HM Courts & Tribunals Service

Guide to the Intellectual Property Enterprise Court Small Claims Track

Issued July 2014

Contents

1. Introduction

This Guide applies to the small claims track within the Intellectual Property Enterprise Court ("IPEC"). It aims to help users and potential users of the IPEC small claims track by giving practical tips and explaining:

- how to decide if the IPEC small claims track is suitable for a claim
- how claims proceed in the IPEC small claims track
- what procedures apply in the IPEC small claims track
- how to contact the IPEC small claims track.

A number of legal terms used in this Guide are explained in the section of Commonly Used Terms in Annex B.

The Civil Procedure Rules ("CPR") govern proceedings in civil courts in England and Wales. They can be found at www.justice.gov.uk/courts/procedure-rules/civil/rules.

Part 63 – Intellectual Property Claims ("CPR 63") and *Practice Direction 63 – Intellectual Property Claims* ("PD 63") set out additional rules that apply only to intellectual property claims. The rules which apply specifically to the IPEC small claims are:

- CPR 63.27 and CPR 63.28
- PD 63 para 32.2
- all other rules and paragraphs referred to in CPR 63.27, CPR 63.28 and PD 63 para 32.2
- CPR 27 (which deals with the small claims track in general)

Where there is any conflict or confusion between the provisions of this Guide and the CPR, you must follow the rules and practices as set out in the CPR.

Further useful information can be found in the *Guide to the Intellectual Property Enterprise Court,* the *Patents Court Guide* and the *Chancery Guide* which can be found at www.justice.gov.uk.

2. Courts that Deal with Intellectual Property Claims

Intellectual property claims are heard in the Chancery Division of the High Court, either by the Patents Court or the IPEC. The IPEC provides a streamlined and more cost-effective forum to hear lower value and less complex intellectual property claims than the Patents Court. IPEC cases are allocated either to the multi track or the small claims track.

The IPEC small claims track provides a forum with simpler procedures by which the most straightforward intellectual property claims with a low financial value can be decided:

- without the need for parties to be legally represented
- without substantial pre-hearing preparation
- without the formalities of a traditional trial and
- without the parties putting themselves at risk of anything but very limited costs.

IPEC small claims track cases are heard by three District Judges (District Judge Melissa Clarke, District Judge Lambert or District Judge Hart) or by deputy District Judges. IPEC multi-track cases are heard by enterprise judges, usually circuit judge HHJ Hacon. Patents Court cases are heard by High Court Judges and their deputies.

On 1 October 2013, the IPEC took over all claims issued in the Patents County Court, and the Patents County Court was abolished.

3. Location of the IPEC small claims track

The main home of IPEC is in the Rolls Building in Fetter Lane, London. However, much of the work of the IPEC small claims track (including all hearings) takes place in the Thomas More Building which is part of the main Royal Courts of Justice complex on the Strand, London.

Annex A to this guide contains a table setting out which steps in an IPEC small claim need to be done in which building. It also contains postal addresses and useful contact details.

4. Is a Claim Suitable for the IPEC small claims track?

Whether a claim is suitable for the IPEC small claims track depends mainly on:

- the *type of intellectual property rights* it relates to; and
- its *value*; and
- the *remedies* sought

4.1 Type of Intellectual Property Rights

The IPEC small claims track is only suitable for claims which relate to the following intellectual property rights:

- copyright
- UK and Community registered trade marks
- passing off
- UK and Community unregistered design rights

The IPEC small claims track cannot be used for claims relating to certain other intellectual property rights, including:

- patents
- registered designs (including UK and Community registered designs)
- plant varieties

For full information about what types of claims can and cannot be brought on the IPEC small claims track, see CPR 63.2(1) and PD 63 para 16.1.

If a claim is not suitable for the IPEC small claims track because of the type of intellectual property right it relates to, you may wish to consider whether it is suitable for the IPEC multi track or the

Patents Court instead. The General IPEC Guide and the Patents Court Guide may assist you in reaching this decision.

A claim relating to a type of intellectual property right which is suitable for the IPEC small claims track, must also fit within the value limits of the small claims track.

4.2 Value

The IPEC small claims track is only suitable for claims where the amount in dispute (not including costs) is £10,000 or less. If the claim has a value of more than £10,000, it is unlikely to be suitable for hearing in the small claims track, unless the court orders otherwise.

The IPEC multi track is suitable for claims with a value above £10,000 but not exceeding £500,000. Higher value claims are usually suitable for the Patents Court.

Before bringing a claim in the IPEC small claims track, the claimant should also make certain that each of the remedies it seeks is available.

4.3 Remedies

The IPEC small claims track is suitable for claims where the remedies being sought are damages for infringement, an account of profits, delivery up or destruction of infringing items and/or a final injunction to prevent infringement in the future.

Interim remedies (which are remedies ordered before the final hearing of the claim) such as interim injunctions, asset freezing orders and search and seizure orders are not available on the IPEC small claims track. A claim seeking these remedies, which would otherwise be suitable for the IPEC small claims track, should be made on the IPEC multi track instead.

5. Who Decides Whether a Claim Starts and/or Stays on the IPEC small claims track?

The Claimant must state clearly in the Particulars of Claim if it wishes the claim to be allocated to the IPEC small claims track. It is also helpful to the court if the Claimant writes “Small Claims Track” on the front of the Claim Form. If the Claimant does so, the claim will be allocated to the IPEC small claims track unless a Defendant objects in its Defence or the court considers the IPEC multi-track or Patents Court to be more appropriate.

If the Claimant does not opt for the small claims track but the Defendant does, or the Claimant opts for the small claims track but the Defendant objects, the court will send the parties a directions questionnaire**.** The parties must send the completed questionnaire to the court within the time stated in the questionnaire and serve a copy on all the other parties within 14 days. The court will then allocate the claim to either the small claims track or multi track as it thinks appropriate.

In deciding on allocation, the court will take into account the value of the claim, the type of intellectual property rights it relates to, the likely complexity and the number of witnesses that may be needed to give oral evidence. Cases concerned with the validity of trade marks (rather than the infringement of a trade mark), for example, are unlikely to be suitable for the IPEC small claims track.

Where cases are transferred from one track to another, the costs rules applicable to the original track will apply up to the date of re-allocation and the costs rules on the new track will apply from the date of re-allocation onwards.

6. Do Parties need Legal Representation in the IPEC Small Claims Track?

The IPEC small claims track is designed to be used by parties who do not have a legal representative acting for them. Accordingly it has more simplified procedures than a standard civil claim, hearings are more informal in nature and evidence is not usually taken on oath. Additionally, if all the parties agree, the court may deal with the claim without a hearing at all, by considering the documents in the case and the written arguments of the parties instead (CPR 27.10). It should be noted, however, that the court will still apply the law and will decide the case on the evidence the parties have made available.

The choice whether to be legally represented or not in the IPEC small claims track is one for each party to make for themselves.

Many parties who are not legally represented choose to bring a friend or family member to hearings. That person may speak for the party or provide moral and practical support if the judge agrees. Corporate parties may be represented by any officer or employee authorised by the company.

If a party chooses to be legally represented in the IPEC small claims track, the costs of doing so are not recoverable from the other party except in exceptional circumstances (see "*Costs Recovery*" below).

There are various sources of free (or "pro bono") legal advice available to parties. A good place to start is a Citizen's Advice Bureau or Law Centre. There is a Citizen's Advice Bureau office on the Ground Floor of the Thomas More Building which operates every day the courts are open on a first-come first-served basis and which offers advice and assistance on the procedural aspects of bringing or defending a claim.

Further information about free legal advice can be obtained from the National Pro Bono Centre which houses national clearing houses for legal pro bono work in England and Wales, for example:

- the Bar Pro Bono Unit
- Law Works (the Solicitors' Pro Bono Group)
- ILEX Pro Bono Forum

The National Pro Bono Centre website is at www.nationalprobonocentre.org.uk.

7. Procedure in the Small Claims Track

7.1 Before issuing proceedings

Claimants in the IPEC small claims track should be aware of the Practice Direction (Pre Action Conduct), which can be found on the Ministry of Justice website at www.justice.gov.uk. This encourages disputing parties to communicate with each other with a view to avoiding litigation or, at least, narrowing the areas of dispute between them. Compliance with it is not a requirement, but it does affect the timing for the service of any defence once a claim has been issued (see "*Time Limits for Serving Documents*" below).

Claimants must state in the Particulars of Claim whether or not they have complied with paragraph 7.1 (1) and Annex A (paragraph 2) of the Practice Direction (Pre Action Conduct) (CPR 63.20 (2)).

As unjustified threats to bring legal proceedings in respect of many intellectual property rights can themselves be subject to litigation, each Claimant will need to make their own decision as to whether it is appropriate to contact a prospective defendant to see if matters can be resolved before any proceedings are issued.

If a Claimant chooses not to comply with the Practice Direction (Pre Action Conduct) this may be taken into account against him when the court considers the issue of costs recovery.

7.2 Issuing Claims

All claims should be issued at the public counter for IPEC in the Rolls Building. The Claim Form should be marked "*Intellectual Property Enterprise Court*" in the top right hand corner and it would be helpful to the court if it was also marked "*Small Claims Track".*

The proceedings start with the issue of the Claim Form, which the court will "seal" with a court stamp. However, the time for a Defendant to file a Defence does not run until the Claimant serves both a sealed copy of the Claim Form and the Particulars of Claim on that Defendant. The Particulars of Claim may be contained in the Claim Form or served separately. See "*Time limits for Serving Documents*" below.

7.3 Service of Documents

CPR 6 sets out the rules that apply to the service of documents, including the service of the Claim Form and the Particulars of Claim. The deadline for a party to take a step in the proceedings is often within a specific number of days after service of a document, e.g. "within 14 days after service of the Particulars of Claim". In order to know when a deadline expires, you therefore need to know the date of service of the document.

Please note that the date of service of a document is not necessarily the date the document is actually received. The time limit will run from a "deemed date of service" which is a date determined in accordance with CPR 6. Parties must therefore check CPR 6 to be certain of the time limits that apply to them.

7.4 Service of the claim

It is the Claimant's responsibility to serve each Defendant with the Claim Form together with a response pack and the Particulars of Claim (at the same time or later) in IPEC small claims track cases. The court will not do it. The Claimant should therefore make sure that the Defendant's copy of the Claim Form (sealed by the court) is obtained at the time of issue. Details of how to obtain the response pack will be given to the Claimant by the court on issue of the claim.

The Claimant must file a certificate of service of the Claim Form within 21 days of service of the Particulars of Claim, unless all the Defendants have served Acknowledgments of Service within that time (CPR 6.17). A Claimant may not obtain judgment in default under CPR 12 unless a certificate of service has been filed at court.

7.5 Time Limits for Filing and Serving Documents

The Claimant must serve the Claim Form on a Defendant within 4 months after the date of issue of the Claim Form unless it is to be served outside the jurisdiction when it must be served within 6 months of issue. These are strict time limits.

The Claimant must serve the Particulars of Claim on a Defendant either at the same time as the Claim Form or within 14 days after deemed service of the Claim Form.

If the Defendant does not respond to the Particulars of Claim, default judgment may be entered against him.

There are two ways for the Defendant to respond. If he is ready to do so, he can simply file and serve his Defence, with or without a Counterclaim, within 14 days after deemed service of the Particulars of Claim (unless the Particulars of Claim have been served out of the jurisdiction when a longer period may apply).

If he needs some more time to produce his Defence, or if he wants to contest the court's jurisdiction, he must file and serve an Acknowledgment of Service within 14 days of deemed service of the Particulars of Claim. He must then file and serve his Defence and any Counterclaim in accordance with the following time limits:

- within 42 days of deemed service of the Particulars of Claim, if it contains the Claimant's statement of compliance with the Practice Direction (Pre-Action Conduct) (see "*Before Issuing Proceedings*" above);
- within 70 days of deemed service of the Particulars of Claim if it does not contain the Claimant's statement of compliance with the Practice Direction (Pre-Action Conduct).

For further time limits, e.g. for filing Defences to Counterclaims and Replies, see CPR 63.22.

The parties are not permitted to extend the time limits set out in the CPR without the prior order of the court. Applications for extensions of time must therefore be made before the time expires or as soon as possible afterwards, and must set out clearly why they are required.

7.6 Contents of Particulars of Claim, Defence and Reply to Defence

The Claimant's Particulars of Claim, the Defendant's Defence and Counterclaim (if any) and any Replies of the parties are known as the "statements of case".

The parties must make sure that their statements of case set out their position in full, but they should not be unnecessarily long. They should set out briefly and accurately all the facts and arguments that the party wants to rely upon, so that the court and all the other parties understand what issues the court is being asked to decide.

A party may attach relevant documents to the statement of case, such as documents establishing any copyright or trade marks or screenshots evidencing the internet publication of a work where breach of copyright is claimed.

All statements of case should be signed with a statement of truth in the following words: "[I believe] *or* [The [*party*] believes] that the facts stated in this [*name of document being verified*] are true".

7.7 Default Judgment

If the Defendant fails to respond to the claim within the time limits referred to above, the Claimant may apply to the court to enter default judgment against the Defendant, by filling in and returning the “Request for Judgment” form at the bottom of the Notice of Issue that was given to them when they issued the claim.

If the court is satisfied that the Claim Form and Particulars of Claim have been properly served on the Defendant and the time for service of an Acknowledgment of Service or Defence has expired, it will usually give judgment for the Claimant against the Defendant and give directions for damages to be assessed by the court and for other remedies to be considered by the court. This may be done at a hearing, in which case notice of the hearing date will be sent to the parties, or it may be done without a hearing, in which case the court may ask the parties for written submissions or arguments and a written judgment will subsequently be produced by the judge.

The Court will not enter default judgment unless the Claimant has filed with the Court a certificate of service of the Claim Form and Particulars of Claim.

7.8 Progress of the Case Once a Defence has been Filed

Shortly after a Defence has been filed at court, the court will send out an order containing directions for the management and progress of the case leading up to the trial. These directions will usually be issued without a hearing and will be based on the court’s consideration of the Claim, Particulars of Claim and Defence. Exceptionally, it may set a preliminary hearing for the parties to attend at which an order for directions will be made.

All orders for directions must be complied with by the parties by the dates specified.

The order for directions will set a timetable for each party to disclose relevant documents to the other parties, and for the evidence of any witnesses to be filed and served. It will include a date for the final hearing of the claim, unless all the parties have agreed that the claim can be decided by the judge without a hearing. In such a case, the order will give a date by which a written judgment will be made available. The court may make other directions as it considers appropriate.

7.9 Experts

No expert may give evidence at the final hearing of an IPEC small claims track claim, whether written or oral, without the permission of the court. If experts are necessary, the claim is likely to be re-allocated to the IPEC multi track or, rarely, the Patents Court.

7.10 Hearings

All IPEC small claims track hearings take place on the Fourth Floor of the Thomas More Building. They are heard in a courtroom and are open to the public, unless the court orders otherwise in exceptional circumstances. All hearings are tape recorded by the court. A party may obtain a transcript of an oral judgment given in a hearing on payment of a fee.

Any party may give the court and the other parties no less than 7 days notice that he does not intend to attend the final hearing and to request the court decide the claim taking into account his statement of case and other documents. CPR 27.9 sets out the effect of giving the required notice and the potential effects of non-attendance without such notice, which may include striking out that party’s case.

At an IPEC small claims track final hearing, the judge may adopt any method of proceeding she considers to be fair. This may include the judge asking questions of witnesses herself or limiting cross-examination of witnesses by others.

7.11 Court Fees

Fees are payable to the court by the Claimant when issuing a claim in the IPEC small claims track and when the final hearing is fixed, and by a party who issues an application. There may be exemptions available depending on the payer's financial circumstances. *Guidance on Fees* is available on the website of the Ministry of Justice at www.justice.gov.uk.

7.12 Small Claims Mediation and other Alternative Dispute Resolution

Like all civil courts, the IPEC small claims track encourages parties to consider the use of Alternative Dispute Resolution (ADR), as an alternative means of resolving disputes or particular issues within disputes.

Parties to IPEC small claims track cases may use the **Small Claims Mediation Service** which is a FREE service provided by HM Courts & Tribunals Service. It may only be accessed after a claim has been issued. Mediation appointments are conducted by telephone and so the parties are not required to attend at court or at the mediators' offices. Parties can also mediate through the small claims mediator without speaking to one another.

The mediation appointment is:

- limited to one hour
- confidential
- can be done any time up to 10 working days before the final hearing of the IPEC small claims case

If mediation is unsuccessful then the parties will continue to a final hearing of their IPEC small claim as usual.

If you would like to arrange a mediation appointment with the Small Claims Mediation Service, contact HM Courts & Tribunals Service by telephone on 01604 795511 or by email on scmreferrals@hmcts.gsi.gov.uk, providing a return telephone number and your case number.

Further information on mediation can be obtained online at www.gov.uk. Further information about alternative forms of ADR can be found in the General IPEC Guide.

7.13 Settlement/Discontinuance of the Claim

The parties may settle the case by agreement between them at any time before judgment is given in the final hearing. A case in the IPEC small claims track can be brought to an end before a final judgment either by the parties' agreement or the discontinuance of the proceedings by the Claimant.

If the parties reach a settlement agreement, it is important that they both notify the court as soon as possible. If the court is notified in writing at least 7 days before the final hearing date that the case has settled, the Claimant (who is responsible for paying the hearing fee) may obtain a full refund of that fee.

Please note that the court will not remove the hearing from the court list (known as "vacating a hearing") on the basis of a letter from one party only. In addition, the court will usually not vacate the hearing unless it is satisfied that the parties have agreed what should happen in relation to the costs of the proceedings.

If the parties would like the terms of their agreement to be recorded in a court order, they will need to request the court to make a "consent order". The benefit of a consent order is that in the event of one party breaching the agreement, the other party can enforce it in the same way as they can enforce any other order of the court.

The court should be notified by both parties of the following:

- that the case has settled;
- that the hearing on [*date*] is no longer required;
- if damages is to be paid, stating that [*party*] shall pay [*party*] the sum of [*amount*] [inclusive/exclusive of VAT, if applicable] by [*payment date*] (or by [*x*] monthly instalments of [*amount*], first instalment date being [*date*]) in full and final settlement of the claim;
- stating what has been agreed about the costs of the parties. This may be an order for one party to pay agreed costs of [*amount*] to the other by [*payment date*] OR it may be "no order for costs" (ie that each party is responsible for their own costs);
- any other terms that the parties have agreed (e.g. for the return or destruction of infringing goods).

This notification may be made by sending the court a draft consent order or a letter containing the information, in each case signed by **both** parties, or by each party sending the court a signed letter containing the same terms of agreement.

A case may also be brought to an end by the Claimant discontinuing the claim. Please see CPR 38 for the procedure to be followed in that case. CPR 38.6 should be particularly noted because filing a notice of discontinuance has a number of consequences in relation to the costs of the proceedings.

8. Costs Recovery

The general principle that an unsuccessful party will pay the legal costs of a successful party does not apply to IPEC small claims track claims.

In the IPEC small claims track there are only very limited circumstances in which the court will order one party to contribute to the costs of another (CPR 27.14). These include:

- fixed sums in relation to issuing the claim;
- court fees (including the hearing fee);
- expenses which a party or witness has reasonably incurred travelling to or from a hearing or staying away from home for the purpose of attending the hearing;
- loss of earnings or loss of leave evidenced by a party or witness caused by attending a court hearing, limited to £90 per day for each person (PD 27 para 7.3);
- in proceedings which include a claim for an injunction, a sum for legal advice and assistance relating to that claim, not exceeding £260 (PD 27 para 7.2);
- such further costs as the court may decide at the conclusion of the hearing should be paid by a party who has behaved unreasonably. A party's rejection of an offer of settlement will not of itself constitute unreasonable behaviour but the court may take it into consideration (CPR 27.14 (3)).

9. Paying Damages and Costs

All court-ordered or agreed payments for damages and costs should be paid directly to the receiving party and not the court. The paying party should ask the receiving party for details of where electronic payments and/or cheques should be sent.

10. Appeals

An appeal from a decision made by a district judge of the IPEC small claims track should be made to an enterprise judge of the IPEC (CPR 63.19(3)).

An appeal can only be made with permission. A party should ask for permission to appeal from the district judge who made the decision, at end of the hearing in which the decision was made. If that district judge refuses permission, or if a party did not ask for permission at the hearing but wants to do so later, he should apply for permission to appeal to an enterprise judge within 21 days of the date of the decision he wishes to appeal.

Annex A – Contact details and addresses for the IPEC small claims track

To issue a claim form, make an application, seek permission to appeal or pay all court fees:

The Rolls Building,
7 Rolls Building,
Fetter Lane, London, EC4A 1NL

DX160040 STRAND 4

Claims, general applications and applications for permission to appeal may be issued at the public counter for IPEC, which is on the ground floor of the Rolls Building. The counter is open Monday to Friday (except public holidays) from 10am–4.30pm.

For general correspondence and filing documents:

Fourth Floor Reception for Courts 88, 89 and 90,
Thomas More Building, Royal Courts of Justice,
Strand, London WC2A 2LL

DX 44450 STRAND

The public counter for IPEC small claims track matters is on the first floor of the Thomas More Building. The counter is open Monday to Friday (except public holidays) from 10am–4.30pm.

Documents which are filed in advance of a preliminary or small claims hearing should be handed in at this counter or sent by post to this address.

Clerks to the enterprise judges and the District Judges of the IPEC small claims track:

Enquiries relating to the IPEC in general may be addressed to the Clerk to the enterprise judges, Christy Irvine:

Christy.Irvine@hmcts.gsi.gov.uk

Enquiries relating to an IPEC small claims track claim may be made to the Clerks to the District Judges of the IPEC small claims track:

Tel 020 7947 7387/6187

Fax 0870 761 7695

Email: IPECsmallclaimstrack@hmcts.gsi.gov.uk

Please note that court staff cannot give legal advice or enter into prolonged correspondence.

Table of what to do where in the IPEC small claims track

Where should I…	
…issue a claim form?	Rolls Building
…pay any court fee?	Rolls Building
…issue an application?	Rolls Building
…send correspondence about an allocated IPEC small claim?	Thomas More Building
…file documents for any hearing to be heard by a district judge?	Thomas More Building
…attend any hearing before a district judge?	Thomas More Building
…apply for permission to appeal the decision of a district judge?	Rolls Building

Other Resources

Copies of this Guide, the General IPEC Guide and other materials you may find useful are available on the website of the Ministry of Justice at www.justice.gov.uk.

Annex B – Tips for the Litigant in Person

This section is primarily aimed at those litigants using the IPEC small claims track who have no previous experience of civil proceedings. It is in two parts: an explanation of commonly used terms and what to expect in your dealings with the court.

Commonly used terms

Notice of Discontinuance	A notice by a claimant that they are not intending to pursue their claim.
Consent Order	An order of the court that is agreed by the parties and approved by a judge.
Directions	An order of the court that sets out what the parties are required to do and by when.
File	A party ordered by the court to file a document or witness statement should send or deliver this to the court within the time stated in the order
Injunction	A court order prohibiting a person from doing something or requiring a person to do something.
Issue	A claim form or application must be issued before being served on the other party/ies. A fee is paid (unless fee exemption applies) and the claim form or application is sealed with a court stamp.
Privilege	The right of a party to refuse to disclose a document or to produce a document or to refuse to answer questions in certain circumstances.
Sealed	Stamped with the court's stamp.
Service	Formally sending a document to someone other than the court (usually the other party). The rules of service in CPR Part 6 apply, including dates of deemed service. If you are required to serve a document, please check whether you need to serve a sealed copy.
Set aside	An order cancelling a judgment or order
Stay	A stay imposes a halt on a particular order or on the proceedings. This may be for a defined period or indefinite until revived by a court order.
Statement of case	The Claim Form, Particulars of Claim, Defence, any Counterclaim and any Replies. In order to rely on the contents of a statement of case as evidence, it should be signed with a statement of truth.
Statement of truth	A confirmation that the content of a document is true. A statement of case and a witness statement should conclude with a signed and dated statement of truth, e.g.: "The facts stated in this [witness statement] [defence] are true".
Strike out	An order of the court deleting all or part of a statement of case, so that it may no longer be relied on.
Without prejudice	Negotiations and documents expressed to be without prejudice mean that their content may only be revealed to the court in very limited circumstances.
Without prejudice except as to costs	Negotiations and documents expressed to be without prejudice except as to costs mean that their content can be produced to a judge who is deciding whether one party should pay the other's costs.

What to expect in your dealings with the court

The Impartiality of the Court

It is a fundamental principle of justice in this country that the court must remain impartial as between the parties to a case. For this reason, neither the court staff nor the judges are able to give any party legal advice. If you raise a query that the court declines to answer, this is often why. Section 7 of this document sets out some ways that you can obtain free legal advice and assistance.

For the same reason, you should copy all email, documents and correspondence you send to the court to the other parties to your case. This is so that the court does not have any information which one or more of the parties do not also have.

If you send information to the court without copying it to the other side, the court will either ignore it or send it to the other parties, even if you indicate that you would prefer it to be kept confidential. For example, if you send confidential medical information to the court in support of an application to adjourn, you should be aware that it is likely to be sent to all other parties to your case.

Without prejudice correspondence and other privileged material

You should be particularly careful about sending the court material which is “without prejudice” or otherwise privileged. In the absence of legal advice about your particular circumstances, you should be cautious about disclosing such material to the court or (if it is not known to them) the other party/ies.

As a general principle, it is usually **not** appropriate to send the court details of settlement offers that have passed between the parties but which have not resulted in an agreement to settle. It is often preferable to bring letters containing such offers to the hearing (rather than filing them in advance). The district judge dealing with the hearing will then be able to explore with the parties whether it can be relied upon without seeing it inadvertently.

Correspondence with the court

Please help the court to administer proceedings efficiently by:

- taking care to address your correspondence correctly;
- including the correct case number on everything you send to court;
- not sending duplicate copies of documents to the court, for example by fax and email and post. This contributes to delay;
- seeking orders and directions by the court by making an application, copied to the other parties, rather than in correspondence;
- seeking legal advice from legal advisors and sources of free legal advice and support rather than from the court;
- looking for the answers to your questions about procedure and practice in the CPR, this guide and the General IPEC guide rather than asking the court.

Distinguishing between correspondence and applications

The court staff and judges will not usually enter into correspondence with a party. There are, of course, times when you will have a purely administrative query for the court, but correspondence should generally be restricted to these matters. The district judges will not comment on decisions or revise orders as a result of correspondence, except in very limited circumstances (for example, if the correspondence points out a typographical error in an order).

If you wish the court to make or vary an order, you will usually need to issue a formal application (form N244) and to pay the appropriate fee. Common examples where correspondence is insufficient are:

- requests for the adjournment of a forthcoming hearing;
- a request that the other party/ies be required to take a step in the proceedings (e.g. to comply with the court's timetable of directions);
- if you wish to challenge a decision that has been made;

Most applications are "on notice". This means that once you have issued your application with the court, you will have to serve a copy of the application notice and any supporting evidence on the other party/ies. You should file a certificate of service with the court to confirm how and when you served it.

If you are served with an application by another party, you should write to the court within 5 days of the date of service with your response. You should also send this to the other party/ies. If possible, the court will then determine the application without a hearing.

It is also not appropriate to "explain your case" to the court in correspondence. This should be done formally by particulars of claim or defence (as appropriate) and witness statement(s).

Follow the court's orders and timetable

This is one of the best ways to put your case before the court effectively. You should not assume that you will be able to rely on documents that are filed late.

If the court directs you to file a document, you will usually also be required to send a copy to the other party/ies. It is important that you do this without delay.

If you are unable to comply with the court's directions, you should make a formal application to the court for a variation in the timetable. The court is more likely to grant an extension of a deadline if you issue your application before the original deadline expires.