Going to Court

Leaflet 4:

Starting your claim and the pre-trial process

"I sprained my ankle and got badly bruised when I slipped over on a wet floor in my local supermarket recently. I fell heavily, knocked into some shelves and a stack of tins fell on top of me. I was badly shaken, ached all over and had to take a week off work to recover."

"My roof is leaking. I have told my landlord about the problem but she has done nothing. My bedroom ceiling has large damp patches on it and I am worried it may collapse if the leak is not mended soon. I think she is hoping that I will give up and just move somewhere else."

Getting involved in a court case is enough to make anyone nervous or stressed – or both! You may be uncertain about what is going to happen or worried about what to do when.

This leaflet is for you if you:

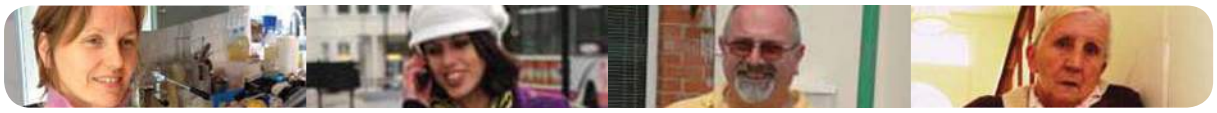
- **want a better understanding of the overall court process;**
- **want to know what you have to do at each of the main stages involved in the court process.**

It looks long, but don't be put off. You don't have to read it all at once. You can start by looking at the 'justice game' to get an overview of what a typical case might look like. Then use the contents page to find the sections that are relevant to your case.

We try to explain any legal language as we go along, but there is also a jargon buster at the end for quick reference.

Our 'Going to Court' leaflets are here to help. There are three earlier leaflets in the series. You might want to have a look at them. The first is about ways of dealing with a legal problem without going to court. The second describes some of the important things you need to do if you think you want to start court proceedings and the third explains the first steps that you need to take.

RCJ Advice Bureau
Helping you find your way through court



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The justice game!

Have a look at our game board. It is designed to give you an overall picture of what is involved in a typical county court case. It will not help you decide what to do in your case because your case will be different. But it may make the process seem a bit less daunting.

One of the problems of going to court is that you will come across lots of new technical words and ideas. This is the jargon that lawyers and court staff use. There's no getting around it; you have to learn what it means too!

Some words that may seem familiar, for example, party or service, have different and very specific meanings in courts. So be prepared for some surprises.

In the justice game, we have put all the jargon in orange. We then explain these words the first time they appear. Follow the arrow to find out what they mean. You can also find them in the **Jargon buster** on **page 60**.

Sometimes we describe the court as 'doing' things, for example, sending out a form or making a decision. It sounds a bit odd because a court is really a place. But 'the court' is often used as shorthand to refer to the people working in the court.

The story so far…

Jim, a builder, installed a new bathroom and kitchen in Mo's house. Mo says the work hasn't been finished and what has been done has been done badly. Mo has followed the pre-action protocol (the official court procedure) and has tried to resolve the dispute, but without success. Mo has decided to take Jim to court. Mo is the claimant (the person who is starting the court proceedings) and is a litigant in person (someone who represents themselves without the help of a solicitor or barrister). Jim is the defendant (the person who has court proceedings brought against them). Jim does not accept Mo's claim.

This is how the court proceedings go in this case, step by step.

Jim Mo

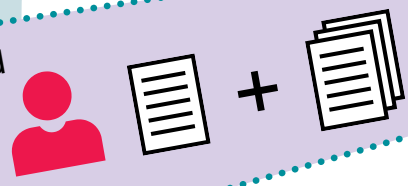
START

1 Mo fills in a **claim form** including the section called the **Particulars of Claim**.

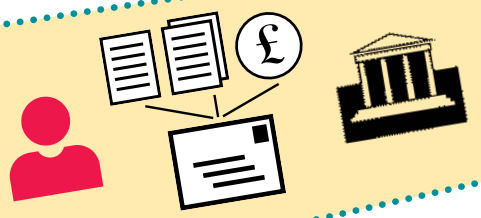
the form that starts a case and where the Claimant explains what they are asking for

a concise written statement of the facts and law on which your claim is based and what you want from the defendant

2 Mo photocopies the completed **claim form** and **Particulars of Claim**. Mo needs one for the court, one for Jim and one to keep.



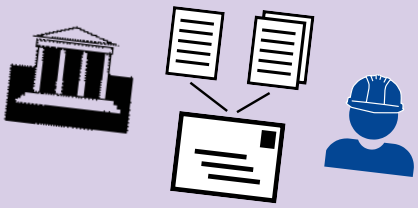
3 Mo sends the original claim form plus two copies to the court together with the correct fee or **fee remission** application form.



the name given to the system for deciding whether you are eligible to pay a reduced court fee or none at all

the pack of forms and information sent to a Defendant after a claim starts

4 The court sends Jim a copy of Mo's **claim form** and a **response pack** by first class post. The **response pack** includes the forms Jim needs to reply to Mo's claim.



this tells you that your claim has started, the date it began, the case number, date and method of service and the deadline by when the defendant has to respond

5 The court sends Mo a **Notice of Issue**. This confirms that Mo's case has started and includes the date of **service**.

formal delivery of court documents

6 Jim has 14 days from the date of **service** to decide what to do next and to reply.

?

7 Jim does not agree with Mo's claim. Jim fills in the **defence form** in the **response pack** and returns it to the court.

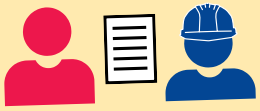
the form the Defendant completes to explain why they dispute the claim

8 The court sends Mo and Jim a copy of the **defence form**, a **notice of proposed allocation** and a **directions questionnaire**.

this tells you which route ('track') the court thinks your case should take through the court system

the answers to this help the court decide how to deal with your case

9 Mo and Jim discuss whether they can agree any of the answers to the **directions questionnaire**. They decide they can agree how long the **trial** will last.



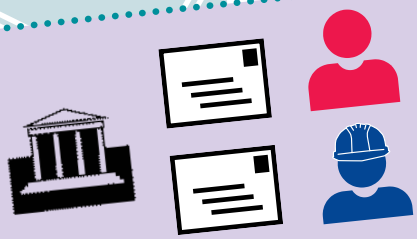
the final hearing when the judge decides who wins and who loses the case

10 Mo and Jim both fill in a **directions questionnaire** and return it to the court by the date stated on the **notice of proposed allocation**. They also send a copy to each other. Mo sends in the correct fee or a **fee remission** application form with her questionnaire.

11 A judge looks at the information in the **directions questionnaires** and decides how the case will progress from now on.

this tells you which track your case has been allocated to, small claims, fast or multi track

12 The court sends Mo and Jim a **notice of allocation**. This allocates (or assigns) the case to the **fast track**. The notice also tells Mo and Jim what to do next. These instructions are called **directions**.



instructions for how the case will be dealt with

the name given to the process that must be followed when a claim has a value of between £10,000 and £25,000

13 Mo and Jim both fill in a form called a **list of documents** and send the other a copy. They do this by the date given in the judge's instructions which will be about 4 weeks after **allocation**. This step is called **disclosure**.

the form you use to list the documents and any other evidence you have that supports your case

the process of showing the evidence that supports your case to the other party

the process of deciding which track the case should follow

14 Mo asks for copies of some of the documents listed on Jim's **list of documents**. (This is called 'inspection'.) Mo pays Jim for these copies.

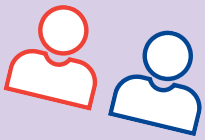
15 Jim asks for copies of some of the documents listed on Mo's **list of documents**. Jim pays Mo for these copies.

a document in which someone explains what they saw, did or heard

16 Mo and Jim exchange **witness statements**. They do this by the date given in the judge's **directions** which will be about 10 weeks after **allocation**.

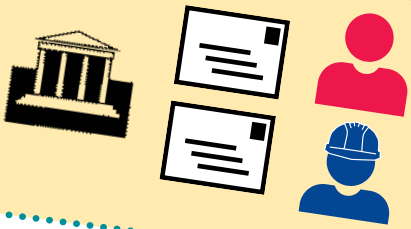
17 Mo and Jim exchange expert reports. They do this by the date given in the judge's **directions** which will be about 14 weeks after **allocation**.

18 Mo and Jim's experts speak to each other to work out where they agree with each other and to try and reduce the number of things they disagree about.



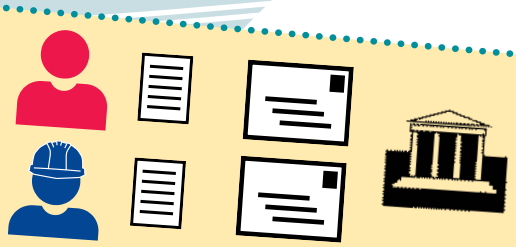
the form you use to tell the court how your case is progressing

19 The court sends Mo and Jim a **pre-trial checklist**. This happens about 20 weeks after **allocation**. The court also tells them the date by which the checklists must be returned.



20 Mo and Jim discuss whether they can agree what information should go in the **pre-trial checklist**.

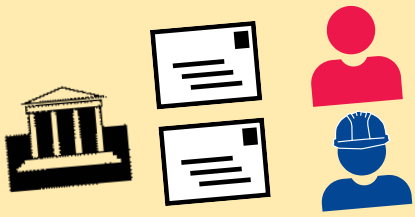
21 Mo and Jim both fill in a **pre-trial checklist** and return it to the court by the date stated on the front of the form.



22 The court sends further **directions** and tells Mo to file a **trial bundle** 7 days before the **trial** starts.

a pack combining both parties' documents with a list at the front showing what's in it

23 The court sends Mo and Jim a notice of the **trial date**. Mo and Jim have about 3 weeks to get ready for the trial. The trial takes place about 30 weeks after **allocation**.



information, for example, from documents or witnesses, that proves the facts of your case

24 The **trial** takes place and the judge makes a decision after hearing the **evidence**.

25 The court sends both Mo and Jim a copy of the **court order**.

the judge's written decision

FINISH

Civil procedure rules

These are the court rules you have to follow. They explain what you need to do when. You may hear lawyers talk about the 'CPR'. What they are referring to are these rules. You need to follow the ones that apply to your case. If you don't follow the court's rules it could cost you money or cause you to lose your case.

You can find the rules here: **www.justice.gov.uk/courts/procedure-rules/civil/rules**. A quick look will probably just confirm your worst fears; there are loads of them! And an individual rule often comes with one or more additional bits of guidance, called 'practice directions'. The good news is that only a few rules and practice directions are likely to apply to your case, unless it is very complicated. So it's not like a book, you don't have to start at the beginning and read all the way through to the end. You need to pick out the rules that are relevant to your case. We will try and help you do this by listing those rules that are most relevant to each of the stages in the court process we describe in this leaflet.

Time limits

Time limits are very important in legal cases. There are strict rules about how much time you have for starting court proceedings and for doing the tasks involved at each stage as your case proceeds. If you don't know how much time you have got to do something or if the time limit is about to run out, it is important to get legal advice quickly.

You may think you have got plenty of time, for example, to fill in the Claim Form, prepare your witness statement or your List of Documents. But you will be surprised how much work is involved in these and other tasks and before you know it a deadline can catch up with you.

Forms

There is no getting away from it; courts use lots of forms. Most stages of a civil case involve filling in a form. Sometimes the court will send you the form you need to fill in. Otherwise you may be able to find the form you need here: **http://hmctscourtfinder.justice.gov.uk/HMCTS/FormFinder.do**

We will try and help by including a link to those forms that are most relevant to each stage in the court process we describe in this leaflet. Where the form is also available in the Welsh language, we include a second link.

Unfortunately, you can't rely on court staff to provide you with forms or help you fill them in. But if you are polite, with luck a member of court staff might help you find the right form or give you the form number so that you can download it for yourself from the internet. Sometimes they might also give you an idea about what to put in a form. However if court staff hand you a particular court form, you cannot assume this means it is necessarily the right step for you to take next. It may or may not be. You may need advice about your options. See **Where to go for further help**.

Most court forms can seem a bit intimidating when you first look at them. A large part of most form filling involves giving factual information. Read through each form a couple of times to find out what information it asks for. Then get

together the information you need before you start filling it in. Once you have done this, the job may turn out to be a bit easier than you first thought. But sometimes you have to write something more, for example, a statement of the essential facts on which your claim is based. You don't have to do this in long words and legal language. The best thing is to keep it short and simple. Ask yourself what you want to achieve and focus on that. Stick to what is relevant and try not to repeat yourself. Never say anything you don't know to be true and if you are unsure about something, say so.

Court fees

You have to pay court fees at various stages during a court case, for example, when you start your claim, if you counterclaim, when you file the directions questionnaire, when you file the pre-trial checklist (if one is required) and if you want to make an interim application. You also have to pay a hearing fee shortly before the trial. You can get this fully or partly refunded if the case settles or is discontinued and you notify the court within certain time limits. For information about refunding hearing fees, see: **http://hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf**

You also have to pay a fee if you want a court to force someone to obey an order it has made, for example, to pay you money or to return something belonging to you. For information about the fees payable for different enforcement proceedings, see: **http://hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf**

How much do I have to pay?

For information about civil court fees, when to pay them and how much they are, see: **http://hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf**

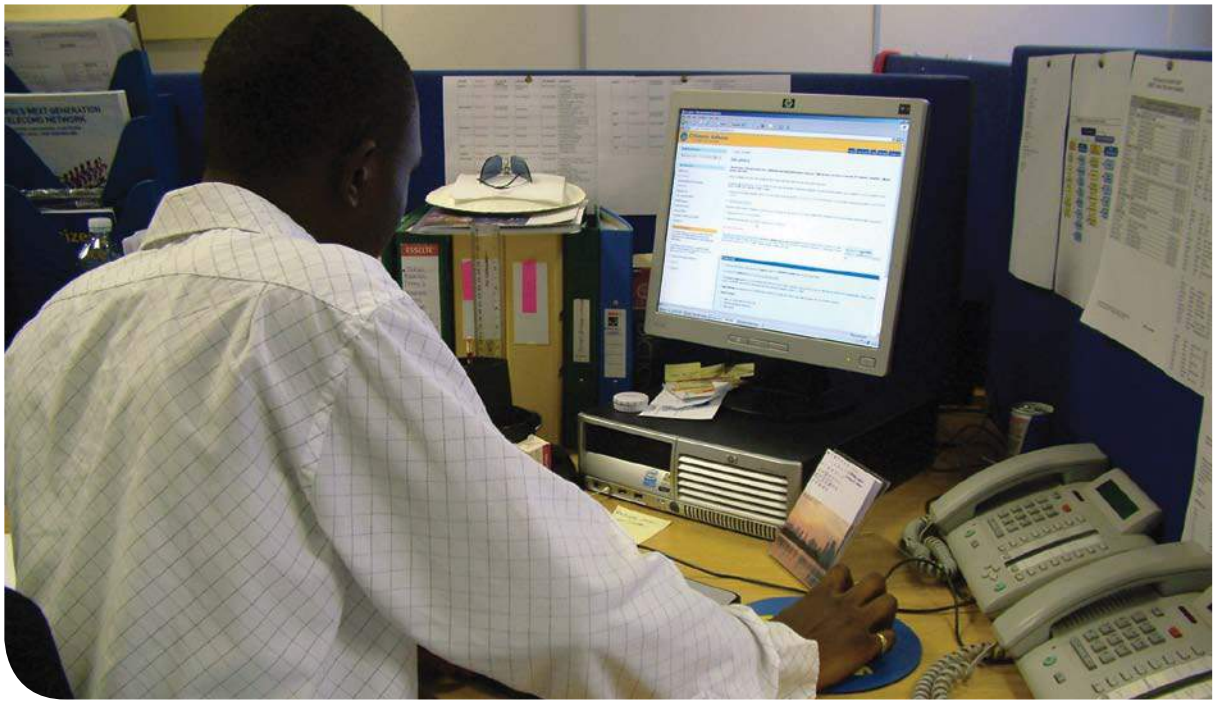
In some circumstances you may not have to pay a fee at all or only a reduced fee. The system for deciding whether you are eligible to pay a reduced court fee or none is called the 'fee remission' system. For example, you will not pay anything if you can prove that you get Income Support, Income-based Jobseeker's Allowance, State Pension Credit guarantee credit, Universal Credit with gross annual earnings of less than £6,000 or income-related Employment and Support Allowance, as long as your savings or other capital don't exceed certain limits. You apply for 'fee remission' by completing form EX160A. You can find this form at the back of the leaflet *Court and Tribunal fees – Do I have to pay them?* See: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex160a-from-07-october-eng.pdf**

But don't forget, even if you don't have to pay your court fees, you will still have some expenses like photocopying and postage.

If you have to pay more than one court fee during your case you must complete a separate application for each fee you want reduced or cancelled.

What happens if I don't pay the court fee?

If you do not pay the fee your case may be delayed or struck out. Depending on whether you are the claimant or defendant, 'struck out' means that you cannot continue with your claim, your defence or your counterclaim.



Finding a court

You can find your local court, its contact details and opening times here: **https://courttribunalfinder.service.gov.uk**

Emailing the courts

You can send some documents, for example, experts' reports, by email. You can find guidance about what you can and cannot send by email, the required form and content of emails, where to send your email and what the court will do with your email here: **www.justice.gov.uk/courts/email-guidance**

How long will my claim take?

Given the number of cases and the amount of paperwork involved, the courts have had to design routes or tracks for cases to follow. Currently there are three of these tracks. For more information about these tracks, see **page 24**. How long your claim takes is likely to depend on which track the court decides your claim should follow. It will probably take longer than you expected. If your case is allocated to the small claims track (see **Jargon buster**) it will probably last less than six months. Fast track or multi track claims (see **Jargon buster**) can be complicated and so often last longer than a year or more.

How much will it cost?

There are two kinds of costs or expenses involved in court proceedings. There are court fees. These are what you pay the court, for example, in return for them processing a form or arranging court time for a hearing. It is the way people who use the courts contribute to the cost of running the courts. Then there are legal costs (often just referred to as 'costs'). These are what solicitors charge for the legal work they do. A litigant in person is also allowed to charge for the work they do on their own case, but only if they win. For more information about what litigants in person can charge for, see **page 51**.

If you win your case, then your opponent should pay you what the court awards you as well as your legal costs. If you lose, you will almost always have to pay your opponent's legal costs as well as your own. (The rules are different for small claims. For more information about costs in the small claims track, see **page 50**.)

Legal costs can add up to tens of thousands of pounds. As a result of losing a court case, it is possible to end up losing your home or be made bankrupt as a result of starting a court case. For more information about costs, see **page 50**.

It is difficult to say how much a case will cost because it depends on so many factors, including whether or not you employ a solicitor and what track your case follows. It is much cheaper if you are claiming £10,000 or less because your case will take the simplest route through the court system – the small claims track. If you are claiming more than that, your case may be more complicated and so cost more. Other factors affecting cost include the number of documents, experts and witnesses on both sides and how quickly and efficiently both parties deal with each stage of the case. For more information about costs, see **page 50**.

How will the judge choose who wins the case?

The judge must decide whether your version of events or the defendant's is more likely than not to be the true version. Your case must be based on facts and the law and you must be able to provide the judge with information that proves these facts. This information is called evidence. For information about evidence see **Leaflet 2: Before you start** in this series.

Starting your claim

You must have a legal basis for starting your claim. This is what the law calls a 'cause of action'. For example, say your car comes back from the garage after being serviced and it doesn't work. It is the garage's responsibility to service your car properly but they have failed to do this. They have broken their contract with you and you have a 'cause of action'. But, if you choose to jump off a rock into the sea and injure yourself as a result, this is no one's fault but your own. In these circumstances, you don't have a 'cause of action'. Without this you don't have a case you can ask a court to decide; you just have a problem you need to resolve in another way. Just because you feel something is wrong or unjust doesn't mean you can start court proceedings.

Also, because of the possible expense and uncertainty involved in court proceedings, it is best not to start a claim, particularly one that is likely to be allocated to the fast or multi track (see **page 25**), unless you have had legal advice about the strength of your case. So, if you have not already done this, get some legal advice before you go any further. See **Where to go for further help**.

You must follow the relevant pre-action protocol (the official court procedure) for your type of claim. For example, if you are claiming compensation for an injury following an accident you will follow the one about personal injury claims. Pre-action protocols explain what to do and how to behave before you start your claim. You can find them at **www.justice.gov.uk/courts/procedure-rules/civil/protocol**. For more information about pre-action protocols, see **Leaflet 3: First steps** in this series.

You will need to complete a claim form. You can do this yourself but it is a very important document. If it is not completed properly, your claim may fail. If at all possible, get legal help either to complete the claim form for you or to check, if you have done it yourself, that you have done it properly. See **Where to go for further help**.

Forms and rules

For most claims, the form to use is this one: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n001-eng.pdf**

You can find notes explaining how to complete this form here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n001a-eng.pdf**

And in Welsh and English here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n001a-bil.pdf**

Relevant rules: How to start proceedings – The claim form **www.justice.gov.uk/courts/procedure-rules/civil/rules/part07**

www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_part07a

For further information about how to start your case read court leaflet EX302: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex302-eng.pdf**

The form includes a section headed 'Particulars of Claim'. The Particulars of Claim is a concise, written statement of the facts on which your claim is based and what you want from the defendant. What is it you want the Defendant to do, to stop doing or to give you? You also need to give details of any interest you want to claim. This is what a simple Particulars of Claim might look like if included on the Claim Form:

An example of Particulars of Claim

Particulars of Claim (attached)(to follow)

1. The Defendant has been a personal friend of mine since 2005.
2. The Defendant is the owner of a cafe called 'Tea and toast' and, sometime in March or early April 2013, asked me for a loan to help her business.
3. I agreed to lend the Defendant £8,500.00. This was a verbal agreement. One of the terms of the agreement was that the Defendant would repay me the sum of £2,000.00 in interest on top of the loan of £8,500.00. We agreed that the Defendant would repay the loan and agreed interest at the rate of £500 a month starting in July 2013. This was when the caf was due to open.
4. I transferred the sum of £8,500.00 to the Defendant on 30th April 2013 and this shows on my bank statement as transaction reference: 735462912800B.
5. The opening of the café was delayed. It finally opened in August 2013. I received the first instalment of £500 from the Defendant towards the end of August 2013.
6. I then had to chase the Defendant for further payments. I received a further £400 from the Defendant at the end of September 2013 and £100 in October 2013. In total I have received £1,000.00 from the Defendant.
7. Since then I have been chasing repayments from the Defendant but without success. I sent a letter before claim to the Defendant on 5th January 2014 but got no reply. The Defendant keeps telling me that the letter is with her solicitor and blames her solicitor for the delay.
8. I am still owed £9,500.00 by the Defendant.

AND the Claimant claims:

1. The outstanding loan agreements sum of £9,500.00
2. Interest pursuant to section 69 of the County Court Act 1984 at an annual rate of 8%
3. Costs

The judge will not award you money you have not claimed for. So if you want your legal costs and interest as well as what you are claiming for, you must ask for them in your Particulars of Claim. Don't miss out. You cannot ask for them later. And they can add up to a lot of money.

Where do I send my claim form?

If you want your claim dealt with by the county court and your claim is just for money, (this includes claims for compensation for personal injury), then you must send it to the:

County Court Money Claims Centre
PO Box 527
Salford
M5 0BY

If you live in Wales, then you must send it to:

County Court Money Claims Centre (Wales)
PO Box 552
Salford
M5 0EG

In these cases you enter 'Northampton County Court' in the heading on the form.

For more information about the County Court Money Claims Centre, see **https://courttribunalfinder.service.gov.uk/courts/county-court-money-claims-centre-ccmcc**

If your claim is for anything other than money, then you should send it to your local court office.

You will know whether you have issued (started) your claim successfully when the court sends you a Notice of Issue.

You can issue your claim with or without including the particulars of claim on the claim form. If you decide to include them, they can either be written or typed into the relevant section on the actual form (like we have done in the example above) or put in a separate document which you then attach to the claim form.

If you decide not to include them, perhaps because you need a little more time to write them, then you have 14 days to get your Particulars of Claim to your opponent after your claim is served on (delivered to) them.

There are times when you might issue your claim but not serve it on the Defendant immediately, perhaps because the time limit for issuing court proceedings is about to run out but you don't yet know where your Defendant lives. In this situation you have up to 4 months from the date your claim is issued by the court to serve it on the Defendant. (Different rules apply if the Defendant lives abroad.) In these circumstances you must serve your Particulars of Claim at the same time.

Claim Form served

- If you don't include the Particulars of Claim in the Claim Form then the Claimant has 14 days after service of the Claim Form to serve them on the Defendant.
- For example, if the date of service for your Claim Form is May 1st, then you must serve your Particulars of Claim on or before May 15th.

Claim Form not served

- You have up to 4 calendar months from the date you issue your claim to serve the Claim Form and the Particulars of Claim. (The situation is different if your Defendant lives outside England and Wales.)

Top tip!

The 'service' (formal delivery) of court documents is a tricky area of law. There are lots of special rules about how and when it must be done. It is easy to make a mistake. If you don't serve your claim (or other court documents) in the correct way and at the right time, you have a big problem. A lot can go wrong at this early stage. If at all possible, get some legal advice. See **Where to go for further help**.

Rules

Relevant rule: Service of documents **www.justice.gov.uk/courts/procedure-rules/civil/rules/part06**

You can make some claims online. You don't have to do things this way if you don't want to. But if you like using online services, this may be for you. You cannot apply for court fees to be reduced or cancelled if you start your claim through an online service. You cannot use an online service if your claim is against more than two people.

Currently there are two online services available:

Money Claim Online

This is an internet service for claimants and defendants run by HM Courts & Tribunals service. You can find out more information about this service at **www.gov.uk/make-money-claim-online**

You can make or respond to a claim for money below £100,000 here: **www.moneyclaim.gov.uk/web/mcol/welcome**

Forms and rules

You can find guidance about Money Claim Online here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part07/pd_part07e**

You can find guidance about Possession Claim Online here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part55/pd_part55b**

Possession Claim Online

This is another internet service for people wanting to claim or respond to a claim for rent or mortgage arrears: **https://www.possessionclaim.gov.uk/pcol**

Once I have started my claim, can I stop it?

You can. You do this by filing a 'notice of discontinuance' at the court and serving a copy on every party to the case. But you will be responsible for everyone's legal costs up until the date you serve this notice unless you can convince the court that you don't have to pay. This is not easy to do. Try contacting your opponent before you file the notice and ask them to agree that they will not claim for their costs if you discontinue your claim. You never know, you might get lucky!

If your case has been allocated to the small claims track before you file the notice of discontinuance, then usually you will only have to pay your own legal costs and not everyone else's as well.

Forms and rules

You can find a notice of discontinuance here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n279-eng.pdf**

Relevant rule: Discontinuance **www.justice.gov.uk/courts/procedure-rules/civil/rules/part38**

I have issued my claim successfully; what happens next?

The court sends a copy of your Claim Form (and the Particulars of Claim if they are in a separate document) to the defendant as well as some notes to help the defendant decide what to do about the claim. You can read the notes for the defendant here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n001c-eng.pdf**

These are the same notes in Welsh and English: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n001c-bil.pdf**

The defendant also gets sent a response pack. The response pack explains what to do next and includes the forms the defendant needs. If your Claim Form includes the Particulars of Claim then this pack is sent at the same time as your Claim Form. If you serve your Particulars of Claim separately then the response pack will be sent to the defendant then.

The defendant has not responded to my claim; what do I do now?

If the defendant has not responded to your claim within the time limit set by the court you can ask the court to decide the case anyway. The law calls this applying for 'judgment in default'.

Court leaflet EX304: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex304-eng.pdf** explains what to do if the person you have made a claim against does not respond to your claim. You may need legal advice before deciding what to do next. If so, see **Where to go for further help**.

The defendant has responded to my claim; what happens next?

For information about what happens next, read court leaflet EX304: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex304-eng.pdf**. It explains what to do if the person you have made a claim against either admits (accepts) the claim, defends (disagrees with) all or part of your claim; or claims that they have already paid you what they owe. You may need legal advice before deciding what to do next. If so, see **Where to go for further help**.

Forms and rules

Relevant rule: Defence and reply **www.justice.gov.uk/courts/procedure-rules/civil/rules/part15**

I am the defendant; a claim has been made against me – what should I do?

For information about what to do if a claim has been made against you, read court leaflet EX303: http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex303-eng.pdf. It explains what happens if you ignore the claim, how to admit (accept) or defend (object to) the claim or make a counterclaim, and whether you need to go to court.

The court will send you a response pack (the pack of forms and information sent to a defendant after a claim starts) explaining what to do next. You use the forms to tell the claimant what your response (reply) is to their claim. You may need legal advice about the various options open to you before deciding what to do. See **Where to go for further help**.

You can use the chart on the following page (**page 20**) to help you work out what to do.

Forms and rules

You can find the response pack here: http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n009-eng.pdf

If the claim is for a specified amount of money (e.g. £7,502.00) you will get sent Admission Form N9A (see http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n009a-eng.pdf) and Defence and Counterclaim Form N9B (see http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n009b-eng.pdf)

If the claim is for an unspecified amount or is not a claim for money you will get sent Admission Form N9C (see http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n009c-eng.pdf) and Defence and Counterclaim Form N9D (see http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n009d-eng.pdf)

Relevant rule: Responding to Particulars of Claim – General www.justice.gov.uk/courts/procedure-rules/civil/rules/part09

Option	Action	Effect
If you admit (accept) the claim or the amount claimed and/or you want time to pay then	Complete the admission form →	Judgment will be entered against you. This means the Claimant wins their case.
If you only admit part of the claim →	Complete the admission form and the defence form →	Judgment will be entered against you for the amount you admit to. This means the Claimant wins part of their case. The court will decide who wins the other part if you do not resolve your dispute before the trial.
If you disagree with the whole claim	Complete the defence form →	The case will proceed to the next stage – allocation.
If you wish to make a claim yourself against the claimant	Complete the defence form and include a counterclaim →	The case will proceed to the next stage – allocation.
If you need more time from the date of service to prepare your defence (28 days instead of the normal 14), or want to contest the court's jurisdiction (the court's power to decide the case) **(The date of service is the official date that the court decides is the date when a party received a document.)**	Complete the acknowledgment of service form Complete the defence form before the time limit expires.	
If you do nothing	→	The claimant will ask the court to decide the claim in their favour if you do not respond to the claim in time. This means they have won their case. This particular kind of court decision is called Judgment in default.

I want to settle my claim; how do I do this?

Whether you are a Claimant or a Defendant, you can make an informal offer to settle part or all of a case at any time. But the court rules offer a formal way of doing this which deliberately creates some pressure on the other party not to turn down a reasonable offer. You will probably hear this method referred to as a 'Part 36 offer to settle'. It is named after the court rule which explains the procedure.

If your attempt to settle formally (using a Part 36 offer to settle) is unsuccessful then the judge will not get to know this until after the trial. At that point they are told about any Part 36 offers to settle because it becomes relevant to what they decide to do about the legal costs involved in the case.

It is a good idea to get legal advice about whether to settle and if that is the best course of action, how and when to settle. Whether you are the Claimant or the Defendant, you can't make an informal or formal offer to settle a claim without knowing what would be reasonable or how much it is worth. Otherwise you may offer too little or too much. Also, the financial impact and tactics around making, withdrawing or turning down a Part 36 offer will vary from case to case and can be complex. You need to understand the impact in your particular case. Get advice. See **Where to go for further help** for details.

Tactical and financial advantages

The financial pressure created by a Part 36 offer to settle comes about because of the possible effect on the amount of legal costs you could end up paying. If you turn down the offer but then don't get a better result from the judge at the trial than what you have already been offered, you could end up paying more legal costs to the party that made you the offer. The tactical advantage of making such an offer is that it forces the other party to pause and think very hard about the strengths and weaknesses of their case.

How do I make a Part 36 offer to settle?

I am the Claimant	• The offer must be in writing. It is best to use the form in the box below to do this. This way you can be sure not to leave anything out. You can do it by letter if you prefer. • You must make it clear that you intend it to have the effect of a Part 36 offer. • You must explain that if the Defendant accepts your offer within the time allowed for them to consider it (and this cannot be less than 21 days) then you will be entitled to your legal costs up to the date when the Defendant serves notice of acceptance on you. So, if the Defendant decides that the best thing to do is to accept the offer then the quicker they do this, the quicker they can stop the bill for your legal costs going up and up. This is in the Defendant's interests because they are going to have to pay it! • You must explain clearly what part of your case the offer relates to. Is it some of it or all of it? • Explain clearly whether it takes into account any counterclaim made by the Defendant.
I am the Defendant	As well as giving the same information as the Claimant (see above box), you must also: • Explain that you will pay the money you have offered the Claimant within 14 days of the Claimant accepting the offer.

How do I accept a Part 36 offer to settle?

By serving a written notice of acceptance on the party making the offer and filing a copy with the court. There is no special form to use for this notice – it can just be a letter. Your letter must include the claim number and title (if court proceedings have been started) and refer to the offer.

How long do I have to accept or refuse a Part 36 offer to settle?

As long as it has not been withdrawn (and sometimes one party threatens this and then does it – again as a way of forcing the other party to think hard about accepting their offer) then you can accept an offer at any time. But if you accept it within the time limit allowed by the other party (which will be at least 21 days but may be more depending on what it says in the Notice of offer to settle – check the notice carefully!) you can stop the bill for the other party's legal costs getting any larger.

Can I withdraw a Part 36 offer to settle?

There are circumstances when you can withdraw a Part 36 offer to settle. Equally you may forget to withdraw an offer when it would be advisable to do so. You will need to get legal advice about how these issues apply in your particular case. See **Where to go for further help** for details.

The potential financial consequences of making, accepting or refusing a Part 36 offer can be serious. It is a complicated area and it is advisable to get legal advice when you think you want to make an offer or an offer arrives for you to consider. See **Where to go for further help**.

Forms and rules

You make a Part 36 offer to settle using this notice: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n242a-eng.pdf**

Relevant rule: Offers to settle **www.justice.gov.uk/courts/procedure-rules/civil/rules/part36**

Additional rules: **www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_part36a**

The defendant is defending my claim; what happens now?

The court will send both you and the defendant a notice of proposed allocation. This tells you:

- that a defence has been filed;
- which track (route) through the court system the court plans to send your case on;
- which directions questionnaire you must fill in, who you must send it to and the deadline for doing this.

There are three routes through the court system that the court can allocate (transfer) your case to. They are called 'tracks':

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

The choice of track will depend on how complex your case is and how much you are claiming. It also affects the amount of work you have to do to get your case ready for trial and how much it could end up costing you.

A directions questionnaire asks for information from you to help the court decide how to deal with your case, what directions to make and which track to allocate your case to. You each need to fill one in, but first you must contact each other to discuss how far you can agree your answers. In particular the court wants you to try and agree the directions you would like them to make. 'Directions' are a list of instructions telling you what you each need to do to get the case ready for a hearing. There is more information about directions in the next section.

Whether you agree them or not, you must send a list of the directions you want the court to make to the court at the same time as returning the questionnaire. (You don't need to send such a list if your case has been provisionally allocated to the small claims track.)

Having filled in your questionnaire you must send it back to the court and a copy to the other party within the time limit. If you don't comply with the time limit, the court could strike out your case. As the claimant, you must pay another court fee at this point.

The judge will consider the information given in the directions questionnaires and decide which track or route is the right one for your case. The court will send you a notice of allocation. This tells you the judge's decision.

It is advisable to get legal advice about how to fill in the directions questionnaire, for example, to help you understand the implication of answering in a particular way and the effect your answer may have on the case. See **Where to go for further help**.

Court leaflets EX305 and EX 306 (see next page) explain the time limits that apply and what happens when the court receives the questionnaire.

Small claims track

The small claims track is generally for claims of £10,000 or less unless your claim is for compensation for personal injury or for housing disrepair when the limit is £1,000. It provides a simplified and more informal system

of resolving disputes and generally the parties represent themselves. An important feature of this track is that, win or lose, you will usually only pay your own legal costs. It is very unlikely that you will have to pay anyone else's legal costs unless the court decides you have behaved unreasonably. But if you win, the other party will pay your court fees and any witness and expert's expenses. Equally, if you lose, the reverse applies.

You may have heard talk about the 'small claims court'. This is just another way of referring to the small claims track; it isn't a real building or separate place. For information about the small claims track read court leaflet EX306: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex306-eng.pdf**

Forms and rules

This is what the Notice of proposed allocation to the Small Claims Track looks like: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n149a-eng.pdf**

This is what the Directions questionnaire (Small Claims Track) looks like: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n180-eng.pdf**

Relevant rule: The small claims track **www.justice.gov.uk/courts/procedure-rules/civil/rules/part27**

You can find additional guidance here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part27/pd_part27**

Fast track and multi track

The fast track is for claims with a value of between £10,000 and £25,000 and the multi track for complex claims worth £25,000 or more. If your claim is allocated to either of these tracks, it is advisable to get help from a solicitor, Law Centre or the Royal Courts of Justice Advice Bureau. See **Where to go for further help**.

For information about the fast track and the multi track read court leaflet EX305: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex305-eng.pdf**

Forms and rules

This is what the Notice of proposed allocation to the Fast Track looks like: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n149b-eng.pdf**

This is what the Notice of proposed allocation to the Multi-Track looks like: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n149c-eng.pdf**

This is what the Directions questionnaire (Fast track and Multi-track) looks like: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n181-eng.pdf**

Relevant rule: The fast track **www.justice.gov.uk/courts/procedure-rules/civil/rules/part28** and additional guidance here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part28/pd_part28**

Relevant rule: The multi track **www.justice.gov.uk/courts/procedure-rules/civil/rules/part29** and additional guidance here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part29/pd_part29**

How will the court tell me what to do next?

Based on the information you and the defendant give in your directions questionnaires, the court will make an order for directions. This is basically a list of instructions telling you what to do and when. In many straightforward cases, and whether or not you managed to send the court agreed directions with your directions questionnaires, the court will make this order without having a hearing. So, don't be surprised if an order for directions just turns up in the post. If this happens to you, the first thing to do is to read the order carefully. If you are uncertain what it means or whether you can do what it tells you to do you have the right to apply to the court to vary (change) or set aside (cancel) the order. But you must do this within the deadline – usually only 14 days from when you get the order. If you miss the deadline, you may be able to make a late application.
In more complicated cases, the court may arrange a case management conference. (You may hear lawyers or court staff talk about a 'CMC'. What they are referring to is a case management conference.) This is a hearing where the court and the parties decide together how best to run the case. The hearing can take place over the phone or at court. The court can review case progress at any time and may make more directions or fix further case management hearings.

If you don't understand what you are being asked to do in the order for directions, don't just ignore the order; get some advice. See **Where to go for further help**.

On page 27 you can see an example of an order for directions in a fast track case.

What do I do if the other side doesn't obey the order for directions?

Let us assume a judge has made an order for directions in your case (like the one on **page 27**). It's 2nd December 2013 and the defendant has not served you with their list of documents. They were supposed to do this by 30th November. What can you do?

There is no problem with you contacting the other party or their solicitor (if they have one) outside of the court process. So, you can try informal pressure, for example, phoning or emailing them to remind them what they were supposed to do and by when. Ask them to do it immediately, and explain that if they don't you will have to go back to court. Tell them when you will do this. If you phone them, follow this up with a letter. If this doesn't work, apply to the court (see **page 35**) for an order that unless they serve you with their list within a certain number of days (for example, 7 days), the court will strike out (not allow them to continue with) their defence and/or counter claim. You will often hear this kind of order referred to as an 'unless' order. This is because the basic format is always the same; unless you do x task by y date, then z will happen.

If you are the claimant and you don't do something the order for directions tells you to do, the defendant can take the same action against you.

You can find standard directions for cases in the Small Claims Track here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part27/pd_part27#B**

You can find standard directions for cases in the Fast Track here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part28/pd_part28#I**

You can find common orders for directions in different types of Multi Track cases here: **www.justice.gov.uk/courts/procedure-rules/civil/standard-directions/general/list-of-cases-of-common-occurance**

An example of an order for directions in a fast track case

IN THE BROWN COUNTY COURT Claim No: xyz1

BETWEEN [Insert name] Claimant
and
[Insert name] Defendant

Directions

Warning: you must comply with the terms imposed upon you by this order: otherwise your case is liable to be struck out or some other sanction imposed. If you cannot comply you are expected to make formal application to the court before any deadline imposed upon you expires.

1. The claim is allocated to the fast track. The trial window is from 2–20 June 2014. The estimated length of trial is four hours.

2. Each party shall give standard disclosure to every other party by list. The latest date for delivery of the lists is 29 November 2013. The latest date for service of any request to inspect or for a copy of a document is 6 December 2013.

3. Each party shall serve on every other party the witness statements of all witnesses of fact on whom they intend to rely. There should be simultaneous exchange of such statements no later than 10 January 2014.

(continued)

This refers to the process of deciding which track the case should follow.

This is the particular period of time during which your case is likely to be heard.

The process of showing the evidence that supports your case to the other party.

A document in which someone explains what they saw, did or heard.

This refers to your right to ask to see and check the original documents supporting the other party's case.

This is when the parties to a case exchange their witness statements on the same day.

(continued)

4. The claimant may rely on the expert evidence of Mr Green, orthopaedic consultant, in the form of the report dated 3 May 2013, already served; an updated report to be served no later than 7 February 2014. The time for service of any questions addressed to the expert shall be no later than 14 days after service of the expert's further report. Any such questions shall be answered within 14 days of service of a question.

5. Pre-trial checklists shall be filed no later than 4 April 2014.

6. The claimant shall lodge an indexed bundle of documents contained in a ring binder and with each page clearly numbered at the court no more than seven days and not less than three days before the start of the trial.

7. Each party must inform the court immediately if the claim is settled whether or not it is then possible to file a draft consent order to give effect to their agreement.

1 November 2013
District Judge Yellow

This is evidence of an expert's opinion, of what they think or believe about something.

A form you use to tell the court how your case is progressing.

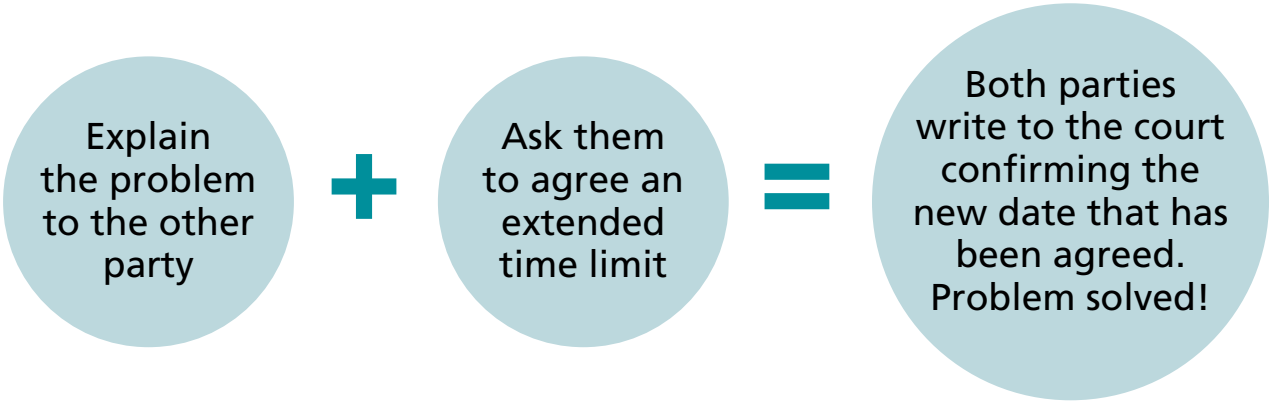
A pack combining both parties' documents with a list at the front showing what is in it.

You reach an agreement with the other party.

What do I do if I cannot comply with part of the order for directions?

Courts are quite strict about sticking to time limits so try and comply with deadlines and keep to the court timetable for your case as much as possible. However, if you cannot comply, don't ignore the problem because there is a solution! You may be able to get the order changed either with the agreement of both parties or by the court, if the other party will not agree to the change you are suggesting. But there are some dates that only the court can change, for example, the trial date.

In our order for directions (see **page 27**), the Claimant has been asked to serve an updated report on the Defendant no later than 7 February 2014. Let us suppose the Claimant gets an email from Mr Green on February 1st saying he is away at a conference in the USA for a week and then on holiday for 2 weeks. He says he will send the Claimant the updated report by February 21st. This means the Claimant cannot comply with the order. The report will be late. What can the Claimant do? There are two ways to do it – the wrong way and the right way:



We advise you to choose the second option! If the other party will not agree to the change you want to make to the order for directions you can apply to the court (see **page 35**). The rule in the box overleaf explains how to make an application for a court order. If your application is unsuccessful then you may be ordered to pay what it cost the other party to deal with your application.

Forms and rules

This is the form you use to apply for a court order: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n244-eng.pdf**

And these are the notes for guidance to help you fill it in: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n244-notes-eng.pdf**

Relevant rule: General rules about applications for court orders **www.justice.gov.uk/courts/procedure-rules/civil/rules/part23**

- The instructions in an order for directions are listed in a particular order for a reason. So, for example, in our example of an order for directions, the parties are asked to serve their witness statements after disclosure (the process for showing what evidence you have to support your case). This way each party has a chance to see the other party's evidence before preparing their witness statements and to comment on what they discover. Without this, they will only have part of the picture.
- So, don't get ahead of yourself. Don't move on to the next task until both you and the defendant have completed the previous one.

When do I tell the other party what evidence I have got and how do I do this?

You may have already shown some of your documentary evidence to the other party in an effort to settle (resolve) your dispute. You may have done this more than once; before you started your claim and afterwards. But there is a stage when the court will usually expect you to put your cards on the table in an organised fashion. The order for directions will tell you what to do and by when. This process is called 'disclosure and inspection'. There is a section about this in court leaflet EX305: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex305-eng.pdf**

You disclose a document by stating that a document (for example, a tenancy agreement) exists or has existed and allowing the other party to see it. The way you do this varies, depending on which track your case is allocated to.

Track	Requirement
Small Claims Track	You usually photocopy whatever documents you have to support your case and send one set to the court and another to the defendant. The defendant does the same with their documents.
Fast Track	You must make a list of all the documents or other evidence you have that are relevant to your claim. You do this using a form called a List of documents. (There is a link to this form in the Forms and rules box on **page 34**.)
Multi Track	You may have to file a Disclosure report as well as your List of documents before you can arrange disclosure and inspection. A Disclosure report asks for information about the potential cost of disclosure. In these complex cases, the court aims to keep costs down at the same time as making sure everyone involved gets to see all the necessary documents. So the court may limit the documents that must be disclosed. This will be made clear in the order for directions.

'Document' means anything in which information of any description is recorded. This includes, for example, emails, letters, invoices, photographs, medical records.

You don't actually allow the other party to see the documents or send them copies until the other party asks you for specific documents or groups of documents listed on the form unless your case has been allocated to the small claims track.

You might think a form called a 'List of documents' would ask you for one list; in fact it asks for 3 different lists. You have to decide which of your documents goes where.

The chart below explains what types of document you must list under each heading.

Witness statements and experts' reports are not included in the List of documents at all. The order for directions will give separate instructions about when these are shown to the other party.

When you get the other side's List of documents you must decide what you want copies of. You may decide some items on the list are not relevant. You may already have copies of others. The other side will do the same and tell you what they want to see.

I have control of the documents numbered and listed here. I do not object to you inspecting them/producing copies.

- Here you list all the documents currently in your physical possession which you must allow the other party to see or take copies of
- For example, your medical records, photographs of your injuries

I have control of the documents numbered and listed here, but I object to you inspecting them.

- Here you list all the documents or parts of a document currently in your physical possession which you are NOT allowing the other party to see or take copies of
- You need to explain why you object

I have had the documents numbered and listed below, but they are no longer in my control.

- Here you list all the documents that were but no longer are in your physical possession
- You have to say when each document was last in your possession and where it is now

If there are a very large number of documents, you may want to arrange to inspect (look at) them in person.

If they have not listed all the documents that they should have done, ask for them. If they don't provide them, you can apply to the court for an order that they produce them within a set time limit.

You must also search out relevant documents to include in your own list going back to the time when the story of your case began.

You are expected to disclose any documents that support either your case or the other party's as well as any which don't. So, even if you have a document which undermines your claim and which you would rather not show the other party, you still have to tell them about its existence. After that it is up to them to spot its significance and ask to see it or not. Equally the defendant may have a document which supports what you say. If so, they must tell you that it exists. They don't have to tell you what's in it; that is why you must inspect their documents carefully to check if there is anything that helps or hinders your case. You are breaking the law if you make a false disclosure statement, without an honest belief in its truth.

Your obligation to allow the other party to see the documents in your control continues until the court proceedings are over. So, if you find a new document at any time during the proceedings, you must let the other party know immediately. Get advice on how to do this. See **Where to go for further help**.

There are documents you don't have to allow the other side to inspect (see/have copies of). These documents are known as 'privileged'. This means no-one, not even a court, can compel you to show them to the other party.

Privileged documents include:

- letters and emails between you and a solicitor;
- notes recording interviews and telephone conversations between you and a solicitor;
- written advice from a solicitor or barrister about, for example, the strengths and weaknesses of your case;
- some witness statements, for example, if you are not going to use a witness's evidence or ask them to come to the trial then you do not need to show their statement to the other party.

You still have to list the documents you object to the other party seeing in your List of documents and explain your objections. In many cases it is usually enough to write in 'They are privileged' in this section.

Understanding what documents you should and should not list and/or allow the other party to see is important and can be tricky. It can damage your case to show the other party privileged documents unnecessarily or by accident. It is advisable to get legal advice to help you get through this stage successfully. See **Where to go for further help**.

Forms and rules

This is what a List of documents looks like: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n265-eng.pdf**

For multi-track cases, you can find the disclosure report here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n263-eng.pdf**

Relevant rule: Disclosure and inspection of documents **www.justice.gov.uk/courts/procedure-rules/civil/rules/part31#IDAALICC**

You can find additional guidance about disclosure and inspection here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part31/pd_part31a**

and the disclosure of electronic documents here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part31/pd_part31b**

Top tips!

- When you exchange documents (swop yours for the other party's) send copies, not the originals. If you send a poor photocopy, it's possible the other party may want to come and see the original for themselves.
- Only send the documents that the other party asks you for (unless your case is a small claim in which case you send copies of them all).
- You will have to pay the other party's photocopying charges for copying the documents you have asked to see (and they will have to pay yours) – as long as these are reasonable.
- If you go and inspect (look at) the original documents in person, you will not have to pay any photocopying charges. Having seen them, you may decide there are some documents you want copies of. You will have to pay for these photocopies.

Interim applications

asking the court to do something

What is an interim application?

An application is how you ask a court to do something. You usually have to do this in writing using the form (an 'Application Notice') in the Forms and rules box on this page. There are notes for guidance at the back of the form to help you complete it. You don't need to write your application using posh, legal words. Plain English will do nicely!

An interim application is one made at any time after you start your claim and before the trial. You may, for example, want to ask the court to:

- give you more time to file your witness statement or experts report;
- give you permission to change your statement of case;
- adjourn (postpone) a hearing date; or
- set aside (cancel) an earlier court order.

The party making the application will usually have to pay a court fee. The amount varies depending on what type of application you make. For information about application fees see: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf**

The rules and guidance about applications explain the procedure for making an application, see Forms and rules below.

When the court deals with your application it can make an order about who should pay the costs involved. You can find a table setting out the different orders and their effect in Practice Direction 44: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part-44-general-rules-about-costs/part-44-general-rules-about-costs2#rule4.1**

Forms and rules

You can find the form to use for making your interim application here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n244-eng.pdf**

You can find notes explaining how to complete the form here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n244-notes-eng.pdf**

You can find the general rules about applications for court orders here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part23**

and additional guidance here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part23/pd_part23a**

www.justice.gov.uk/courts/procedure-rules/civil/rules/part23/pd_part23b

There are always costs consequences to making an interim application. If you make one and lose it you will always be ordered to pay the other party's costs. So before applying, see if you can get the other party to agree to what you want. That way, you may not need an order at all or if an order is made but by consent (with the other party's agreement) then usually you will only have to pay your own legal costs and not theirs as well.

Witness statements

explaining what you and your other witnesses saw, did or heard

I have been told I have to prepare witness statements; what are these?

If you want to give evidence about your claim at the trial you have to put this evidence into a written document called a 'witness statement'. All claimants and defendants have to prepare a witness statement. If you want anybody else to give evidence to the judge at the trial about what they saw or heard, you must prepare a witness statement for them as well. These witnesses are called witnesses of fact because they can help prove the facts of the case.

At the trial you and your witnesses will only be able to talk about what you have covered in your witness statements. You will not be allowed to talk about anything new or additional. If you want to talk about it, put it in the statement.

There are rules about what a witness statement has to look like and have in it. If you are the claimant what you put in your witness statement is a similar but more detailed version of what you put in your Particulars of Claim. You need to describe:

- the background to your claim;
- how you and the defendant know each other;
- what the defendant agreed to do and what went wrong;
- the chronology – what happened and when;

- the impact, for example, on your life, your family, your health, your home, car;
- what you have tried to do to solve the problem or lessen the damage.

For further information about this read the section on witness statements in this practice direction: **www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_part32#IDADKVJC**

On the next page you can see an example of a witness statement to help you write yours.

An example of a witness statement

IN THE BROWN COUNTY COURT

Claim No: xyz1

Claimant: [Insert name]

Defendant: [Insert name]

Witness statement of [Insert name]

1. I, [insert name], [insert occupation] of [insert address] am the Defendant and make this witness statement in accordance with the Court Order of 8 February 2014 and in support of my application to vary the order of 7 October 2013 to allow me to pay the Judgment debt by instalments.
2. By order of the Court dated 20 November 2012 the total sum secured by the Claimant in the final charging order is £14,668.15. This is the total amount that can be claimed by the Claimant.
3. On 9 December 2012 I paid the Claimant £4,500.00 directly into their account. This reduced the judgment debt to £10,168.15.
4. On or around 7 March 2013 I paid two separate sums which totalled a further £3000. This reduced the judgment debt to £7168.15.
5. I telephoned the Claimant on 11 March 2013 and told them I was prepared to pay the full amount I owe to avoid additional court costs. They did not accept this.
6. A family member has offered to lend me the entire amount of £7,168.15. I will be able to pay this to the Claimant in cleared funds before the next hearing. In the circumstances, I think it is entirely reasonable to settle the full judgment outstanding. The Claimant is not entitled to add additional interest and costs as it is clear from the terms of the Court Order of 20 November 2012 that the sum of £14,668.15 is the final amount secured by the charge.

Statement of truth

I, [insert name], believe the facts stated in this witness statement are true.

SIGNED: .....

DATED:.....

The order for directions in your case will tell you when you and the other party must exchange your witness statements. In the example of an order for directions (see **page 27**), the court orders the parties to exchange witness statements after disclosure. This is standard and is because otherwise you would not benefit from what you find out from the other party's documents. For example, you might find out something that supports your case that you want to bring to the court's attention. You can do this by mentioning it in your statement. Alternatively, you might find something that threatens your case. You have the chance to explain the circumstances or offer a different explanation in your statement.

Preparing your witness statements correctly is important. Once you have drafted them it is advisable to get legal advice about them. See **Where to go for further help**.

If you have a witness but you decide not to use their evidence, there is no need to give their statement to the other party.

Simultaneous exchange of witness statements

Simultaneous exchange happens when parties exchange statements on the same day. It is advisable to do this so that no-one gets to see anyone else's statements before writing their own. The idea is that otherwise you could get some advantage from seeing what the other side's witnesses say before you write your own.

You can only be completely sure that 'simultaneous exchange' happens if you agree to swop statements at a meeting. But most people don't do this; it is too inconvenient. Instead you all agree to exchange statements by fax/email on a particular day at a particular time or by posting them on the same day. You must not send your statement without double checking that the other party is sending theirs at the same time. Phone them or their adviser to check that they are ready to exchange. You might say something like: 'Do you agree that we will email our statements to each other immediately after this call ends?' You should keep a written record of the conversation. Note down the key points that you and the other party say and the date and time of the conversation.

If it turns out that the other party has not prepared their witness statements in time to exchange them before the deadline in the order for directions, you can try informal pressure, for example, phoning or emailing them to ask them to get them ready immediately. Explain that if they don't, you will have to go back to court. Tell them when you will do this. If you phone them, follow this up with a letter. If this doesn't work, apply to the court for an order that unless they exchange witness statements within a certain number of days (for example, 7 days), the court will strike out (not allow them to continue with) their claim, defence and/or counter-claim.

Forms and rules

Relevant rule: Evidence **www.justice.gov.uk/courts/procedure-rules/civil/rules/part32**

- Keep the statement focused on facts only – not your opinions or what someone else has told you.
- If you are the claimant you need to cover liability (who is legally responsible for what happened and why) and quantum (how much your claim is worth and how you have calculated this).
- Try not to ramble! Don't be long winded! Keep it short and simple.
- Show your statement to a friend. Do they think you are repeating yourself, straying too far from the point or being too emotional in it?
- If you have a witness whose first language is not English, do you need to arrange an interpreter?

Expert evidence is evidence of an expert's opinion, of what they think or believe about something. A judge will only take account of someone's opinion if it is given by an expert about something they are experts in. And their opinion must be relevant to the dispute, for example, a doctor's opinion about whether or not you will fully recover from an accident. Such people are called expert witnesses.

You may need to get expert evidence to prove some of the points in your case. For example, if your case is about housing disrepair, you may need evidence from a surveyor. It is important to choose an expert who is respected by other people who do the same work as them. It is also usually best if they have not been involved in your case in any way. So, for example, if you need medical evidence you should choose an expert who is not involved in treating you.

I have got an expert and I want them to give evidence; what do I do?

You will need the court's permission to use expert evidence in court. In some cases the court will decide there should be a single expert, jointly instructed by you and the other party. In others, they may allow each party to have separate experts. In either case, expert evidence has to be given in a written report.

The order for directions in your case will set out what you need to do. In our example (see **page 27**), paragraph 4 states that the claimant is allowed to rely on a particular expert's evidence and asks for an updated report to be prepared and filed by a particular date.

Usually, either party can submit written questions for the expert to answer before the trial happens. The court will include a timetable in their order for directions setting out how long you have to ask any questions and how long the expert has to reply. Typically you may have 14 or 21 days after you get the expert's report to submit your questions and the expert will have a similar period in which to reply. You must send a copy of your questions to the other party.

Unless the court gives permission or the other party agrees you can only ask questions that aim to make some aspect of the report clearer and more understandable. The answer you get will be treated as part of the expert's report and so will become evidence in the case, whether you like what they say or not!

The order for directions will often ask the experts to meet (or phone each other) and have a discussion before the trial to try to reach an agreement about their evidence. If they cannot agree then at the very least the judge will expect them to identify and narrow down the areas where they disagree.

There are lots of rules and guidance about experts, their reports and their role in court proceedings. If you want to involve an expert in your claim, you will need to read these (see box below).

Rules

Relevant rule: Experts and Assessors **www.justice.gov.uk/courts/procedure-rules/civil/rules/part35**

Relevant guidance: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part35/pd_part35**

Top tips!

- Expert's reports, particularly from medical experts, often take a long time to get and are expensive.
- An expert witness must remain independent. They have a duty to the court that is above their duty to you. So, they may say something that does not support your case even if it was you who asked them for their opinion and is paying their bill!
- It may be 'your' report but any party can use that expert's report as evidence at the trial
- Think carefully about whether to ask the expert questions and if so what questions to ask and how to ask them. You may get an answer that is not favourable to your case.

Pre-trial checklists

telling the court how your case is progressing

A pre-trial checklist is a form you use to tell the court how the case is progressing in the run up to trial. You may also hear it called a 'listing questionnaire'.

This way the court can find out, for example:

- whether you have got any preparation tasks left to do;
- how many witnesses you have;
- whether any experts have been able to agree their evidence;
- whether you are going to be presenting your own case or not; and
- how long you think the trial is going to take.

It is not easy estimating how long a trial is going to take. Even lawyers who are in the courts regularly get this wrong. So get advice, but also think about:

- how long it is going to take you to say what you need to say to the court;
- how many witnesses are coming and how long their statements are; and
- whether an expert witness is coming.

As a rough rule of thumb, a fast track case is usually expected to last one day or less. Most small claims track cases will last well under one day. You don't have to file a pre-trial checklist if your claim has been allocated to the small claims track.

There is a section about the pre-trial checklist in court leaflet EX305: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex305-eng.pdf**

Forms and rules

You can find a pre-trial checklist/ listing questionnaire here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n170-eng.pdf**

Relevant rule: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part28#28.5**

Chronology – a timeline

A chronology (or timeline) is a complete list in date order of the relevant actions or events about the facts of your case. It should include a short description of what happened on each date and any relevant supporting documents. A good chronology can help you assess the true strength of your case. And many judges find them helpful too.

An example of a chronology

Date	Event	Document
May 14th–16th 2013	Jim installs new kitchen in Mo's home	Estimate and letter confirming the agreed work and installation date.
May 17/18th 2013	Jim installs new bathroom in Mo's home	Estimate and letter confirming the agreed work and installation date.
19/5/13	Mo photos the unfinished and badly done parts of the building work. She emails them to Jim explaining what needs to be finished off and what needs to be re-done.	Photos Email
21/5/13	Jim texts Mo to say that as far as he is concerned the job is finished and he will be sending Mo his bill.	Text
21/5/13	Mo rings Jim and tries to discuss what work still needs to be done. Jim repeatedly says that everything was fine when he left the job. He refuses to return to Mo's home to look at the work Mo says needs finishing.	Diary note

(continued)

Date	Event	Document
6/6/13	Jim sends Mo an invoice for the full contract price	Invoice
7/6/13	Mo emails Jim to say she will only pay part of his bill. She refuses to pay the rest until the job is completed satisfactorily.	Email
10/6/13	Jim rings Mo and angrily tells her she must pay the bill in full.	
15/6/13	Mo gets an estimate from another builder to get the work finished properly	Estimate
17/6/13	Mo sends the estimate to Jim with a covering letter explaining that if he does not complete the work to her satisfaction within a reasonable time, she will go to court and claim the cost of putting the work right.	Letter

A list of issues

You may be asked to prepare a 'list of issues' in some courts and by some judges. Identifying 'issues' in a legal case is about defining and summarising what you disagree about. Each area of disagreement is an 'issue'. The idea is to help you agree what you are actually arguing about! Most of these issues are likely to be facts you disagree about, for example: Jim disagrees that any work needs to be finished off.

Occasionally people disagree about the law that applies to their case.

Your order for directions will tell you whether you have to prepare a list of issues. Even if you don't, you may want to do one anyway. The process of thinking about what to put in this list can help you work out what evidence you need, what witnesses to choose and the questions you need to ask your and the other party's witnesses.

Preparing a trial bundle and index

I have been told I have to lodge an indexed bundle of documents; what is this?

A bundle of documents is a collection of papers. They can be tied together or put in a file. 'Index' just means list. Essentially it is a pack with a list at the front showing what is in it that you have to provide for the court. It pulls together all the information and evidence relevant to the case in one place to provide a history of the case.

- The trial bundle combines both parties' documents to form one pack.
- You have to agree the contents with the other party.
- The judge uses it at the trial.
- The court may give you instructions (in the order for directions) about what the bundle should include. You may, for example, be asked to include a short case summary (250 words max) outlining what you and the other side still disagree about. This order may also direct how the court wants the bundle presented, for example, in a ring binder and with each page clearly numbered.
- You usually have to file the bundle at court and serve a copy on the other party 5 or 7 days before the hearing (or as directed by the court). You take the other copies with you to court on the day of the trial to give to people who need them, like witnesses and experts.
- You do not have to prepare a bundle if your case is being dealt with in the small claims track, although sometimes people do because they are useful.

The bundle needs an index at the front. An index is a list of what is in the bundle and where you can find each document. You should be able to look down the index, find the document you are interested in, turn to the page it says it is at and find it there. It makes finding things much quicker as long as you make sure the documents are in the order the index says they are in and every sheet of paper is numbered in order in the middle of the bottom of the page.

At the trial you can say to the judge 'please will you look at page 38 in the bundle' and if everyone quickly and correctly finds the same page, then you have done it successfully!

On the next page is an example of what an index looks like.

An example of an index

IN THE [Type or write in the name of the court] COURT

Claim No: [Type or write in the case number]

BETWEEN	[Insert name]	Claimant
	and	
	[Insert name]	Defendant

Index to trial bundle

Description of Document	Page number
Claim Form	1 – 2
Particulars of Claim (including medical report)	3 – 20
Defence	21 – 24
Order for directions dated 31 August 2013	25 – 26
Agreed Case Summary	27
Witness statement of the Claimant	28 – 32
Exhibit to the witness statement of the Claimant	33 – 35
Witness statement of Mr Smith	36 – 39
Exhibit to the witness statement of Mr Smith	40 – 42
Witness statement of the Defendant	43 – 47
Witness statement of Ms Brown	48 – 51
Exhibit to the witness statement of Ms Brown	52 – 56
DVLA document V5C	57 – 60
MOT test certificate	61 – 62
Repair & Care Recovery and Storage Invoice No 1	63
Repair & Care Recovery and Storage Invoice No 2	64

- Stick to the deadline for preparing and filing the indexed bundle at court. If this is not possible for some reason (for example, you have just come out of hospital and are not well enough to do it yet) then try to agree more time with the other side. Let the court know and explain your difficulty. If the other side will not agree, then you will have to apply to the court for more time. Whatever you do, don't just ignore this or any other deadline!

- Read what the court has asked you to do very carefully. Sometimes you don't have to prepare the trial bundle because the other party has been asked to do this job!

- If you get the chance, for example at a hearing when the judge gives directions, and if the other party is represented by a solicitor, ask the judge to order them to prepare the bundle. This will save you having to puzzle over the task and should get it done quickly and efficiently. Make sure the documents you want in the bundle are included. However, doing this in fast and multi track cases could add to the legal costs you pay if you lose the case.

- If you do have to produce the bundle, you will have to produce enough copies for everyone at the trial. Check how many copies you need by asking the other party's solicitors.

- Get together all the paperwork which supports your claim and counters what the defendant says or is claiming. You have to include anything that is relevant to the claim even if it does not help your case.

- You never put original documents in the bundle but take them with you to the trial in case the judge has any queries about them.

Top tips!

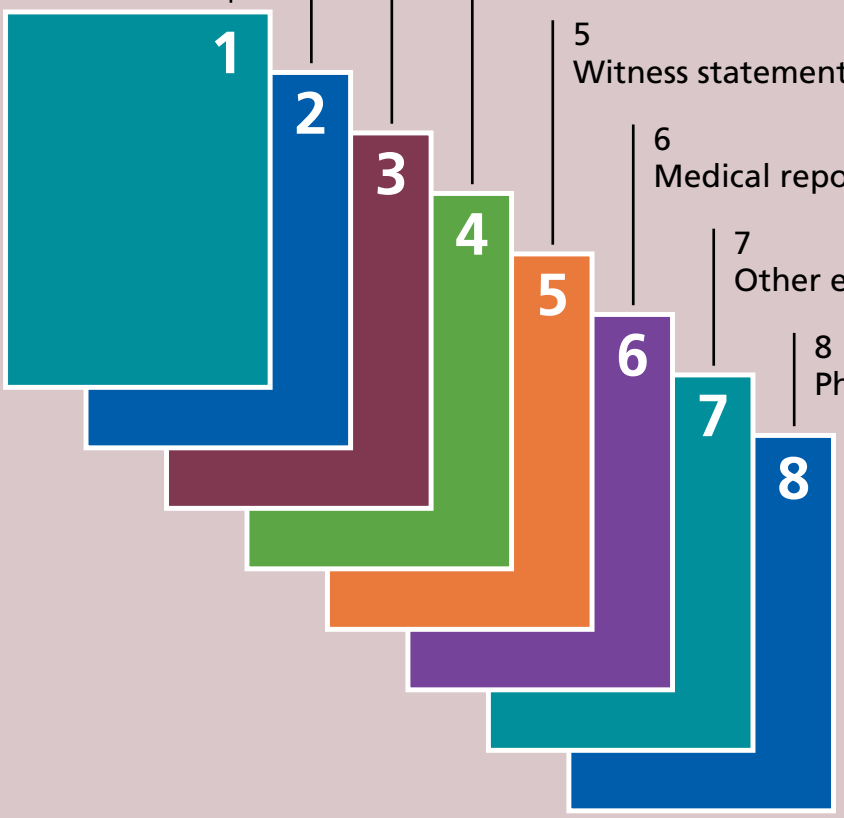
- The usual order to put the documents in is:

1
Statements of case (These are court documents in which you present and argue for your case. So a claim, counterclaim or defence are all 'statements of case'.)

2
Court orders

3
Any documents from the List of documents that deal with the fault and where responsibility lies, for example, the accident report in a personal injury claim.

4
Any documents from the List of documents that deal with the value of the claim. It is important not to overlook this heading. The judge may want help deciding how much your claim is worth. So if, for example, you are finding it difficult to get work and this is relevant to your claim, produce evidence of unsuccessful job applications.



5
Witness statements

6
Medical reports

7
Other experts reports

8
Photographs

- If you include a document in your bundle that is not in your List of documents, the other party will object and you will have to explain to the judge why you are only producing it now.
- If the total number of pages in your bundle is more than 100, then use numbered dividers between each group of documents. These will help everyone find their way around the bundle more quickly.
- Don't number the pages in your bundle until the other side have agreed it. If they want something else to go in and you have already numbered it, you will end up having to do it all again!
- To get the bundle agreed, just send the other side a copy of the index – your list of what the bundle will have in it. At this stage your index will not have any page numbers on it because you have not finalised what is going in it. The other side may want documents taken out or added. If you cannot agree, the documents in dispute are put in a second bundle. There is no need to send them the actual documents along with the index.
- Produce and number one bundle and index first. Take any staples out of the documents. Check the bundle against the index to make sure the documents in the bundle are in the order the index says they are in!
- Make sure every sheet of paper is numbered in order in the middle of the bottom of the page, so when you look for page 57 to find the DVLA document V5C – there it is!
- You may hear the term 'pagination' used by the judge, court staff and the other side's lawyers. All it means is giving numbers to the pages of the bundle. So a 'paginated' bundle is one where the pages have been numbered in the middle of the bottom of the page.
- Make sure you have got your first bundle right before copying however many more you need. This may sound obvious but it is easy to do the copying before numbering the pages and then you are stuck with having to number 3 or more sets of documents by hand instead of just one!
- You will usually be expected to do single sided photocopying.

Forms and rules

Relevant rule: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part39/pd_part39a**

Costs

charging for legal work and who pays

Legal costs (often just referred to as 'costs') are what solicitors charge for the legal work they do. The court has the power to order who will pay these charges. As a litigant in person, you are allowed to charge for the work you do if the court awards you costs – but this is only possible if you have a fast or multi track case.

The general rule about who pays the costs of a court case in fast and multi track claims is that the loser pays the winner. This means the loser has to pay the winner's legal costs as well as their own.

However things are very different in the small claims court where the general rule is that neither the Claimant nor the Defendant can get their costs paid by the other party (apart from fixed costs like court fees, witness expenses and expert's fees); each party has to pay their own costs and no-one's else's, whether they win or lose. Very occasionally the court decides that the loser has behaved unreasonably and so orders them to pay the winner's costs.

Sometimes, even though the court orders the loser to pay the winner, they only pay some of what is owed or none or they delay paying. This then involves the winner spending their own money and lots of time trying to make the loser pay up. This is because courts do not enforce costs orders. There are various methods available but all of them cost more money with no guarantee of success. For further information see court leaflet EX321 *'I have a judgment but the defendant hasn't paid – What do I do?'* **http://hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex321-eng.pdf**

Legal costs and court fees are two different things. For more information about court fees see **page 10**.

How do costs build up?

Solicitors charge for their time. So, if you are using a solicitor, every time you write to, email or phone a solicitor they will charge you for the time they spend reading and thinking about what you write, thinking about what advice to give you, giving you that advice and talking to you. The more you contact them or meet them face to face, the more time they spend writing letters for you, negotiating on your behalf, drafting court documents, taking steps in court proceedings for you or representing you at court hearings, the greater the cost – to you.

The key is to use their time wisely. So for example, prepare for speaking to a solicitor by making a list of:

- The main points you want to make.
- The questions you want to ask.

Legal costs can add up to thousands of pounds, sometimes considerably more. This is why parties are encouraged to agree their disputes if possible either without going to court at all or before

the case gets to trial. It may sound unlikely, but the fact is, it is possible to end up losing your home or to be made bankrupt as a result of losing a court case. However there are times when going to court is likely to be the best or only option and a good solicitor can make all the difference to the result you get.

Can I charge for the time I spend as a litigant in person?

Yes. Currently you can charge £18.00 per hour of your time reasonably spent on your case. This is time spent on case preparation including any work which a solicitor might charge for – see Practice Direction 46 – Costs special cases at **www.justice.gov.uk/courts/procedure-rules/civil/rules/part-46-costs-special-cases/practice-direction-46-costs-special-cases#3.1**

If your financial loss is greater than that, for example, because if you were not involved in the case you would have been at work earning more than £18.00 per hour, the court may allow you to charge more for some of your time. You will need to provide evidence of what paid work you were able to do, how much you earned and how much less that was than normal. If you lost out financially because you received job offers that you had to refuse because of the case, again you will need to provide evidence of this and what you would have been paid if you want the court to consider allowing you to charge more than £18.00 per hour for the hours spent on the case when you would have been at work.

There is an overall limit on what the court will allow you to charge for your time. This is two thirds of what a solicitor could reasonably charge for doing the same work: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part-46-costs-special-cases#46.5**

Litigants in person and VAT

A litigant in person is not treated as having supplied services and so you cannot charge VAT on legal work you do for yourself. This means your bill of costs should not include a claim for VAT.

When do I ask for my costs?

If you are a litigant in person and you win your case, ask for your costs after the judge has delivered judgment (given their decision about who has won). This involves saying something like 'As I have been successful, please can I have my costs?'

You must get an order for costs to allow the court to assess them.

The basis for assessment

There are two different starting points for assessing costs. One is called the 'standard basis' and the other the 'indemnity basis'. If the court uses the standard basis, it will resolve any doubt about whether it was reasonable to spend the money and if so whether the amount spent was reasonable in favour of the party who has to pay the bill. If you lose a case, this is the basis on which you want the court to calculate the winner's costs.

If the court uses the indemnity basis, it will resolve any doubt about whether it was reasonable to spend the money and if so whether the amount spent was reasonable in favour of the winner. If you win a case, this is the basis on which you want the court to calculate costs because the total amount the loser pays you will be higher than if the court uses the standard basis.

Normally, the court will order costs to be paid on a standard basis. However, if the loser has acted unreasonably during the case or refused to accept a reasonable offer and gone to trial unnecessarily, sometimes the court will order costs to be paid on an indemnity basis.

Litigants in person and costs estimates

The court may ask you for an estimate of your costs at any stage in the case. This is so you and the court can check how much the case has cost so far. So, keep a record of the time you spend (the date, the task you did and the number of hours spent on each task) and your expenses as you go along and then you will be ready to provide this.

In multi-track cases, if you are represented, you must prepare a costs budget at the allocation stage. However, this does not apply to you if you are a litigant in person. If the other party is represented then you should get a costs budget from them. If a represented party fails to produce a costs budget, this may limit the amount of costs you have to pay them if you lose the case. In this situation, check whether a costs budget has been sent in to the court. If not, you can raise this as a 'point of dispute' when the court comes to decide how much you have to pay towards the winner's costs. For more information about points of dispute, see **page 55**.

Court orders about legal costs

The court can make different types of court orders about legal costs as a case proceeds through the various stages towards trial. You can find a table setting out the different orders and their effect in Practice Direction 44: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part-44-general-rules-about-costs/part-44-general-rules-about-costs2#rule4.1**

Assessing legal costs at the end of the case

Assessment is the process by which the court decides whether the costs claimed by the winner are within the authorised amounts and are fair and reasonable. Essentially it is a control on what solicitors, barristers, experts and you can charge for your time.

When does the court assess legal costs?

The court assesses legal costs at the end of the court proceedings. Proceedings end when the court has finally decided the dispute between the parties, whether or not there is an appeal.

How does the court assess costs?

The court will do this in one of two ways; by making either a summary or detailed assessment.

	Summary assessment	Detailed assessment
When	If the trial lasts for 1 day or less.	For more complex cases. Typically, a court order will say: 'Costs to be assessed if not agreed'.
What	It is the more straightforward procedure. You prepare a statement of costs (how much you have spent on running your case) before the trial. At the trial the judge decides how much the unsuccessful party pays.	After the trial the winning party prepares a statement of costs which they send to the losing party. The aim is to try and agree the costs between you. If you cannot agree them, then the winning party has to file more detailed information about what they are claiming in the form of a bill of costs and start costs assessment proceedings. For more information about costs assessment proceedings see **page 54**. The losing party can challenge the costs claimed in a document called points of dispute. For more information about points of dispute, see **page 55**. These are technical documents that are usually drafted by a specialist called a law costs draftsman. The Royal Courts of Justice Advice Bureau may be able to help you prepare your bill of costs and points of dispute.
How	Follow the format used in Form N260 (see **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n260-eng.pdf**)	You may find this model form of bill of costs helpful if you have to prepare your own: **www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/new-precedent-a.pdf**
What next?	Send the statement to the court and to the other party before the trial starts. If yours is a fast track case you must do this at least 2 days before the trial. For all other cases you must do it at least 24 hours before the trial is due to start.	If you cannot agree the costs following service of the points of dispute, a judge will assess the bill and make a decision for you.

What can I claim for?

Time spent on case preparation, for example face to face meetings or telephone calls with the other party or their legal representative, drafting documents, reading documents, researching the law online or in a library and attending court hearings.

Expenses include things you have to pay for yourself like court fees, expert's fees, photocopying, couriers, postage, paper, ring binders, printer cartridges, travel costs (for example to and from court, to and from your legal adviser, or to visit a witness to take a statement).

When deciding whether to allow you to claim for an expense the court will take into account whether:

- the expense was actually paid;
- it was reasonable to pay it; and
- the amount paid was reasonable.

What cannot be claimed?

If a litigant in person is paid their costs for attending court to run their own case they are not entitled to a witness allowance as well (see **www.justice.gov.uk/courts/procedure-rules/civil/rules/part-46-costs-special-cases#46.5**).

Cost assessment proceedings

Here we explain the steps involved in these proceedings, depending on whether you are the winning or the losing party.

Winning party	Losing party
Send details of your costs to the losing party. Ask them if they accept the amount you are claiming. If they agree the figure, ask them to send you a cheque.	Decide whether you think the costs claimed are necessary and reasonable. If you agree the amount, then pay it. If not, explain what you think is too much or unreasonable to the winning party.
If the losing party does not agree the amount, start costs assessment proceedings within 3 months of the date of the costs order.	

(continued)

Winning party	Losing party
To do this you: 1. Prepare a bill of costs. You can find an example in the Forms and rules box on **page 59**. 2. Fill in a Notice of commencement of assessment of bill of costs. You can find this here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n252-eng.pdf** 3. Send the bill of costs and the Notice of commencement together with copies of any invoices, for example, from your expert, your solicitor or your barrister (if you used one) to the losing party. If you are claiming any other expenses, for example the cost of travelling to and from court or photocopying costs, then you must produce receipts or invoices to prove them.	You have 21 days to object to the bill of costs. The date by which you must object is in the Notice of commencement of assessment of bill of costs. You must set out each item you dispute, the reason you object to it and what reduction you are looking for. The law calls these objections 'points of dispute'. You can find an example of some points of dispute in the Forms and rules box on **page 59**. When you serve your points of dispute on the winning party, you must make an offer to settle the claim.
If the losing party sends you points of dispute then you can reply to each point in the sections headed 'Receiving Party's Reply' (see Points of dispute (Costs precedent G) – **www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/new-precedent-g.pdf**) – but you don't have to do this. If you want to reply you must do this within 21 days of receiving the points of dispute.	
If the losing party does not send you any points of dispute before the deadline expires, you should apply to the court for a Default Costs Certificate. A Default Costs Certificate is a court order ordering the other party to pay you the full amount you are claiming. You do this by completing and sending this form to the court with the correct fee: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n254-eng.pdf**	

(continued)

Winning party	Losing party
If you cannot apply for a Default Costs Certificate (because the losing party sends in points of dispute before the deadline expires) then your next step is to apply for an assessment of the costs. You do this by completing and filing at court Form N258 together with the correct fee: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n258-eng.pdf** If you are claiming costs of £75,000 or less then the court will do a provisional assessment by looking at your bill of costs and any supporting invoices. The court may decide that provisional assessment is not suitable and arrange a hearing. If your costs are more than £75,000 then the court will arrange a detailed assessment hearing.	
If the court provisionally assesses your costs and you are unhappy with the amount and want to try and persuade the court to increase it, you can ask for a hearing. But if you do this and don't get an increase of 20% or more then you will have to pay the costs of the hearing.	The losing party usually has to pay the costs of the assessment proceedings, but there are some exceptions to this.

On the next page you can see an example of points of dispute which may help you write your own if you need to do this.

An example of points of dispute

IN THE BROWN COURT Claim No: xyz1

BETWEEN	[Insert name]	Claimant
	and	
	[Insert name]	Defendant

Defendant's points of dispute in relation to the claimant's bill of costs

Objection no.	Item no.	Objection
1		**Proportionality** – The Claimant asks for costs of £7,781.80 which compared to the amount they recovered of £7,576.28 are disproportionate. This was a straightforward matter. There was no dispute about the debt or liability for the debt. The Defendant asks the Court to find the costs disproportionate and apply the joint tests of necessity and reasonableness as per the Court of Appeal decision in *Home Office v Lownds [2002] EWCA CIV 365*.
2	2	**Communications with the Council** – These communications did not achieve anything and so it is unreasonable for the Defendant to have to pay for this time.
3	5	**Documents** – The claim of 1 hour 30 minutes for time spent preparing the claim and considering procedure is excessive. In particular, the Defendant should not have to pay for time claimed for considering procedure. 30 minutes is considered reasonable.
4	7	**Hearing 6.6.13** – The Court order does not say who should pay the costs of this hearing. This means the Defendant does not have to pay the Claimant's costs. No offer.
5	8	**Communications with the Claimant** – 2.9 hours is considered excessive, 1 hour is offered.

(continued)

6	12	**Documents** – the 11 hours claimed is considered excessive. On a broad brush approach 3 hours is considered reasonable. 13.05.13 1 hour – Excessive, 12 minutes offered 15.05.13 1 hour – Excessive, 30 minutes offered 29.05.13 2 hours – Excessive, 30 minutes offered 14.06.13 1 hour 30 minutes – this claim is excessive and duplicates time claimed later for preparing the bundle and papers for Counsel. No offer is made.
7	13 & 14	**Attendance at Court** – It was unreasonable for both a solicitor and a barrister to attend court. No offer is made for the cost of the solicitor attending. Given the straightforward nature of the case, Counsel's brief fee of £700 is considered excessive, £500 is offered.
8	21	**Preparing and signing bill of costs** – The time claimed is considered excessive. 2 hours is offered for the bill drafting and 12 minutes for signing the bill.
9		**Interest** – The Claimant delayed serving the bill of costs, and so the Defendant asks the Court to disallow any entitlement to interest for the period of delay.

Dated this ..... day of 2014

- Keep a notebook and record all the work you do and the time you spend doing it including travel time and all your expenses as you go along.
- Keep the actual receipts and invoices to show what you spent.
- Ask for your costs if you win at the trial.
- If you lose your case, the Royal Courts of Justice Advice Bureau offers free advice from a costs draftsman about the costs you have been ordered to pay and whether and how to challenge them.

Forms and rules

You can find the Statement of Costs for summary assessment here: **http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n260-eng.pdf**

You can find other useful costs forms at the end of Practice Direction 47:

A bill of costs (Costs precedent A) – **www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/new-precedent-a.pdf**

Points of dispute (Costs precedent G) – **www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/new-precedent-g.pdf**

There are lots of rules about costs. You can find some of them here:

The general rule about costs is at: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part-44-general-rules-about-costs**

The rules that apply when a court orders another person to pay a litigant in person's costs are here: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part-46-costs-special-cases#46.5**

Small claims track costs: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part27** and **www.justice.gov.uk/courts/procedure-rules/civil/rules/part27/pd_part27**

Fast track trial costs: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part45-fixed-costs#sectionVI**

In some types of case the amount of costs you get paid or have to pay is fixed: **www.justice.gov.uk/courts/procedure-rules/civil/rules/part45-fixed-costs**

Rules about Costs assessment proceedings:

www.justice.gov.uk/courts/procedure-rules/civil/rules/part-47-procedure-for-detailed-assessment

www.justice.gov.uk/courts/procedure-rules/civil/rules/part-47-procedure-for-detailed-assessment/practice-direction-46-costs-special-cases2

Jargon buster

Allocation – the process of deciding which track the case should follow.

Case management hearing – a hearing where the court decides or the parties agree how to deal with the case.

Claim – a formal request, for example, for money or that something is done or stopped from happening, that starts court proceedings.

Claim form – the form that starts a case and where the claimant explains what they are asking for.

Claimant – someone who starts court proceedings.

Costs – what solicitors charge for the legal work they do. They are also known as 'legal costs'.

Counterclaim – a claim that competes with the previous claim.

Court order – the judge's written decision.

Date of service – the official date that the court decides is the date when a party received a document.

Defendant – someone who has court proceedings brought against them.

Defence form – the form the defendant completes to explain why they dispute the Claimant's claim.

Directions – instructions for how a case will be dealt with.

Directions hearing – a hearing where the court decides or the parties agree the instructions they will follow to get the case ready for trial.

Directions questionnaire – a questionnaire that helps the court decide how to deal with your case and which track to allocate (transfer) your case to.

Disclosure – the formal name for the process of showing the evidence that supports your case to the other party. 'Standard' disclosure refers to the usual way of going about the process as described in Part 31 of the Civil Procedure Rules.

Discontinue – end your claim before it is dealt with by a judge or comes to trial.

Dispute – the thing you and the other party are arguing about.

Enforcement proceedings – proceedings to force someone to obey a court order, for example, to pay you money or return something belonging to you.

Evidence – information, for example from documents or witnesses, that proves the facts of your case.

Exchange of documents – sending the documents you are going to rely on to prove your case to the other party (and sometimes to the court as well).

Jargon buster – continued

Fast track – the name given to the process that must be followed when a claim has a value of between £10,000 and £25,000.

Fee remission – the name given to the system for deciding whether you are eligible to pay a reduced court fee or none at all.

File – to put a legal form or document in the court records.

Hearing fee – the fee you have to pay to the court shortly before the trial.

Inspection – the formal name given to your right to see and check the original documents supporting the other party's case. A 'request to inspect' is when you ask to do this.

Interim application – an application made at any time after you start your claim and before the trial. An application is how you ask a court to do something.

Judgment – the court's decision.

Judgment in default – the court's decision made when the defendant does not respond to the claim in time. As a claimant you can ask the court to enter 'judgment in default' once the relevant time limit expires.

Jurisdiction – the court's power to decide the case. It also refers to the geographical area in which the court has power to act.

Law report – the public record of a judge's decision.

List of documents – the form you use to list the documents and any other evidence you have that support your case.

Litigant in person – the name given to someone who represents themselves in court proceedings or at a court hearing without the help of a solicitor or barrister.

Multi track – the name given to the process that must be followed when a claim has a value of £25,000 or more.

Notice of proposed allocation – a notice is a bit like a letter. They are the way courts tell you what is going on. A 'notice of proposed allocation' tells you which track the judge thinks is suitable for your case. This could be the small claims track; the fast track; or the multi-track. It also tells you to complete a directions questionnaire.

Notice of issue – this notice tells you that your claim has started and the date it began. It also tells you the case number, the date of service, the method of service and the defendant's deadline for responding.

Order for directions – a list of instructions telling you what to do and when.

Jargon buster – continued

Party – this kind of 'party' is not about balloons and dancing! It is a person or group of people forming one side in a dispute.

Particulars of Claim – a concise written statement of the facts and law on which your claim is based and what you want from the defendant.

Pre-trial checklist – the form you use to tell the court how your case is progressing in the run up to the trial.

Pre-action protocol – an official procedure explaining how to behave and what to do before court proceedings start.

Response pack – the pack of forms and information sent to a defendant after a claim starts.

Service – formal delivery of court documents, for example, to a claimant, a defendant, a witness or an expert. You can serve court documents in various ways, for example, by hand, post or email.

Settle – to sort out the case with the other party by reaching an agreement.

Small claims track – the name given to the process that must be followed when a claim has a value of £10,000 or less.

Statements of case – these are concise written statements of the facts and law on which your claim or defence is based. The Particulars of Claim is the claimant's statement of case and the Defence and Counterclaim are the defendant's statement of case. Details of what is in them can be published by the press unless the court has made an order preventing this because, for example, they contain sensitive information.

Strike out – to stop an application, claim or defence from continuing with the result that you are unsuccessful.

Track – the route through the court system that the case will take.

Trial – the final hearing which takes place in front of a judge who decides who wins and who loses the case.

Trial bundle – a pack combining both parties' documents with a list at the front showing what is in it for use at the trial.

Trial window – this is a particular period of time during which your case is likely to be heard. The court may ask for information about when you can and cannot attend during that period.

Witness statement – a document in which someone explains what they saw or heard or what they said or did and confirms the truth of what they say.

Where to go for further help

How to find a legal advisor

The Royal Courts of Justice Advice Bureau can help you if:

- you have a case in the County Court, High Court, Administrative Court or Court of Appeal in civil or family cases

and

- you are not already represented by a solicitor or barrister.

The Royal Courts of Justice Advice Bureau has qualified solicitors who can give you free, confidential legal advice including help with:

- Court procedure
- Applications to the court
- Referral to free representation
- Referral to a free mediation service
- Free advice from a costs draftsman about orders for costs against you.

The Royal Courts of Justice Advice Bureau is independent of the courts and can help wherever you live in England or Wales.

To book an appointment to see a solicitor please see **www.rcjadvice.org.uk** for latest appointment details.

You can also ask friends and family for a recommendation. To find a local solicitor who can help you, search here:

- **find-legal-advice.justice.gov.uk**
- **www.lawsociety.org.uk/find-a-solicitor**
- **www.lawcentres.org.uk/i-am-looking-for-advice**

Help finding court forms

Court staff may be able to explain court procedures and help you find a court form. They are not able to give you legal advice.

You can search for court forms here:
http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do

(continued)

Where to go for further help – continued

Help when at court

The Personal Support Unit (PSU) supports people going through the court process without a lawyer. Volunteers offer a free and confidential service. PSU aims to help you manage your own case yourself. PSU does not give legal advice or act on your behalf, but can offer practical help such as going to your hearing with you and help completing and filing your forms.

For more information as well as the location and contact information for your nearest PSU, please visit **www.thepsu.org** or call **020 7947 7701/7703**.

Sources of information about the law and your rights

Advicenow **www.advicenow.org.uk**

Adviceguide from Citizens Advice **www.adviceguide.org.uk**

Getting advice!

Are you sure you know what the law says and means? Do you understand how it applies to your case?
Are you certain you know what legal procedure to follow?

If not, you are not alone! Most people need advice – usually more than once in their case. So, get advice!

See **Where to go for further help**.

Feedback

Whether you have read one or all of the Going to court leaflets, we would love to hear from you. Please tell us what you think of them by completing our survey (**www.surveymonkey.com/s/FGZ3G2B**). We will use your feedback to improve the leaflets and make sure they are as helpful as possible. Thank you!

Disclaimer: The law is complicated. It is always best to get advice. This leaflet is not meant as a substitute for legal advice.

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citizens advice bureau

RCJ Advice Bureau
Helping you find your way through court