PART 16 Defence And Reply

PART 16

Defence and reply 16.1 - 16.2

16.1

This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

16.2

In relation to specialist proceedings in respect of which special provisions for defence and reply are made by these Rules and Practice Directions applicable to those claims, the provisions of this Part apply only to the extent that they are not inconsistent with those Rules and Practice Directions.

Filing a defence 16.3

16.3

A defendant who wishes to defend all or part of a claim must file a defence.

Consequence of not filing a defence 16.4

16.4

If a defendant fails to file a defence, the claimant may obtain default judgment if Part 13 allows it.

Form of defence 16.5

16.5

A party may file a defence by submitting it electronically using the Court 's e-filing system.

Statement of truth 16.6 - 16.8

16.6

Part 22 requires a defence to be verified by a statement of truth.

16.7

The form of the statement of truth is as follows:

'[I believe][the defendant believes] that the facts stated in this defence are true.'

16.8

Attention is drawn to Section VI of Part 29 which sets out the consequences of verifying a statement of case containing a false statement without an honest belief in its truth.

The period for filing a defence 16.9 - 16.10

16.9

The general rule is that the period for filing a defence is:

(1) 14 days after service of the particulars of claim; or

(2) if the defendant files an acknowledgment of service under Part 11, 28 days after service of the particulars of claim.

16.10

The general rule is subject to the following rules:

(1) Rule 9.57 (which specifies how the period for filing a defence is calculated where the claim form is served out of the jurisdiction);

(2) Rule 12.10 (which provides that, where the defendant makes an application disputing the Court's jurisdiction , he need not file a defence before the hearing);

(3) Rule 24.5 (which provides that, if the claimant applies for immediate judgment before the defendant has filed a defence, the defendant need not file a defence before the immediate judgment hearing); and

(4) Rule 9.48 (which requires the Court to specify the period for responding to the particulars of claim when it makes an order under Rule 9.45).

Agreement extending the period for filing a defence 16.11 - 16.12

16.11

The defendant and the claimant may agree that the period for filing a defence specified in Rules 16.9 and 16.10 shall be extended by up to 28 days.

16.12

Where the defendant and the claimant agree to extend the period for filing a defence, the defendant must notify the Court in writing.

Service of copy of defence 16.13

16.13

A copy of the defence must be served on every other party.

Making a counterclaim 16.14 - 16.15

16.14

Part 21 applies to a defendant who wishes to make a counterclaim .

16.15

Where a defendant to a claim serves a counterclaim under Part 21, the defence and counterclaim should normally form one document, with the counterclaim following on from the defence.

Reply to defence 16.16 - 16.19

16.16

If a claimant files a reply to the defence, he must:

(1) file his reply within 21 days after service of the defence; and

(2) serve it on all other parties at the same time.

16.17

The reply should be served before case management information sheets are provided to the Court . In the normal case, this will allow the parties to consider any reply before completing the case management information sheet, and allow time for the preparation of the case memorandum and the list of issues each of which is required for the case management conference.

16.18

In some cases, more than 21 days may be needed for the preparation, service and filing of a reply. In such cases an application should be made on paper for an extension of time and for a postponement of the case management conference.

16.19

Where a claimant serves a reply and a defence to counterclaim , the reply and defence to counterclaim should normally form one document, with the defence to counterclaim following on from the reply.

No statement of case after a reply to be filed without Court's permission 16.20

16.20

A party may not file or serve any statement of case after a reply without the permission of the Court .

Claimant's notice where defence is that money claimed has been paid 16.21 - 16.24

16.21

Where:

(1) the only claim (apart from a claim for costs and interest) is for a specified amount of money; and

(2) the defendant states in his defence that he has paid to the claimant the amount claimed,

the Court will send notice to the claimant requiring him to state in writing whether he wishes the proceedings to continue.

16.22

The claimant must respond to a notice issued by the Court under Rule 16.21 within 28 days after service of the notice on him. When the claimant responds, he must serve a copy of his response on the defendant .

16.23

If the claimant fails to respond under Rule 16.22 within 28 days after service of the Court’s notice on him, the claim shall be stayed .

16.24

Where a claim is stayed under this Rule, any party may apply for the stay to be lifted.

Claim stayed if it is not defended or admitted 16.25 - 16.26

16.25

Where:

(1) at least 6 months have expired since the end of the period for filing a defence specified in Rules 16.9 and 16.10;

(2) no defendant has served or filed an admission or filed a defence or counterclaim ; and

(3) the claimant has not entered or applied for judgment under Part 13 (default judgment), or Part 24 (immediate judgment);

the claim shall be stayed .

16.26

Where a claim is stayed under Rule 16.25, any party may apply for the stay to be lifted.

Application to lift stay 16.27

16.27

Any application made under Rule 16.24 or Rule 16.26 should be made in accordance with Part 23 and should give the reason for the applicant’s delay in proceeding with or responding to the claim.