

NOTES FOR DEFENDANT ON REPLYING TO THE CLAIM FORM

You have 28 days from the date on which you were served with particulars of claim in which to respond. Particulars of claim may be contained in the claim form itself or served separately.

You should respond by completing and returning the acknowledgment of service enclosed with this claim form.

Court staff can tell you about court procedures, but they cannot give legal advice. If you need legal advice, for example about the likely success of disputing the claim, you should contact an advocate immediately.

The address of the Courts Office, to which any forms to be returned to the court must be sent, is —

Courts Office
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

Responding to this claim*Acknowledgment of Service*

Whether or not you wish to defend the claim, you must file an acknowledgment of service. The period for filing (the time in which the form should reach the Courts Office by) the acknowledgment of service is:

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

Defence/Counterclaim

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

Failure to acknowledge service

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

Documents to be filed with the acknowledgment of service

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

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

is alleged to have been lost or destroyed.

In addition you must file written evidence about the documents which should be in the form annexed. It must be signed by you personally (and not your advocate) or by your litigation friend (only applicable where defendant is a minor or a patient under the Mental Health Act 1998).

Non inspection of testamentary documents

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

All written evidence whether in a witness statement or an affidavit must be typed and a typed copy of any manuscript evidence should also be exhibited to the relevant witness statement, affidavit or other document adducing the same.

Counterclaim

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

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

FORM OF WITNESS STATEMENT OR AFFIDAVIT ABOUT TESTAMENTARY DOCUMENTS (typed)

(Title of the claim as in claim form)

I [*name and address*] the [*first*][*second*][*third*] defendant in this claim state [on oath] that I have no knowledge of any document –

- (1) being or purported to be or having the form or effect of a will or codicil of [*name of deceased*] whose estate is the subject of this claim;
- (2) being or purporting to be a draft or written instructions for any such will or codicil made by or at the request of or under the instructions of the deceased;
- (3) being or purporting to be evidence of the contents or a copy of any such will or codicil which is alleged to have been lost or destroyed,

except —

[details of any testamentary document of the deceased, and if it is not in your control, either give the name and address of the person who you believe has possession or control of it, or state that you do not know the name and address of that person]

[I believe that the facts stated in this witness statement are true] [*or jurat for affidavit*]