HER MAJESTY'S COURTS SERVICE

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EX306

The defendant disputes all or part of my claim

This leaflet explains what will happen if the defendant disputes ('defends') all or part of your claim. It also tells you what will happen if the defendant says that the money has already been paid. Other leaflets you may find helpful are mentioned in the text. These are available free from any county court office or from our website www.hmcourts-service.gov.uk

Remember that this and other leaflets can only give you a general idea of what is likely to happen. They cannot explain everything about court rules, costs and procedures which may affect different types of claim in different ways.

What happens if the defendant wants to defend all of my claim?

Within 14 days of receiving (being 'served' with) particulars of your claim, the defendant must send to the court (called 'filing') either:

- an acknowledgment of service; or
- a defence.

Why would the defendant file an acknowledgment of service instead of a defence?

Filing a Form N9 (acknowledgment of service) gives the defendant extra time in which to prepare a defence. The time for filing a defence is increased from 14 to 28 days from the date of service of your particulars of claim.

If the defendant files an acknowledgment of service, but then fails to file a defence within the time allowed, you can ask the court to enter 'judgment in default'. This means asking the court to make an order that the defendant pay you the money and costs you are claiming. The leaflet **EX304 - No reply to my claim form - what should I do?** - will tell you what you have to do.

How will I know an acknowledgment of service has been filed?

When the court receives the acknowledgment of service you will be sent a Form N10 (notice that acknowledgment of service has been filed). It will tell you:

- the date it was received;
- whether the defendant intends to defend all or part of your claim;
- the name and address of the defendant's solicitor (if a solicitor files the acknowledgment on the defendant's behalf); and
- any change in the defendant's name and address which is mentioned in the acknowledgment.

What happens if the defendant defends all of my claim?

If your claim is for a fixed sum of money (called a 'specified amount'), the defendant will fill in the defence and counterclaim form (Form N9B) and file it with the court. The defendant may also use this form to make a claim against you, that is, say that you owe money to the defendant. This is called 'making a counterclaim'.

If your claim is **not** for a fixed amount (an 'unspecified amount'), the defendant will use a defence and counterclaim form (Form N9D).

How will I know when a defence has been filed?

The court will send you a copy, together with other documents for you to complete.

If you are claiming against more than one defendant, they may not reply to your claim at the same time. If one files a defence before the other, the court will send a letter to you and the defendant who files the first defence. The letter will explain that the court will delay sending out any further documents until the other defendants to your claim have had the appropriate time to file a defence, if they wish.

What other documents will be sent with the copy of the defence?

The court will send you and the defendant:

- Form N150 (allocation questionnaire); and
- Form N152 (notice of defence).

You will also be sent a Form N271 (notice of transfer) if the court transfers the claim. It will do so where:

- your claim is for a specific amount; and
- the defendant is an individual who resides or carries on business in another court's area.

The notice of transfer will tell you the name and address of the court to which the claim is being transferred.

Why send an allocation questionnaire?

Once a claim becomes defended, the court (a judge) has to make sure that it is prepared and progresses to final hearing or trial as quickly as possible. This is called 'judicial case management'. To ensure that the claim receives the right amount of the court's attention and involvement, a procedural judge, who will normally be a district judge, will allocate the claim to one of the three tracks. These are:

- the small claims track;
- the fast track; and
- the multi-track.

Each track offers a different way of handling claims, taking account of things like:

- their value (the amount of money or damages being claimed);
- the claim's complexity (the amount of evidence needed, the number of parties and witnesses); and
- the need for expert reports.

The court can allocate a claim to a track that usually deals with claims of a higher value but cannot allocate the claim to a track that usually deals with claims of a lower value, without the consent of all the parties.

To help the procedural judge make a decision about which track is most appropriate, all parties to a defended claim will be asked to fill in Form N150 (allocation questionnaire) or Form N149 (allocation questionnaire - small claims track). It will be sent with a Form N152 (notice of defence). Form N152 will tell you the name and address of the court to which the questionnaire must be returned and the date by which you must do this. You will also find this information on the questionnaire itself.

As claimant, you must also remember to return the questionnaire with the appropriate fee. A fees leaflet is available which will tell you how much this is. Staff at any county court will also be able to tell you.

You will have to pay a court fee unless:

- you receive Income Support
- you receive Pension Credit Guarantee Credit
- you receive income-based Jobseeker's Allowance
- you receive Working Tax Credit with no element of the Child Tax Credit. Court staff will explain this to you.
- your gross annual income does not exceed a specified limit. See form EX160A for more details.

If you show that a payment of a court fee would involve undue hardship to you, you may be eligible for a part remission. The amount decided will be based on a detailed means-test to assess your disposable income. Court staff will calculate what contribution you should make towards the fee.

For further information, or to apply for a fee concession, ask court staff for a copy of the combined booklet and form **EX160A - Court fees - Do I have to pay them?** This is also available from any county court office, or a copy of the leaflet can be downloaded from the internet at www.hmcourts-service.gov.uk. You will have to make a separate application for each fee that is payable.

Make sure you return your completed questionnaire (and fee if appropriate) to the court named in Form N152. **This may be different from the court which issued the claim.**

What will happen when the questionnaire is returned?

Court staff will keep a note of the date when the allocation questionnaires are due to be returned. This is called ‘case monitoring’.

When all the questionnaires have been returned, or when the time for their return has passed, court staff will refer the court file to a procedural judge. If everyone has returned their questionnaires, the judge will use the answers to the questions in them to help decide which is the most appropriate track for managing the claim.

When the judge has made a decision, this will be sent to you and any other party, in the form of an order called a ‘notice of allocation’. The notice will tell you which track your claim has been allocated to. It will also tell you what you must do to prepare your case for trial or final hearing (called ‘directions’).

If your claim is allocated to the small claims track you will usually be told when and where the hearing will take place. If the claim is allocated to the fast track you will usually be told the period during which the trial of the claim will take place. (Fast track trials will not normally last longer than one day.)

If your claim is allocated to a track which is different to the one that you and any other party to the claim suggested was appropriate for it, you will be told the judge’s reasons for making a different decision.

What happens if the questionnaire is not returned by the due date?

The court file will be referred to the procedural judge immediately after the time for returning the questionnaires has expired, even if only some or none of the questionnaires are returned.

The judge may decide to:

- allocate the case to a track without the information your questionnaire might have provided, especially if other parties to the claim have filed theirs; or
- impose a 'sanction' - this is like a penalty for failing to obey the court's request that you complete and return the questionnaire by a specific date.

The sanction could be to send you an order to file a completed questionnaire within three days of the date of service of the order (the day you receive it). If you do not comply with that order, your particulars of claim will be struck out. If it is the defendant who has not returned the questionnaire it would be the defence that was struck out. This means you could not proceed with your claim (or the defendant with the defence) because the documents referred to have been deleted and cannot be used.

As an alternative, the judge can order that you come to a court hearing to explain why you did not comply with the court's request. If this happens you may be told to pay the other party's costs of attending that hearing. You may be ordered to pay these straightaway or within a period of time fixed by the court. The judge may use this hearing to ask for the information needed to allocate the case to track.

What happens if the defendant's defence is that the money has already been paid?

The court will send you a copy of the defence Form N9B and Form N236 (notice of defence that amount claimed has been paid).

Form N236 will ask you to let the court know whether:

- you accept that the money has been paid; or
- you do not agree that it has been paid and that you wish the claim to continue as a defended claim.

You should fill in the 'Claimant's Reply' section of the form indicating your answer and return it to the court by the date given on Form N236. **You must also send a copy of your reply to the defendant.**

If you do not return the notice by the date shown, your claim will be 'stayed'. This means that the court will not take any further action on your claim. The only action you or the defendant can take is to apply to the court for the stay to be lifted. You may have to pay a fee to do this.

If you indicate that you wish the claim to proceed as defended, the procedure (beginning with the sending out of the allocation questionnaire) set out in the earlier paragraphs of the leaflet will apply.

What does the defendant do when only part of my claim is defended?

If the claim is for a specified amount of money, the defendant will complete and file with the court:

- an admission form (N9A); and
- a defence and counterclaim form (N9B).

The forms will say how much of your claim is admitted and why the balance is disputed. In the admission form, the defendant may also request time to pay the amount admitted, either by instalments or at some future date.

The court will send you copies of the admission and defence forms. You will also be sent a Form N255A (notice of part admission). The notice asks you to tell the court:

- if you do not agree that only part of the claim is owed, that you wish the claim to proceed as a defended claim; or
- if you accept the part amount in full settlement of your claim, that you wish the court to enter judgment for that amount.

If the defendant has offered to pay the amount admitted by instalments, or at some future date, you must also tell the court whether or not the rate of payment is acceptable.

If you are not accepting the rate of payment offered you must say why you object. A court officer will calculate what might be an appropriate rate of payment. This process is called 'determination'. You and the defendant will be sent a copy of the order which tells the defendant:

- how much to pay;
- to whom;
- where; and
- when.

If you do not accept the defendant's part admission, your claim will proceed as defended and the procedure (beginning with the sending out of the allocation questionnaire) set out in the earlier paragraphs of this leaflet will apply.

What additional help is available for court users with a disability?

If you have a disability which makes going to court or communicating difficult, please contact the Customer Service Officer of the court concerned who may be able to help you. If the Customer Service Officer of the court cannot help you, you can contact the Disability Helpline on 0800 358 3506 between 9am and 5pm Monday to Friday. Calls to this number are free. If you are deaf or hard of hearing, you can use the Minicom service on 0191 478 1476.

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