

## IN THE COURT OF APPEAL (CIVIL DIVISION)

***Hamilton v Button***

On 1 April 2008, Mr Hamilton was driving his Citroën Xsara Picasso when he stopped at a red traffic light. Mr Button was approaching the same traffic light in a Honda Jazz. Unfortunately, Mr Button failed to brake in sufficient time and crashed into the back of Mr Hamilton's car. Mr Hamilton suffered a whiplash injury and his car suffered significant damage to the rear. Mr Button admitted fault immediately.

Two days later, Mr Button's insurers wrote to Mr Hamilton admitting liability and offering the use of a hire car for the two months that Mr Hamilton's Citroën would be undergoing repairs. They offered him the use of a Ford Mondeo, free of charge, for that period. Mr Hamilton rejected their offer, as he wanted a vehicle similar to his own so that he could transport his 3 year-old twins in comfort. He rang up F1 Hires, his local car rental firm, who told him that although they could offer him a 5-seater Citroën Xsara Picasso at £27.37 per day, it was not due back from another customer for three weeks. Mr Hamilton asked if they had anything similar, and was informed that they had a 7-seater Ford Galaxy, at £68.62 per day. However, if Mr Hamilton wanted to hire it for more than a month, they would be able to offer him a 10% discount, to £61.76 per day. Mr Hamilton accepted and hired the vehicle for two months.

On 1 September 2008, Mr Button made a Part 36 offer of £3,500 in settlement of the claim, to cover his injuries and damage to his car. This was rejected by Mr Hamilton, on the basis that no offer had been made in respect of his car-hire charges, and a counter-offer proposed of £8,000. This was rejected by Mr Button. A further Part 36 offer was made by Mr Button on 1 October 2008 of £4,000. This was also rejected on the same basis as before. Mr Hamilton issued proceedings on 1 November 2008 in respect of his injuries, damage to his car, and his car hire charges, claiming £8,000. No further Part 36 offers were made by either side until trial on 1 April 2009.

At first instance, Mansell J found the following facts:

1. On 1 October 2008, as a claim had not yet been issued, under the Predictive Costs (Fixed Recoverable Costs) scheme, as provided in section II of CPR Part 45, Mr Button's solicitors would have been liable to pay fixed costs of £1,880.
2. From the expiry of the offer of 1 October 2008, Mr Hamilton's costs totalled £9,000, and Mr Button's totalled £6,000.
3. F1 Hires would have been able to provide a similar Ford Mondeo to that offered by Mr Button's insurers for £34.32 per day.

Mansell J awarded Mr Hamilton £4,150 in respect of his injury, damage to his vehicle and interest. He stated that:

1. No award was made in respect of the car hire charges, as the car offered by Mr Button's insurers would have been adequate for Mr Hamilton's needs and he had therefore not taken reasonable steps to mitigate his loss.
2. Although the Part 36 offer of 1 October 2008 had been beaten, under *Carver v BAA Plc* [2008] 3 All E.R. 911, Mr Hamilton had failed to achieve a more advantageous result and so Mr Button should be entitled to his costs from the expiry of the offer of 1 October 2008.

Mr Hamilton appeals on the following grounds:

1. The Ford Mondeo offered by Mr Button's insurers was not equivalent to his own. Mr Button had therefore not proved that Mr Hamilton had failed to mitigate his loss, and therefore the claim of £3,705.60 in respect of the hire charges was reasonable.
2. Even if the claim in respect of the car hire charges was not accepted, *Carver* should not apply as Mr Hamilton's claim had been reasonable and had not been exaggerated, and the reason for the rejection of the earlier Part 36 offers had been clearly stated.