

GENERAL

Order 22 RSC

WHO By party against who a debt or damages is brought to 'entice' the other party to accept the sum in satisfaction of the claim.

WHAT An offer to dispose of the claim on terms.

WHEN Anytime after entry of Appearance **O22 R1(1)**

WHY To put pressure on the other party to bring action to an end.

HOW Serve Notice on other party. Send letter to Registrar enclosing cheque and state what it is for.

Types of Claims Debts or Damages

Effect of acceptance of Payment In Action is settled as if payment under a compromise.

Does not imply an admission on merits of the case

AMOUNT Should be between the minimum and maximum to entice the Plaintiff.

TENDER

The performance of one party to an agreement of his obligation to pay money or deliver goods and the refusal of the other party to accept money or goods.

TENDER arises where the contract cannot be completely performed.

Can be raised as **Defence** if the party seeking to perform the contract through his payment/delivery makes a payment in court before he files the Defence.

WHEN Can only be raised as **Defence** if he paid the same amount into Court that he said he tendered.

COSTS

Acceptance of Payment In P entitled to costs up to time of acceptance of payment in.

Taxation of Costs Taxed on standard basis and paid by D up to time that he is served with notice of acceptance.

Non Acceptance

Case goes to trial and liability of costs will follow the usual course.

Judgment is less than Payment In Usual for Court to make a **split order** for costs. P will have his costs taxed up to time of payment in but thereafter liable to D's costs.

Split Cost Even though P had right of action and won some award, he acted **unreasonably** by not accepting a proper offer.

Judgment is same as Payment In D is entitled to costs after Payment In.

PROCEDURE

1. Letter to Registrar of Supreme Court enclosing cheque. State what it is for.
2. File **Notice** and serve on Plaintiff.
3. Plaintiff has **3 days** to acknowledge receipt in writing.

NON DISCLOSURE

Payment In should **NOT** be disclosed to the Judge. He must remain neutral and unbiased.

If disclosed by application (because trial going bad for P) or by inadvertence, Judge has **discretion** to continue to hear case or refer it.

If liability has been decided but not quantum, any party may disclose to the Payment In but **not the quantum** of the Payment In.

EMBARRASSMENT

It must be possible to determine what the payment applies to.



WITHDRAWAL OF PAYMENT IN

Leave Required - O22 R1(3)

At the **Judicial Discretion** of the Court whether to allow and on what terms.

Leave may be granted if:

1. The D can show good reason (new facts);
2. New Judicial Decision;
3. Mistaken meaning of statement of claim
4. Character of litigation has changed (eg. increase of a counterclaim)

INTEREST UNDER RSC

Payment In **SHOULD** include interest in accordance with *Civil Procedure (Award of Interest) Act*

ACCEPTANCE OF PAYMENT IN

Time Within **21 days** of receipt of Notice of Payment In **BUT before** trial **O22 R3(1)**

Where trial has begun P may accept within **2 days** of receipt of Notice if before Judge begins giving Judgment or Summing Up **O22 R3(2)**.

Fee Small payment to Bahamas Treasury Department

ORDER FOR PAYMENT OUT

Order Required When:

1. Money was paid in by some but not all D's sued jointly
2. There is a Defence of Tender before action
3. In satisfaction of a action under Fatal Accidents Act or where more than 1 person is entitled to the money.

REMEMBER Where the person is under a disability (Patient/Minor) an Order for payment out must be obtained.

LATE ACCEPTANCE

After the time has passed for acceptance, the Court will only allow late acceptance if no substantial alteration in the risk of the litigation.

EFFECT OF PAYMENT

