**Multiple causes of action, counterclaims & additional claims -**

**(CPR 20)**

This element explains the different types of additional claims including why, how and when to make such claims and the consequences of doing so.

**Introduction**

The main CPR which supports the content of this element is in:

- CPR Part

The definition of an additional claim is:

‘Any claim other than the claim by the claimant against the defendant’.

A counterclaim is one type of additional claim. The definition of a counterclaim is:

‘A claim brought by a defendant in response to the claimant’s claim, which is included in the same proceedings as the claimant’s claim.’

There are a number of different types of additional claims (CPR 20.2). These are summarised in the table below.

**Description of the additional claim**

A counterclaim by a defendant against the **claimant.** (CPR 20.2(1)(a) and 20.4)

A counterclaim by a defendant against the claimant and some other person. (CPR 20.2(1)(a) and 20.5)

An additional claim by a defendant against any person (already a party to the proceedings) claiming a contribution or an indemnity. (CPR 20.2(1)(b) and 20.6)

An additional claim by a defendant against any person (already a party to the proceedings) claiming some remedy other than a contribution or an indemnity. (CPR 20.2(1)(b) and 20.7)

An additional claim by a defendant against any person (not already a party to the proceedings) claiming a contribution or an indemnity or some other remedy. (CPR 20.2(1)(b) and 20.7)

An additional claim being made by a party which has itself been joined to the main proceedings pursuant to CPR 20. (CPR 20.2(1)(b) and 20.7)

**Additional claims: an overview**

**Important note:**

Ø A claim by the original claimant cannot fall into any of the categories summarised in the above table, even if the claimant is adding a further claim to its existing claim. Therefore, a claim by the original claimant is **not** an additional claim.

Ø It is also worth noting that the terms ‘contribution’ and ‘indemnity’ are also defined in the CPR, as follows:

**Contribution** ‘A right of someone to recover from a third person **all or part** of the amount which he himself is liable to pay.’

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**Indemnity** ‘A right of someone to recover from a third person the **whole** amount which he himself is liable to pay.’

**Counterclaim recap (classic counterclaim)**

The main statements of case that will exist in every defended claim are:

The claim form (CPR 16.2 and 16.3)

The particulars of claim (CPR 16.4)

The defence (CPR 16.5)

In many cases, you might encounter a ‘classic’ counterclaim (CPR 20.4) as introduced in the ‘Counterclaims and other statements of case’ element within the topic of ‘Responding to proceedings’. This is, of course, one type of additional claim.

**Classic counterclaim**

A classic counterclaim (CPR 20.4) is a defendant’s counterclaim against the claimant, pursued in the same proceedings as the main claim. These types of counterclaim are very common.

If disputed, the claimant will serve a defence to counterclaim in response, which is very similar to a ‘normal’ defence, and both the main claim and counterclaim will continue to case management (ie the directions stage) together.

**Classic counterclaim example**

Ø C agrees to sell new machinery to D for D to use in its factory, in return for a payment of £35,000.

Ø C delivers the machinery, but D does not pay the invoice because it alleges the machinery is temperamental, and this has caused disruption to its business and a loss of profits in the region of £50,000.

Ø C maintains that there is nothing wrong with the machinery.

C commences proceedings seeking payment of the £35,000.

In response, D files a ‘defence and counterclaim’. The counterclaim is that, in breach of contract, the machinery was of unsatisfactory quality, and these breaches have caused the loss of profit of £50,000.

This is a classic counterclaim (CPR 20.4).

**Other types of additional claim**

There are a number of other possible additional claims (as shown in the earlier table) which we will now go on to look at.

As a preliminary point, note that an additional claim is, subject to a small number of exceptions, to be **treated as a claim** (CPR 20.3).

This means, for example, that a party served with an additional claim must file a defence in accordance with the usual rules (CPR 15.2). If it does not, it will be deemed to admit the additional claim (CPR 20.11).

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**Counterclaims against a person other than the claimant**

Sometimes the defendant will have a counterclaim against both the claimant and another person at the same time. This type of counterclaim (CPR 20.5) is much more unusual in practice than the classic counterclaim previously mentioned (CPR 20.4).

The claimant AND Some other person

**Counterclaims against a person other than a claimant**

The defendant’s own cause of action, as particularised in the counterclaim, must be against the claimant **and** some other party who is, for example, jointly liable with the claimant to the defendant.

If this other party is not already a party to the ‘main’ court action between the claimant and the defendant, the other party will need to be joined into the main claim as a third party so that the defendant’s counterclaim can proceed.

Remember that if the claimant was not involved in the claim which the defendant is bringing, this would essentially be a claim by the defendant against some other party who is not involved in the current proceedings (ie the main claim between the claimant and the defendant). In those circumstances, it would not be a ‘counterclaim’ (because it would not be a claim by the defendant against the claimant) and it would have nothing to do with the main cause of action (since the claimant would not be involved).

**Counterclaims against a person other than a claimant**

For this type of counterclaim the defendant’s counterclaim must be against the claimant **and** the third party together.

There must be some **connection** between the claimant and third party in respect of the counterclaim. (If there was not, the defendant would simply issue an entirely separate action against the third party.)

As with other counterclaims, it is still the case that the defendant’s counterclaim might arise from a completely different set of facts from the main/substantive claim.

**Counterclaims against a person other than a claimant - example**

Ø The defendant, a homeowner, engages a builder, the claimant, and an architect to carry out work to her home.

Ø The defendant is unsatisfied with the work and does not pay the builder claimant.

Ø The claimant brings a claim against the defendant for the payment of its invoice.

The homeowner defendant might bring a claim in the same proceedings against builder claimant **and** architect.

It may be that both the claimant and architect were involved in the problem leading to the work being unsatisfactory so there is a connection between these two parties and this counterclaim.

This would be a counterclaim against the claimant and ‘some other party’ in relation to the unsatisfactory works.

This is a counterclaim again a person other than a claimant (CPR 20.5).

**Contribution or indemnity**

The remaining types of additional claim relate to the defendant claiming a **contribution** or **indemnity** from someone else to cover any liability it might be ordered in the main claim that they, the defendant, owe to the claimant.

The words ‘contribution’ and ‘indemnity’ have differing meanings in different legal contexts and there is detailed case law in this regard (the specifics of which are beyond the scope of this module). For our purposes, the CPR glossary definitions as mentioned above will apply. For the purposes of the CPR an indemnity is equivalent to a 100% contribution.

A right to a contribution might arise in tort, contract or under the Civil Liability (Contribution) Act 1978 – for instance, in a road-traffic accident case, that Act might give a driver being sued by an injured pedestrian the right to seek a contribution from another driver who also contributed to the accident.

A right to an indemnity will often arise from a contract (with one party contracting to indemnify another) or some other statutory provision: for example, a defendant being sued for professional negligence might have a contractual right to claim an indemnity from his insurers.

**Claims for a contribution or indemnity from an existing party**

A crucial hallmark of **both** claims for contribution and indemnity is that the party pursuing the claim for contribution / indemnity is seeking to recover something which it is itself obliged to pay to someone else.

A defendant who has acknowledged service of a claim or who has served a defence may make an additional claim for contribution or indemnity against an existing party (most likely a co-defendant) (CPR 20.6) by filing a contribution notice with the court and serving that notice on the other party.

There would need to be a **legal basis** on which the defendant could base this claim, so case analysis will again be essential, as when considering any other claim.

**Claims for a contribution or indemnity from an existing party**

For this type of additional claim to arise, there must be other existing parties **already** involved in the action ie it must be more than a simple ‘one claimant against one defendant’ claim by this time.

For example, the claimant’s original claim might have been made against **more than one defendant** from the outset.

If Defendant 1 here is vulnerable to a judgment against it, whereby it owes the Claimant damages which Defendant 1 considers are Defendant 2’s responsibility, Defendant 1 will protect its position by bringing its **own** claim against Defendant 2 for a contribution or indemnity in respect of those damages. Thus if the judge decides that Defendant 1 should pay eg 100% of the Claimant’s claim, Defendant 1 has some redress against Defendant 2.

In addition to the above, there are three other typs of additional claim (CPR 20.7):

**[CPR 20.2(1)(b)]** - An additional claim by a defendant against any person (already a party to the proceedings) claiming some remedy other than a contribution or an indemnity. So this would include a claim for some remedy other than a contribution or an indemnity from a co-defendant.

**[CPR 20.2(1)(b)] -** An additional claim by a defendant against any person (not already a party to the proceedings) claiming a contribution or an indemnity or any other remedy. So this would include a claim for contribution or indemnity from someone who is not an existing party.

**[CPR 20.2(1)(c)] -** An additional claim being made by a party which has itself been joined to the main proceedings pursuant to CPR 20.

These types of **additional claims** often involve the defendant pointing the finger of blame at a third party whom, for some reason, the claimant cannot or does not wish to sue directly, exposing the defendant to full blame.

**Claims for a contribution or indemnity from a third party**

As mentioned above, one of the more common CPR 20.7 claims is a claim for a contribution or indemnity from someone **not** already an existing party, ie a third party. The same principles will apply as apply to a defendant claiming a contribution or indemnity from an existing party (pursuant to CPR 20.6). So again, there would need to be a legal basis on which the defendant could base this claim against the third party and case analysis will be essential as when considering any other claim.

**Other additional claims**

The issues in this type of additional claim are purely between the defendant and the third party (ie do not involve the claimant at all), but many of these issues will **depend upon** what happens in the main claim between the claimant and the defendant.

**Examples include:**

Ø The defendant’s **loss** in the additional claim arises solely out of anything the defendant is ordered to pay to the claimant in the main claim.

Ø There will frequently be related matters of evidence and fact which, once decided in the main claim, resolve the point in the additional claim as well.

**Additional example**

C enters into a contract with D to invest £500,000 in D’s business. C was induced to enter into the contract with D by relying on:

a) Representations made by D about the financial status of its business (which turned out to be untrue); and

b) Comments made in a pre-contract meeting by an accountant, E, known to C and who also advises D on its finances.

Ø C advances the £500,000 to D which is then dissipated and lost. C sues D for the recovery of the £500,000 in a misrepresentation claim, based on D’s actions inducing C to enter into the contract.

Ø D alleges that when making its representations, it relied on the advice and comments of E, its financial adviser, and alleges that E owed D a duty of care in these circumstances.

Ø D can protect its position in the event that it is ordered to pay the £500,000 back to C in C’s misrepresentation claim by bringing an **additional claim** against E for a contribution or indemnity recouping anything D is ordered to pay.

Ø This additional claim will be based on the duty of care E owed to D, which was breached, causing the loss (the damages D had to pay to C).

**Permission or no permission?**

It is necessary to ascertain if the court’s permission is required for your client to pursue a counterclaim or an additional claim.

Classic counterclaim (CPR 20.4) No Permission? If filed at the same time as/with the defence. Permission? If filed at any other time.

Counterclaims against a person other than the claimant (CPR 20.5). Permission is always required.

Claimants for a contribution or indemnity from an existing part (CPR 20.6). No Permission? If filed and served at the same time as/with the defence (or – if the additional claim is made against a party added to the main/substantive claim at a later date – within 28 days after that party files its defence). Permission? If filed at any other time.

Other additional claims (CPR 20.7). No Permission? If the additional claim is issued before or at the same time as the defence is filed. Permission? If filed at any other time.

Permission is applied for using the ‘normal’ interim application procedure. The Application Notice will be accompanied by a draft order and evidence in support which will include details of the stage the main claim has reached, details of the additional claim, a summary of the relevant facts, explanation of any delay and the name and address of any proposed party (20 PD 2).

**Structure and form of additional claims**

**Classic counterclaims**

A counterclaim by a defendant against the claimant (and not against anyone else) will usually take the form of a ‘particulars of counterclaim’ (CPR 20.4(1)). The defence and the counterclaim should normally form one single document, with the counterclaim following on from the defence (20 PD 4.1).

As the defence and counterclaim form one document, they are filed and served together (in accordance with the time limits specified in relation to defences).

**Claim for a contribution or indemnity from an existing party**

A claim for a contribution or an indemnity from another party (ie someone who is already a party to the main / substantive proceedings) is made by serving the appropriate notice. There is no set form for making a CPR 20.6 claim (ie no equivalent to the N1 claim form), but an example format is provided on the Court Service website (see PF22).

If done in circumstances when the court’s permission is not required, the notice is filed and served with the defence.

If the court’s permission is required, the court will give directions as to when the notice should be served.

**Other additional claims**

Other claims are started by issuing an N211 claim form which is similar to the ‘normal’ claim form (ie the N1), other than it is buff coloured and contains more room for the details of all the parties to be inserted.

If such an additional claim is made without the court’s permission, the claim form should be served on the person against whom it is made within 14 days of it being issued (CPR 20.8).

If the court’s permission is required, the court will give directions as to when the notice should be served.

**All additional claims**

A party upon whom an additional claim is served becomes a party to the proceedings if he was not already a party (CPR 20.10). If an additional claim is served on someone who is **not** already a party to the proceedings, it must be accompanied by (CPR 20.12(1)):

• a response pack; and

• a copy of every statement of case and any other documents that the court directs.

A copy of the additional claim form must also be served on every existing party (CPR 20.12(2)).

**Case management**

As mentioned previously, claims can be added and heard in this way to, for example, save time and costs and to avoid duplication of evidence and inconsistent judgments.

The court will consider whether or not remedies should be sought by way of an additional claim or as a separate action altogether. For example, unless there is a substantial connection between the original proceedings and the proposed additional claim, the court will usually direct them to be dealt with separately (CPR 20.9).

**Where the defendant to an additional claim files a defence**, other than to a counterclaim, the court will arrange a hearing to consider case management of the additional claim (20 PD 3 and CPR 20.13).

Notice of the hearing will be given to any party likely to be affected by any order made at it – in most cases this will be all of the parties. The court may treat the hearing as a summary judgment hearing, dismiss the additional claim or give directions on the way any claim or issue should be dealt with, including how the additional defendant will be dealt with at trial.

**Title of proceedings where there are additional claims**

Matters can become confusing when there are a number of different parties involved in a set of proceedings in a variety of capacities.

Ø **Names of Parties**

**Claimants and defendants** in the **original** claim should always be referred to as such in the title to the proceedings, even if they subsequently acquire an additional procedural status (20 PD 5.2).

**Additional parties** should be referred to in the title to the proceedings in accordance with **the order in which they are joined to the proceedings**, for example ‘Third Party’ or ‘Fourth Party’ and so on, whatever their actual procedural status (20 PD 5.3).

**Example:** The defendant makes a counterclaim against the claimant and an additional new party. The claimant will be referred to as the claimant in the counterclaim (despite being in the position of defendant to the counterclaim) and the ‘new’ party will be referred to as the ‘Third Party’ (20 PD 5.3(c)).

**Default judgment and additional claims**

As a preliminary point, note that an additional claim is, subject to a small number of exceptions, to be **treated as a claim** (CPR 20.3). This means, for example, that a party served with an additional claim must file a defence in accordance with the usual rules (CPR 15.2).

What happens if the person on the receiving end of an additional claim does not respond?

Ø If a party does not file a defence to a counterclaim then a defendant can apply for default judgment as usual (CPR 12.3(2)(b)).

Ø If an existing party does not reply to a notice of contribution or indemnity, it is **not** possible to apply for a default judgment.

Ø Where an additional claim form (N211) is served on a person not already a party, it should be accompanied by an acknowledgment of service and a response pack. If a party fails to reply to a Form N211 in the appropriate way/within the specified time limits then it will **generally be deemed to admit the claim and will be bound by the judgment or decision given at trial of the main claim** (to the extent that it is relevant to any matter arising in the additional claim) (CPR 20.11(2)). It is not possible to apply for default judgment in such claims, other than in exceptional circumstances (CPR 20.11(2)(b) and 20.11(3)).

**Summary**

• CPR 20 contains detailed provisions in relation to the different types of counterclaim and additional claims that can be made after a claim (the ‘main claim’) has started.

• These claims often include a party (other than the claimant) claiming a contribution or indemnity from another existing party in the main claim or from a new party.

• New parties that become involved in additional claims in this way will be referred to as ‘Third Party’, ‘Fourth Party’ and so on.

• The indemnity or contribution is to cover amounts that the party claiming it is ultimately ordered to pay to the claimant in the main claim.

• An indemnity equates to a 100% contribution.

• In some circumstances permission will be needed from the court to make an additional claim. All the relevant documents will be served on all parties.

• Parties who are on the receiving end of an additional claim must respond to it or they risk default judgment in some types of claim or being deemed to have admitted the claim and being bound by the judgment in the main claim so far as it is relevant to the additional claim.