

Probate Claim

Notes for the defendant

Please read these notes carefully they will help you decide what to do about this claim. If you need legal advice, you should contact a solicitor or Citizens Advice Bureau immediately.

You have 28 days from the date on which you were served with particulars of claim in which to respond. Particulars of claim may be contained in the claim form itself or served separately. You should respond by completing and returning the acknowledgment of service enclosed with this claim form.

Court staff can help you complete the form and tell you about procedures but they cannot give you legal advice.

Responding to this claim

Acknowledgment of Service

Whether or not you wish to defend the claim, you must file an acknowledgment of service. The period for filing the acknowledgment of service is:

- if you have been served with a claim form which states that particulars of claim are to follow, within 28 days after you have been served with the particulars of claim;
- in any other case, 28 days after you have been served with the claim form.

Defence/Counterclaim

If you wish to defend the claim you must file a defence (and or a counterclaim). The period for filing it (them) is the same as the period for filing an acknowledgment of service set out above.

N2B Notes for the defendant (10.01)

Failure to acknowledge service

If you fail to acknowledge service, the claimant may, after the time for acknowledging has expired, ask the court to proceed with the claim.

Documents to be filed with the acknowledgment of service

When you file your acknowledgment of service with the court you must also lodge any testamentary documents of the deceased person that are in your possession and control.

A testamentary document means a will, a draft of a will, written instructions for a will made by or at the request of, or under the instructions of the testator and any documents purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

In addition you must file written evidence about the documents which should be in the form annexed to the Practice Direction to Part 57. It must be signed by you personally (and not your solicitor) or by your litigation friend.

Non inspection of testamentary documents

A party is not, unless the court gives permission, allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until they have lodged their testamentary documents and filed their evidence.

Counterclaim

If you believe that you have a claim or are entitled to a remedy relating to the grant of probate of the will, or letters of administration of the estate of the deceased person, you must serve a counterclaim.

If the claimant fails to serve particulars of claim within the time allowed, you may ask the court's permission to serve your counterclaim. If permission is granted, the claim will then proceed as if your counterclaim were the particulars of claim.