

What if I have accepted the amount offered by the defendant but the defendant wishes to pay by instalments, or at a future date? (specified amount claims only)

You should think carefully about how you want the money to be paid. Although you may feel that you would like all the money paid at once, you might be more likely to get paid if it is paid either at a future date, or by instalments over a period of time.

For either scenario, including whether you accept or decline the rate of payment offered by the defendant for instalment payments, you should fill in form **HC7A** – Request for Judgment.

If you decline the rate of payment for instalments you should set out why you object and complete the form showing how you wish the defendant to pay.

Take or send the completed form to the Court Office *with a copy of the defendant's admission form*. It is a good idea to keep a copy of both forms for yourself.

A court officer will consider the details given in the defendant's admission form and your objections, if any and make an decision of what would be reasonable for the defendant to pay.

You and the defendant will be sent an order. The order will tell the defendant that the order was made after being considered by the court officer to explain why it might be different from the original offer. It will also tell the defendant how much to pay, to whom, where and when.

Do I have to accept the court officer's decision?

No. You, or the defendant, can object to the rate of payment set by the court officer. You must do this within 14 days of receiving the order.

You should apply to the court saying why you object to the rate of payment determined by the court officer. You should send a copy of your application to the defendant.

A judge will decide what would be a reasonable way for the defendant to pay.

The judge can decide to deal with your objections with or without a hearing. If there is to be a hearing the court will send you a notice setting out the time, date and place the hearing will be held. If there is a hearing and you do not attend, the judge may still make an order.

After the hearing, or after the judge has made a decision on the papers without a hearing, the court will send you an order setting out the judge's decision. If the judge varies the previous order you and the defendant will receive a copy of the new order (after his decision).

What do I do if I do not accept the defendant's part admission?

If you have filed a notice within 14 days of the admission stating you decline the part admission, you must indicate that you wish the claim to proceed, in which case it will proceed as a defended claim.


The file will be passed to the judge who will then set a directions hearing. You and the defendant will be notified of the date set.

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COURTS OF JUSTICE

Defendant disputes all or part of my claim. HCG06

Claimant guidance in the Small Claims Procedure



www.courts.im

This leaflet will tell you what to do if the person you are claiming against (the defendant) disputes all or part of your claim. It also explains what will happen if the defendant says that the money has already been paid.

All forms are available online at www.courts.im or from the public counter.

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

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

- an acknowledgment of service;
- or a defence.

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

Filing a form **HC2B** - Acknowledgment of Service gives the defendant extra time in which to prepare a defence. The time for filing a defence is increased from 14 days to 28 days from the date of service of your particulars of claim.

If the defendant files an acknowledgment of service, but then fails to file a defence within the time allowed, you can ask the court to enter judgment in default. This means asking the court to make an order that the defendant pay you the money and costs you are claiming.

The leaflet **HCG03** No reply to my claim form – what should I do? – will tell you what you have to do.

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

When the court receives the acknowledgment of service you will be sent a copy. It will tell you:

- the date it was received by the court;
- whether the defendant intends to defend all or part of your claim;

- the name and address of the defendant's advocate (if the advocate files the acknowledgment of service on the defendant's behalf);
- any change in the defendant's name and address which is mentioned in the acknowledgment; and
- whether the defendant intends to dispute the court's jurisdiction.

What happens if the defendant defends all of my claim?

If your claim is for a specified amount (a fixed sum of money), the defendant will fill in the defence form **HC2E** – Defence & Counterclaim (specified) and file it with the court. If your claim is for an unspecified amount (not a fixed amount of money), the defendant will use the defence form **HC2F** – Defence & Counterclaim (unspecified).

The defendant may also use these forms to make a claim against you, that is, say that you owe money to the defendant. This is called 'making a counterclaim'.

How will I know when a defence has been filed?

The defendant must file his defence with the court within 14 or 28 days of the particulars of claim, dependant upon whether the defendant filed an acknowledgment of service or not and must serve a copy of the defence on you at the same time.

If you are claiming against more than one defendant, it is up to each defendant to file their defence within the set time.

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

Within 28 days of the defence being filed and served on you, which includes a notice asking you to state your position in writing, you must file a response to the defendant's notice stating whether you wish the proceedings to continue or not.

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

In a claim for a specified amount, the defendant will complete forms **HC2C** - Admission (specified amount) and **HC2E** - Defence & Counterclaim (specified amount).

In a claim for an unspecified amount, the defendant will complete forms **HC2D** - Admission (other than specified amount) offering an amount in satisfaction of the claim and **HC2F** - Defence & Counterclaim (other than specified amount).

The defendant will file a copy of each with the court and send or take a copy of each to you.

What happens now?

If the defendant is defending only part of the claim then he must be admitting part of the claim. Within 14 days of receiving the admission you must file and serve a notice stating whether you accept or decline the admission in satisfaction of the claim or wish the proceedings to continue as a defended claim. If you do not file a notice within 14 days your claim will be marked 'stayed' until you do file one.

What do I do if I accept the defendant's part admission?

If you accept the amount admitted in satisfaction of the claim you can ask the court to enter judgment (called 'entering judgment on admission'). This means that you are asking the court to make an order that the defendant pays you the amount of your claim and the costs of issuing it in the terms offered by the defendant.

To make the request:

- in a specified amount claim you should fill in form **HC7A** – Request for Judgment; or
- in an unspecified amount claim you should fill in form **HC7C** – Request for Judgment and send or take it to the court.