

Probate Claim

Notes for claimant on completing a claim form

Please read all these guidance notes before you begin completing the claim form. The notes follow the order in which information is required on it.

Court staff can help you fill in the claim form and give information about procedure once it has been issued. But they cannot give you legal advice.

If you need legal advice, for example about the likely success of your claim, you should contact a solicitor or a Citizens Advice Bureau.

If you are filling in the claim form by hand, please use black ink and write in block capitals.

The claim form and all subsequent court documents relating to the probate claim must be marked at the top:

'In the estate of [name] deceased (Probate)'

Copy the completed claim form and the defendant's notes for guidance so that you have one copy for yourself, one copy for the court and one copy for each defendant. Send or take the forms to the court office with the appropriate fee. The court will tell you how much this is.

You must fill in the heading of the form to indicate the court where you want the claim to be issued. In London, you can issue your claim at the Royal Courts of Justice. The heading will be:

'In the High Court of Justice Chancery Division'

Outside London, you can only issue your claim in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle upon Tyne or Preston. This will be either in the District Registries; the heading will be :

'In the High Court of Justice Chancery Division
District Registry'

or

in the county court; the heading will be:

'In the County Court'

As the person issuing the claim, you are called the 'claimant'; the person you are suing is called the 'defendant'.

Claimants who are under 18 years old or persons who lack capacity to conduct proceedings within the meaning of the Mental Capacity Act 2005 (ie. protected parties), must have a litigation friend to issue and conduct court proceedings on their behalf. Court staff will tell you more about what you need to do if this applies to you.

You must provide the following information about yourself and the defendant according to the capacity in which you are claiming and in which the defendant is being sued. When claiming or being sued as:-

An individual

All known forenames and surnames, whether Mr, Mrs, Miss Ms or other (e.g. Dr.) and residential address within the United Kingdom (including UK postcode) or in any other European Economic Area (EEA) state.

If you are willing to accept service by DX, fax or e-mail, within the UK add details.

Please note that the service regulation provides that cross-border service by any direct means including fax or email is not permitted within the EEA.

Where the individual is

Under 18 write '(a child by "Mr Joe Bloggs" his litigation friend)' after the child's name. If the child is conducting proceedings on their own behalf write '(a child)' after the child's name.

A person who lacks capacity within the meaning of the Mental Capacity Act 2005 to conduct proceedings (ie. protected parties) write '(by "Mr Joe Bloggs" his litigation friend)' after the protected party's name.

Where your claim seeks revocation of a grant of probate or letters of administration, every person who is entitled to, or claims to be entitled to, administer the estate under the grant, must be made a party to the claim.

Claim form

- The claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.
- If you dispute another party's interest in the estate you must state this and set out your reasons.
- If you contend that
 - at the time when a will was executed the testator did not know of and approve its contents,
 - a will was not duly executed; or
 - at the time of the execution of a will the testator was not of sound mind, memory and understanding; or
 - the execution of a will was obtained by undue influence or fraud,

you must set out the contention specifically and give particulars of the facts and matters relied upon.

Statement of truth

This must be signed by you, by your solicitor or your litigation friend as appropriate. Proceedings for contempt of court may be brought against a person who signs a statement of truth without an honest belief in its truth.

Address for documents

Insert in this box the address at which you wish to receive documents if different from the address you have already given under the heading 'Claimant'.

Documents to be filed

You must file any testamentary document of the deceased person which you have in your possession or control with your claim form.

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

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

You may only file your claim form without the testamentary documents or evidence about them if the court gives permission. It will normally do this only in cases of urgency. For example, where you wish to apply for the immediate appointment of an administrator pending the determination of your claim and it is not possible to obtain the documents immediately.

If the court gives permission it will expect you to give an undertaking to lodge the documents by a specific date.

Inspection of testamentary documents

Except with the permission of the court, no party is allowed to inspect the testamentary documents or written evidence lodged or filed by another party until they have lodged their testamentary documents and filed their evidence.