claims properly started under the RTA Protocol were no longer continued under it but were pursued under Part 7 and were likely to be allocated to the multi-track rather than the fast track. He identified three examples. The first was where a claim originally thought to be worth no more than £25,000 was revalued at a substantially higher level and where the complexity of the case took it beyond a one-day trial estimate. The second arose from the exclusion of vehicle-related damages from the valuation of a claim for the purposes of the RTA Protocol. The third arose where a claim was properly started under the RTA Protocol but was met with an allegation that the claim had been dishonestly fabricated.
41. Between paras 44 and 50 Briggs LJ set out the legislative history that had led to the introduction of the fixed costs regime. In para 54 he concluded that the intended purpose of the fixed costs regime was that it should not apply to cases where there had been a judicial determination that a case should continue in the multi-track. The reason why this restriction had not been included was inadvertence, rather than a deliberate decision of the Rules Committee.
42. In para 55 Briggs LJ did not however consider that the Rules Committee would have carried back to a pre-allocation stage a policy to disapply fixed costs, merely because a claim properly started in the Protocols had grown in value beyond £25,000, or had become the subject of a pleaded defence of fraud or dishonesty. It did not necessarily follow that every such case would be inappropriate for management and determination in the fast track. To require the parties to guess, or the court to decide, whether a case which settled prior to allocation was or was not subject to fixed costs would introduce a damaging and unnecessary degree of uncertainty into the scheme.
43. In para 56 Briggs LJ said that the best way to give effect to the legislative intention was to insert “and for so long as the claim is not allocated to the multi-track” into rule 45.29B. The rule was subsequently amended with effect from 6 April 2017 to include these words.
44. I shall return in a moment to the scope and consequences of the reasoning in *Qader*. But before that some further comments may be made about Part 36.
45. Rule 36.1(1) states that Part 36 is a self-contained procedural code.
46. As Moore-Bick LJ said in para 4 of *Gibbon v Manchester City Council* [2010] EWCA Civ 726; [2010] 1 WLR 2081, Part 36 contains a carefully structured and highly prescriptive set of rules dealing with formal offers to settle proceedings which have specific consequences in relation to costs. In para 6 he said that certainty was to be commended in a procedural code, which must be understood and followed by ordinary citizens who wished to conduct their own litigation, and that Part 36 was drafted with these considerations in mind.

47. The purpose of Part 36 is to encourage the early settlement of cases, ideally at a stage before the costs have accumulated too much. By making a reasonable offer at an early stage, a defendant is able to throw the costs risk on to the claimant (see *Matthews v Metal Improvements Co Inc* [2007] EWCA Civ 215; [2007] C.P. Rep 27 at para 33).
48. The principal issue on this appeal is whether the costs consequences of the Claimant's acceptance of the Part 36 offer fall to be determined under rule 36.13 on the one hand, or under rule 36.20 on the other.
49. Starting with the text of the provisions, rule 36.13(1) expressly states that it is subject to rule 36.20, and the words in parenthesis at the end of rule 36.13(1) expressly refer to rule 36.20. So where rule 36.20 applies, rule 36.13 does not.
50. Rule 36.20 is headed "Costs consequences of acceptance of a Part 36 offer where Section IIIA of Part 45 applies". Rule 36.20(1) expressly applies "where ... a claim no longer continues under the RTA or EL/PL Protocol pursuant to rule 45.29A(1)".
51. The scope of Section IIIA of Part 45 is in turn defined in rule 45.29A, namely (so far as material), it applies to a claim started under the RTA Protocol or the EL/PL Protocol "where such a claim no longer continues under the relevant Protocol".
52. It is common ground that the Part 7 claim in the present case was a claim started under the RTA Protocol but no longer continued under it.
53. Taking these provisions without more the case would therefore fall within the scope of rule 36.20.
54. Stacey J concluded, however, that it was necessary to read these provisions together with rule 45.29B. She considered, on the basis of *Qader*, that the effect of rule 45.29B was to disapply the fixed costs regime altogether where an ex-Protocol claim had been allocated to the multi-track, so that Section IIIA ceased to apply. She therefore treated such a case as falling within an exception to the exception created by rule 36.20, and concluded that rule 36.13 (rather than rule 36.20) applied.
55. I respectfully disagree with this interpretation of the rules. In my judgment, in a case where, on the date on which the relevant period contained in a Part 36 offer expires the claim still falls within the scope of Section IIIA, the consequences of acceptance of the offer are governed by rule 36.20 rather than rule 36.13, even in a case which is subsequently allocated to the multi-track.
56. This is a workable and straightforward interpretation of the text of rule 36.20. The heading to rule 36.20 refers to cases falling within Section IIIA and the rule cross-refers to rule 45.29A. It was common ground that the present claim fell within rule 45.29A (and Section IIIA) when it was issued and continued to do so until it was allocated to the multi-track. In my judgment, there is nothing in rule 36.20, read together with rules 45.29A and 45.29B or otherwise, which requires it to be interpreted in the other sense. On the contrary, rule 36.20(4) expressly applies where a defendant's Part 36 offer is accepted after the relevant period. In such a case, on a simple reading of the text, the claimant will be entitled to the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 for the stage applicable at the date on which the relevant period expired. Where allocation to the multi-track has not occurred by the date on which the relevant

period expires there is no difficulty in giving effect to the plain language of the rule. The relevant date is that on which the relevant period contained in the offer expired; and in the present case that was a date on which the claim remained within the fixed costs regime.

57. In my judgment the words in rule 45.29B, “and for so long as the claim is not allocated to the multi-track”, do not require, where a case comes to be allocated to the multi-track, that it is to be treated for all purposes as if it had never, at the previous stages, fallen within Section IIIA of Part 45.
58. The Claimant relied on paras 35(d) and 59 of *Qader* to argue that upon the allocation of the claim to the multi-track, Part 45 is completely disapplied, with retrospective effect and for all purposes. I do not think that *Qader* establishes such a broad proposition. In that case the question was whether a claim which had been allocated to the multi-track should be subject to fixed costs or should be subject to costs management. The court was concerned only with the code contained in Part 45 and did not have to consider its interplay with other rules. Nor did it have to consider the question of the potential retrospective effect of allocation for any other purposes. Specifically there was no discussion of Part 36.
59. As I have said, I do not consider that the phrase “and for so long as the case is not allocated to the multi-track” in rule 45.29B must always be given retrospective effect for all purposes. The words indeed have a temporal element (“for so long as”). This naturally connotes that until a case has been allocated to the multi-track the claimant is entitled only to the fixed costs identified in rule 45.29B. I note that Newey LJ appears to have interpreted the wording in this way in *Ho v Adelekun (No. 1)* [2019] EWCA Civ 1988; [2019] Costs LR 1963 at para 33, where he said that “the more natural interpretation of CPR 45.29B might be thought to be that, where a case is transferred from the fast track to the multi-track, the fixed costs regime ceases to apply prospectively, not in relation to the past costs, incurred when the case was in the fast track”. *Ho v Adelekun (No. 1)* was concerned in part with the reallocation of a case from one track to another (for which there are specific rules, including rule 46.13(2)). But para 33 of that judgment shows (as counsel for the Claimant accepted) that there is no blanket rule that the allocation of a case to the multi-track disapplies the fixed costs regime in Section IIIA retrospectively and for all purposes.
60. Hence there is no universal rule that the words of rule 45.29B and the allocation of the case to the multi-track require that the case be treated for all purposes as if it had never previously come within the scope of the fixed costs regime under Section IIIA. In other words, the allocation of the case to the multi-track after the end of the relevant period of a Part 36 offer does not operate to remove the case from the scope of rule 36.20 by requiring one to treat the case as if it had never been within Part IIIA before the date of allocation. On the contrary, in my view, the most natural and straightforward reading of the rules is that set out in para 55 above.
61. This conclusion accords with the reasoning in para 55 of *Qader*, where the court explained that the policy of disapplying fixed costs does not carry back to the pre-allocation stage, merely because a claim properly started in the Protocols had grown in value beyond £25,000, or had become the subject of a pleaded defence of fraud or dishonesty. As Briggs LJ explained, to require the parties to guess, or the court to decide, whether a case which had settled prior to allocation was or was not subject to

fixed costs would introduce a damaging and unnecessary degree of uncertainty into the scheme. Briggs LJ was speaking there of introducing undesirable uncertainty into the operation of Part 45 itself. But it seems to me that the Claimant's interpretation of the rules would, similarly, bring undesirable uncertainties into the operation of Part 36. The purpose of Part 36 is to encourage early settlements and the rule operates most effectively if defendants can be confident that their liability is capped at the amount of the claimant's costs at the date of the expiry of the relevant period, without uncertainty about how those costs will come to be determined, possibly depending on later events.

62. Hence, in my judgment, there is no conflict between rule 36.20 and rule 45.29B and there is no basis in a case where there has been allocation of the case to the multi-track for reading the latter rule as excluding the application of the former. But if the rules were considered to conflict, the more general rules (in Part 45) must be read as yielding to the more specific rule 36.20. That rule specifically stipulates the consequences of acceptance of a Part 36 offer in respect of a claim falling within Section IIIA. It is therefore to be given precedence over the more general rules about fixed costs contained in Part 45: see *Solomon* at para 21.
63. I also think that the Defendant's interpretation has more rational and coherent consequences than the rival reading. If the Claimant had accepted the offer within the relevant period she would have been restricted to fixed costs. It would be surprising if the Claimant were to become entitled to a substantially greater amount of costs by accepting the offer after the expiry of the relevant period by reason of events occurring after the end of that period, and outside the parties' control. Part 36 operates in part by placing the costs risk onto the claimant. The principle underlying rule 36.20 (and indeed rule 36.13) is that claimants who accept an offer after the relevant period will generally be entitled to the amount of costs they would have received had they accepted the offer on the last day of the relevant period, and no more. It appears to me that this principle is furthered if the defendant is able to anchor its liability to the costs environment applicable during the relevant period of the Part 36 offer. Here the costs environment during the relevant period was that of fixed costs.
64. I agree here with HHJ Duddridge that it would be surprising if a claimant were to become entitled to a greater amount of costs by reason of accepting an offer after the expiry of the relevant period by reason of an allocation of the case to the multi-track in the meantime. Part of the purpose of the rules is to encourage early settlement and it seems to me to be implicit in the rules that 21 days is regarded as a reasonable period in the normal case for a party to be able to decide whether or not to accept the offer. A claimant may of course still be able to accept an offer after the end of that period but, as already noted, it is hard to see why a claimant who does so should be in a better position than one who accepts the offer within time.
65. Nor do I think that it answers this point to say that the Defendant could have withdrawn the offer after the end of the relevant period. The Defendant was, in my judgment, entitled to maintain the offer with a view to limiting its liability to the costs payable in the costs environment applicable on the date of expiry of the relevant period in the event that the Claimant decided to accept it after that date.
66. In support of the argument that rule 36.13 rather than rule 36.20 applies, the Claimant relied on the words in rule 36.13(3) "except where the recoverable costs are fixed by these Rules". The Claimant argued that in the present case the costs were not fixed by

the rules because of the effect of allocation of the case to the multi-track which completely disapplied Part 45. There are two difficulties with this argument. The first is that rule 36.13 is expressed to be “subject to” rule 36.20, so that it is first necessary to determine whether rule 36.20 applies before considering the specific wording of the sub-paragraphs of rule 36.13. If rule 36.20 applies, rule 36.13 does not. The Claimant’s argument inverts the right order of analysis by starting with the words of sub-rule 36.13(3).

67. The second difficulty is that, as already explained, the argument misstates the consequences of allocation to the multi-track: there is nothing in the words to suggest that the claim is to be treated for all purposes as if it had never fallen within the scope of Section IIIA of Part 45. In my view, where a case continued to come within the fixed costs regime on the date when the relevant period ended, the recoverable costs are indeed “fixed” by the rules for the purposes of rule 36.13(3).
68. For these reasons, in my judgment rule 36.20, rather than rule 36.13, determines the consequences of the Claimant’s acceptance of the Part 36 offer.
69. The Claimant contended that even if rule 36.20 applies, it must be interpreted in the light of the whole of Section IIIA of Part 45, including rule 45.29B, reflecting the intention inherent in the rules that fixed costs should never apply to a case allocated to the multi-track. I am unable to accept this argument for the reasons already given. If rule 36.20 is the governing rule, it requires the application of the fixed costs rules in Part 45 applicable on the date on which the relevant period expires in any case which has not, by that date, already been allocated to the multi-track. For the reasons I have already given, I reject the argument that the words “and for so long as the case is not allocated to the multi-track” in rule 45.29B are to be read as meaning that the claim is to be treated as if it had never fallen within Section IIIA of Part 45. On the contrary, until allocation has taken place the case comes within Section IIIA and a claimant in an ex-Protocol case who accepts a Part 36 offer with a relevant period which expires before the disapplication of Section IIIA is entitled only to fixed costs determined in accordance with rule 45.29C and disbursements in accordance with rule 45.29I.
70. For these reasons I would allow the appeal.
71. It is unnecessary to consider the alternative ground of appeal based on the case of *Williams*.
72. It is also unnecessary for the purposes of this appeal to decide how the CPR would operate in a case where a Part 36 offer had been made in an ex-Protocol case but after the allocation of the case to the multi-track; or indeed where the offer had been made before such allocation but the relevant period had expired afterwards. I would prefer not to express any concluded views about such cases. However, by way of footnote I would suggest that the Rules Committee may wish to consider these scenarios, as the existing rules do not yield entirely straightforward answers and they would benefit from clarification.
73. It may assist to outline some of the potential issues. Rule 36.20(2) provides that where a Part 36 offer is made within the relevant period, the claimant is entitled to the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA for the stage applicable at the date on which notice of acceptance was served on the offeror. Rule 36.20(4) provides

for the same entitlement where the offer is accepted after the relevant period. The rules assume that the fixed costs set out in the Tables are applicable at the date of acceptance of the offer. But where the case has already been allocated to the multi-track before the expiry of the relevant period (so that the case would fall within the exception contained in rule 45.29B) there would on the face of it be no applicable fixed costs. There would therefore appear to be a potential gap.

74. One way of filling the gap would be to revert to the default rule in rule 36.13, so that standard costs would be recoverable. This might be considered to have the benefit of coherence. Once the case has been allocated to the multi-track, by virtue of rule 45.29B, the fixed costs regime is disapplied and the case becomes subject to the usual costs rules under CPR 44. It might be thought to be more coherent if the consequence of accepting a Part 36 offer in such a case were that the claimant was entitled to standard costs. It might also be thought that there was no rational basis for suggesting that in such a case the defendant should be able to limit its liability to fixed costs (since the fixed costs regime no longer applies to the claim). Moreover, on this understanding, because of the allocation of the case to the multi-track, the fixed cost regime contained in rule 45 would not apply to the case as at the date of acceptance of the offer (see rule 45.29B). Reading rules 45.29A and 45.29B together, it may be thought that the case is no longer one where there were “fixed recoverable costs” as referred to in the heading to Section IIIA.
75. Other issues might arise in the case where on the date of the offer the case had not been allocated, but allocation to the multi-track happened during the relevant period. Again, the Rules Committee might wish to consider whether and if so how the rules might be clarified to cover such a scenario.

Disposal

76. I would allow the appeal and restore the order of HH Judge Duddridge.

Lady Justice Falk:

77. I agree.

Lord Justice Lewison:

78. I also agree.