

# Calderbank dos and don'ts

**Galina Ward**

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## Calderbank v Calderbank [1976] Fam 93

- Divorce proceedings
- Wife ordered to pay husband lump sum of £10,000
- On 14 August 1974 had offered to transfer to him a property worth £12,000
- Not able to rely on earlier “without prejudice” offer or use then existing procedure to make payment into court
- First instance judge made no order as to costs

## Calderbank v Calderbank [1976] Fam 93

I have reached the conclusion that that was an offer which in the circumstances of this case the husband ought to have accepted and that, as he persisted in these proceedings and recovered a lump sum of a smaller amount than the value of that house, the right order would be that he should have the costs up to August 14 and thereafter the wife should have her costs of the proceedings in the court below.

## Calderbank based on Lands Tribunal procedure

There are various other types of proceedings known to the court where protection has been able to be afforded to a party who wants to make a compromise of this kind and where payment in is not an appropriate method. One is in proceedings before the Lands Tribunal where the amount of compensation is in issue and where the method that is adopted is that of a sealed offer which is not made without prejudice but which remains sealed from the tribunal until the decision on the substantive issue has been made and the offer is then opened when the discussion as to costs takes place.

# Lands Chamber Practice Directions

## **12.1. Power to award costs**

1) Under section 29 of the Tribunals, Courts and Enforcement Act 2007 the Upper Tribunal has power to order that the costs of any proceedings incurred by one party shall be paid by any other party...

## **12.2. Exercise of discretion in awarding costs**

...Subject to what is said below the discretion will usually be exercised in accordance with the principles applied in the High Court and county courts.

## **12.3. The general rule for costs**

1) The general rule is that the successful party ought to receive their costs.

## Who is the successful party?

- In general, ratepayer who secures a reduction in RV.
- Tribunal will also have regard to all the circumstances, including the conduct of the parties; whether a party has succeeded on part of their case, even if they have not been wholly successful; and admissible offers to settle (PD 12.3).

# Lands Chamber Practice Directions

## 12.7. Offers to settle

1) In any proceedings before the Tribunal any party may make an offer to any other party to settle all or part of the proceedings or a particular issue on terms specified in the offer. Neither the offer nor the fact that it has been made may be referred to at the hearing if it is marked with ‘without prejudice save as to costs’ or similar wording, or if it is said to be a ‘Calderbank’ offer.

## Lands Chamber Practice Directions

2) Offers to settle part of proceedings or a particular issue must **clearly identify which part of the proceedings or the issue that it relates to**. Offers should also state **whether or not the offer is open for acceptance indefinitely or for a specified period of time**. An offer should state whether or not it includes **interest** (if it has been claimed), at what rate and for what period it covers. It should also state whether or not it includes agreement to pay the other party's **costs** and either the amount or the basis of those costs.



## Lands Chamber Practice Directions

3) The party making an offer to settle must send a **copy of it to the Tribunal** within a **sealed envelope enclosed with a cover letter**. The Judge or Member hearing the case will not see the offer (it will remain in its sealed envelope separate from the Tribunal's case file) or be informed of its existence until after the proceedings have been determined. **If requested** by a party to do so, the Judge or Member **may then consider the offer, when considering the question of the costs of the proceedings**.

## Key points

- Mark offer “without prejudice save as to costs”/Calderbank
- Make clear what is or is not covered: issues
- Specify when it can be accepted
- Does it cover costs or will that be left to Tribunal if offer accepted?
- Copy to Tribunal in sealed envelope with cover letter