

The Letter Before Claim

Para 6(a) of the PD on Pre-Action Conduct: The Claimant must issue a Letter Before Claim.

Conduct: Do not write to the defendant if they have legal representation – address it to his solicitors – **IB11.4, O11.1.**

What should be included in a Letter Before Claim?

Name and Address of Claimant

Factual Background

The Claim

- legal basis & factual basis
- loss suffered and how calculated
- details of any CFA/AEI claimant has entered into

Documents

“we enclose the following on which we rely”
“in return please provide us with...”

ADR - suggest most suitable method.

Give reasonable dates by which you expect Acknowledgement and Response

- A - (within 21 days of receipt)
- R- (within 30 days)

Draw their attention to the court’s power to impose sanctions for failure to comply with PD, unless D is known to be legally represented.

Inform D that ignoring the letter may lead to proceedings being started and may increase liability for costs & interest (unless D is legally represented)

PROFESSIONAL NEGLIGENCE

Letter Before Claim should contain:

(under the Professional Negligence Pre-action Protocol)

Para 5.2

- Identity of claimant and any other parties
- Brief outline of the Claimant’s grievance
- Indication of financial value of the claim (where possible)

Para 5.3: Address letter to the professional and ask them to inform their professional indemnity insurers immediately.

Para 5.4: Professional should acknowledge receipt within 21 days of receipt. No further obligation (to reply etc)

Your basic headings should be

Factual Basis of Claim

Legal Basis of Claim

Consequences of Breach

In Financial Terms

Documents

ADR Proposal

Deadlines for Acknowledgement & Response

WS3 Claim Form and The Particulars of Claim

Claim Form

About the Claim Form

File it at court and serve on all defendants to begin proceedings (PD7A para 3.1)

Proceedings are COMMENCED when the court issues the Claim Form (by sealing, stamping and numbering it), but for LIMITATION PURPOSES the claim has been brought as soon as the court receives the form. From the date the proceedings were commenced, the claimant has **4 months** to serve it on the Defendant (6 months if Defendant is not in England or Wales). If you serve it in the EEA you need a certificate. If you want to serve it outside the EEA you need the court’s permission.

The court can grant remedies beyond those specified in the claim form.

Completing the Claim Form

- If the PARTICULARS OF CLAIM are not served or contained on the Claim Form, state that they are to follow. If they are served with the claim form, delete “to follow”.
- Always complete the brief details box e.g “Claimant claims damages arising out of the defendant’s breach of contract on 8 Aug 2015.”
- Which court? - **see WS1.** District Registry or RCJ for High Court. QBD will be suitable unless the claim is specialist in nature.

The Claim Form must be completed as follows:

- Where claimant or defendant is acting in a representative capacity – state what it is correctly, e.g.
 - *Mr Fred Jones Trading As Jones & Son [sole trader:option to add their trading name]*
 - *XYZ (A Firm) [partnership: under PD7A para 5.3 use the name of the partnership at the time the action accrued]*
 - *Majestic Ltd/plc [company]*
 - *Mrs Margaret Sugar [individual]*
 - *Miss Georgia Holland (by her litigation friend) [minor]*
- Include the claimant’s residential address or place of business, even if his solicitors are accepting service. This MUST include a postcode. The same applies for the defendant. If this is not done, the Claim Form will be issued but not served (para 2.5).
- The full names and titles of the parties must be stated, e.g. Mrs Jane Suita, numbered where there are multiple claimants or defendants.

Under CPR part 16 the Claim Form must:

- Contain a concise statement of the nature of the claim and the remedy the claimant seeks r.16.2(1)
- Contain a statement in value in accordance with r16.3(2) (where the claim is for money)
 - The amount owed
 - That the claimant expects to recover
 - › Not more than £10k/£10K<>25K/more than £25k; or
 - Claimant cannot say how much they expect to recover
- Where the claim is for a specified sum (i.e. a fixed amount, like a debt) the claim form must contain a statement of interest accrued **r.16.2(1)(cc)**

Under CPR part 22.1(1)(2) the Claim Form must:

- Be verified by a statement of truth in the form set out in PD22. See WS4.

Other requirements:

- Court Fees – see http://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court_leaflets_id=264
- Solicitors Costs – enter these if it is a claim for a specified amount of money – see **CPR part 45**.

STATEMENTS OF TRUTH

All Statements Of Case must be verified by a statement of truth **r.22.1(1)(a)**.

Without it, the party will not be allowed to rely on its contents as evidence and the court may strike out the Statement Of Case totally. **PD 22 para 4**

Who can sign?

- Company:
 - Any of the company's senior personnel, provided they have sufficient knowledge of the matters contained.
 - The solicitor
"The Claimant believes that the facts stated in these particulars of claim are true. I am duly authorised by the claimant to sign this statement." [Also state position held]
- Individual
 - The claimant
 - › *"I believe that the facts stated in these particulars of claim are true."*
 - The solicitor (in his own name, not his firm's **PD 22 para 3.10**)
 - › Where a solicitor signs this for the client, it refers to the client's belief, not the solicitor's, so words should be altered to *"the Claimant believes"* not *"I believe"*. The solicitor must tell the client that in signing it he is confirming the client's belief in those facts and the consequences of signing the statement if they do not have an honest belief in those facts, including committing contempt of court. (**PD 22 para 3.7, 3.8**).

The Particulars Of Claim

About the Particulars of Claim

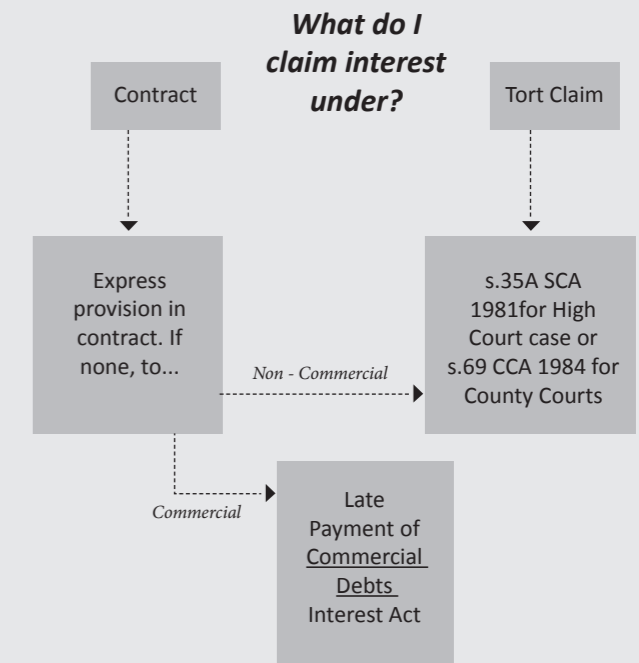
- They are a statement of case.
- Can be amended several times before trial.
- They can be served with or after the claim form.

Requirements set out in PD 16

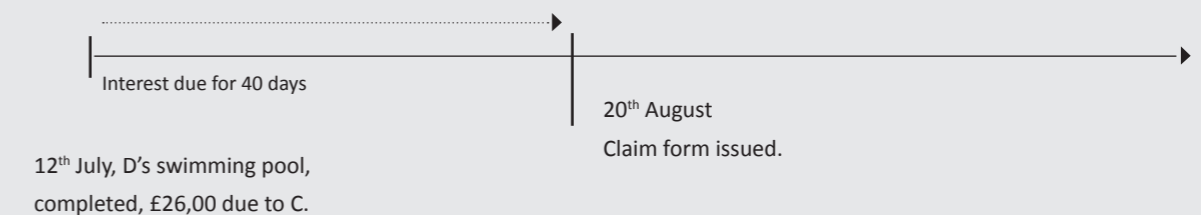
Para 4(1): a concise statement of the facts on which the claimant relies and if seeking interest, a statement to that effect and the details set out in para 4(2) (otherwise can't claim the interest!)

INTEREST – state:

- Are you seeking it on the basis of a contract, statute, other basis?
- Where claim is for a specified amount state:
 - the % rate,
 - the dates (from and to) it has accumulated so far
 - total amount claimed
 - daily rate it is accruing at (Appendix C(4))



CALCULATING INTEREST PAYABLE ON A CONTRACT CLAIM



Where the contract provided interest would be payable for late payment from and including the day the work was completed at 10% per annum. On 30th August the claim form will claim the following interest:

$$\text{Daily Rate} = \frac{\text{outstanding sum} \times \text{contract rate \%}}{365} \quad \text{In example} = \frac{26,000 \times 0.1}{365} = \text{£}7.12 \text{ (rounded up)}$$

The payment has been outstanding for 40 days (20 July, 20 in August) so state that £284.93 is currently owing (If the contract did not specify a rate you would claim at 8% pa under s.69 CCA1984 – a daily rate of £5.70)

- Where the claim is based on a **WRITTEN CONTRACT – para 7.3**
 - A copy of the contract or the docs constituting the agreement & general conditions of sale
- Where the claim is based on an **ORAL CONTRACT – para 7.4**
 - Give the contractual words used, and state by whom, when and where
- Include address for service and such other matters as set out in **PD 16 para 8.1-2**
- There should be one allegation per numbered paragraph and events should be set out chronologically.
- It must be verified by a statement of truth (if not part of claim form).

When is the Acknowledgement of Service/Defence due?

10.3(1)

Acknowledgement of Service must be filed:

- Where Claim Form and Particulars Of Claim were sent together – within 14 clear days of (deemed) service.
- Where Particulars of Claim follow Claim Form – 14 clear days from the (deemed) service of the Particulars Of Claim.

15.4

Unless the parties have agreed otherwise, a Defence must be filed

- Where no acknowledgement was filed – within 14 clear days of (deemed) service of the Particulars of Claim.
- Where an acknowledgement was filed – 28 clear days after (deemed) service of Particulars of Claim.

Entering Judgment In Default

Claim Form served with Particulars of Claim	15th day after deemed service of the Claim Form
Particulars of claim served after Claim Form	15th day after deemed service of the Particulars of Claim

Deemed Service of the Claim Form

The Claim Form is always deemed to have been served on the **SECOND BUSINESS DAY** after the step to serve it (see below) was carried out (r.6.14). “Business day” means any day except weekends, bank holidays, Good Friday or Christmas Day (r.6.2(b)).

Serving the Claim Form

When?

It must have been served by midnight on the calendar day 4 months after the date of issue of the claim form.

Where?

Where you have been informed in writing that the solicitor is authorised to accept service – send it there (r6.7).

Under r.6.9 where there is no address for service or solicitor: **See overleaf.**

Type of Defendant	Place of Service
Individual	Usual or last known residence
Individual being sued in the name of a business	Usual or last known residence of individual/principal or last known place of business
“ of a partnership	Usual or last known residence of a partner/principal or last known place of business of the partnership (main office)
Limited Liability Partnership	Principal Office of partnership or any place of business within the jurisdiction with a real connection with the claim
Company registered in England and Wales	Registered Office of the company or any place of business within the jurisdiction with a real connection with the claim

Step to Service – How?

First class post, DX, other next day business delivery	Posting, leaving with, delivering to or collection by relevant service provider
Delivery of the document to or leaving it at the relevant place	Delivery of the document to or leaving it at the relevant place
Fax	Completing the transmission of the fax (must have indicated a willingness to accept this method of service e.g. by including fax number on headed notepaper)
Other electronic method	Sending the email/other electronic transmission (must have <u>expressly</u> indicated a willingness to accept this method of service)
Personal Service	Hand it to them or drop it at their feet while in the jurisdiction (r.6.5(3)(a))

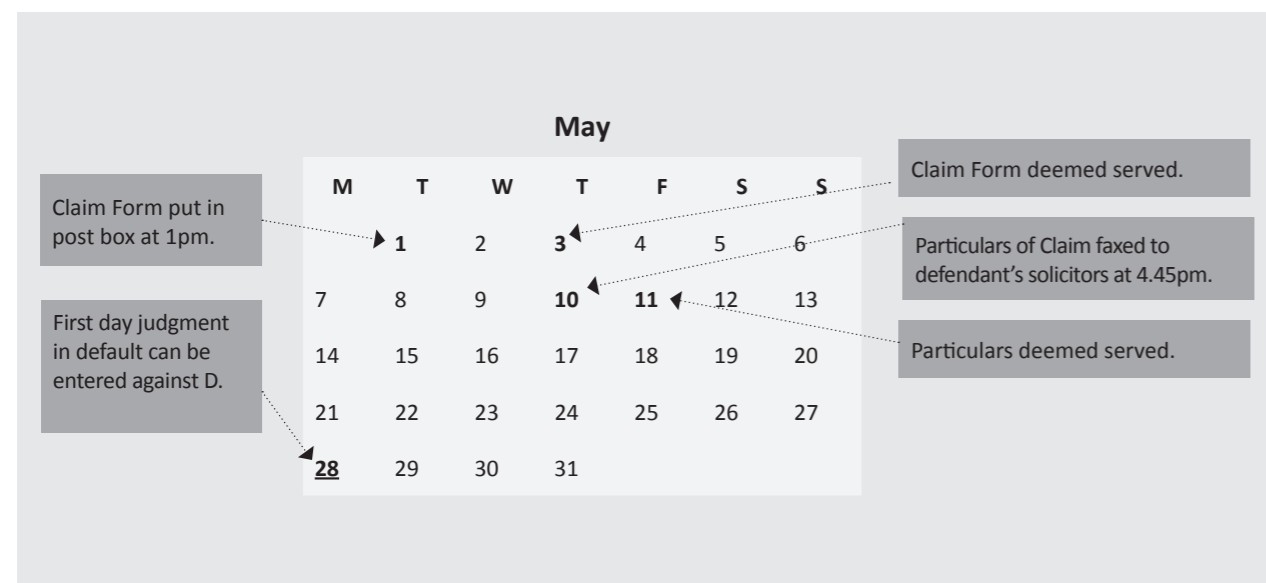
Serving Other Documents and Statements of Case

Where?

As for Claim Form

When is it deemed served?

Method of Service	Deemed Date
Personal Service	If the document is served personally before 4.30pm on a business day, on that day; or, in any other case, on the next business day after that day.
First class post	The second day after it was posted, left with, delivered to or collected by the relevant postal service provider provided that that day is a business day; or in any other case, on the next business day after that day.
Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30pm, on that day; or in any other case the next business day after that day.
Document Exchange	The second day after it was left with, delivered to or collected by the relevant postal service provider provided that that day is a business day; or in any other case, on the next business day after that day.
Fax	If the transmission of the fax is completed before 4.30pm on a business day, on that day; or in any other case on the next business day after the day on which it was sent.
Email	If the email is sent before 4.30pm on a business day, on that day; or in any other case on the next business day after the day on which it was sent.



WS4 Default Judgment, Defence and Counterclaim

Grounds to set aside a default judgment

Mandatory Grounds r.13.2:

The court must set aside a judgment under part 12 where condition in r12.3(1) or 12.3(3) was not satisfied:

- D has satisfied the whole claim
- Acknowledgement of service was not served after the expiry of the deadline, i.e. judgment wrongly entered

Discretionary Grounds r.13.3(1):

The court may set aside or vary a default judgment under part 12 where

- Defendant has a real prospect of defending the claim
- It appears to the court there is some good reason why the judgment should be set aside or varied or the defendant should be allowed to defend the claim.

PROCEDURE

- Apply to set aside as soon as you become aware the default judgment exists as court expects you to act promptly. Any delay will have to be explained.
- Application must be on notice and supported by evidence (e.g. Witness Statement from the defendant)

Costs orders:

Ground on setting aside	Usual Costs Order made	Why?
mandatory ground 13.2	Claimant to pay defendant's costs.	Claimant is at fault for entering judgment.
"real prospect" defence 13.3(1)(a)	Defendant has to pay claimant's cost.	Defendant is at fault for failing to deal with proceedings.
"good reason" 13.3(1)(b)(i)	Costs in the case.	Neither party at fault.

Drafting a Defence and Counterclaim

Time Limits for the Defence and Reply

Defence must be filed (CPR 15.4):

- 14 days after the Particulars of Claim have been served; or
- Where D acknowledged service, 28 days after Particulars Of Claim have been served.

Where C replies to the Defence:

The reply must be filed and served on all other parties (15.8 CPR) at the same time as the Allocation Questionnaire.