

## SECURITY FOR COSTS

**This Client Guide provides an overview of Security for Costs in English litigation.**

### What is Security for Costs?

A claimant chooses whether to issue proceedings, leaving the defendant to respond by admitting or defending the claim. Security for Costs protects a successful defendant (and the claimant in some circumstances, see below) where there is a risk that it may be unable to recover its legal costs from the claimant.

Security for Costs is a court order requiring the claimant to provide security, such as a payment into court, bond, guarantee, or equivalent form of collateral. It gives the defendant a degree of protection that its recoverable costs will be met, at least in part, if it successfully defends the claim.

### Who can apply for an order of Security for Costs?

The application can be made by a defendant, a claimant defending a counterclaim, or a respondent in an appeal.

Defendants may also seek Security for Costs against certain non-parties, such as litigation funders.

Security for Costs can have tactical value. The prospect of having to pay money into court or provide a guarantee, which may itself carry a cost, can prompt the claimant to re-assess the costs, merits, and prospects of the claim and may encourage resolution or settlement.

### When and in what amount should security be sought?

The Civil Procedure Rules (CPR) provide that the court may make an order for Security for Costs if “it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order” and one of the conditions in CPR 25 applies (see below). The court will expect the application to be supported

by a costs breakdown. The amount and form of security are matters for the court’s discretion.

The general rule under the CPR is that the unsuccessful party pays the successful party’s recoverable costs. In practice, that will usually be a substantial proportion of the costs incurred, but rarely 100%.

The court will consider the overriding objective when deciding whether to grant Security for Costs and, if so, in what amount. The amount of security must be proportionate. The court will also consider, as part of its overall discretion, whether the order would unjustly stifle the claim.

The court will not conduct a full merits assessment when deciding whether to order Security for Costs. However, the parties’ prospects of success may be relevant.

Security for Costs is only available once proceedings have commenced and not at the pre-action stage. Applications should be made promptly and without undue delay to minimise the risk that the court refuses to grant security. Security for Costs is not available in small claims track cases because of the restrictions on costs recovery in those proceedings.

### Grounds for Security for Costs

An application for Security for Costs is made to the court managing the proceedings and is typically determined by a judge at an oral hearing. It may be sought against one or more claimants, although if at least one claimant is regarded as a “good mark”, that may defeat the application.

CPR 25.13 sets out the criteria applied by the court when considering whether to order Security for Costs. The court must be satisfied that “it is just to make such an order” and that one or more of the following conditions is satisfied:

- the claimant is resident outside the jurisdiction;
- the claimant is a company or other body and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
- the claimant has changed its address since the claim was commenced with a view to evading the consequences of the litigation;
- the claimant has failed to give its address in the claim form, or gave an incorrect address in that form;
- the claimant is acting as a nominal claimant, other than as a representative claimant under Part 19, and there is reason to believe that it will be unable to pay the defendant's costs if so ordered; and
- the claimant has taken steps in relation to its assets that would make it difficult to enforce an order for costs against it.

The court also has case management powers to order a party to pay a sum into court where that party has failed, without good reason, to comply with a CPR, Practice Direction, or Pre-action Protocol.

Following amendments to the CPR in 2025, the court may now order Security for Costs on the basis that the claimant is resident outside of England and Wales, removing the previous requirement that the claimant's country also fall outside the 2005 Hague Convention countries.

However, the Hague Judgments Convention 2019 (**the Convention**), which came into force in the UK on 1 July 2025, is likely to influence how courts approach such applications in practice. By creating a framework for enforcing court judgments between contracting states, the Convention may weaken the usual justification for security, namely the practical risk that a defendant will struggle to recover costs from a claimant based abroad. Courts are therefore likely to treat a claimant's residence in a contracting state as a significant factor weighing against the grant of security.

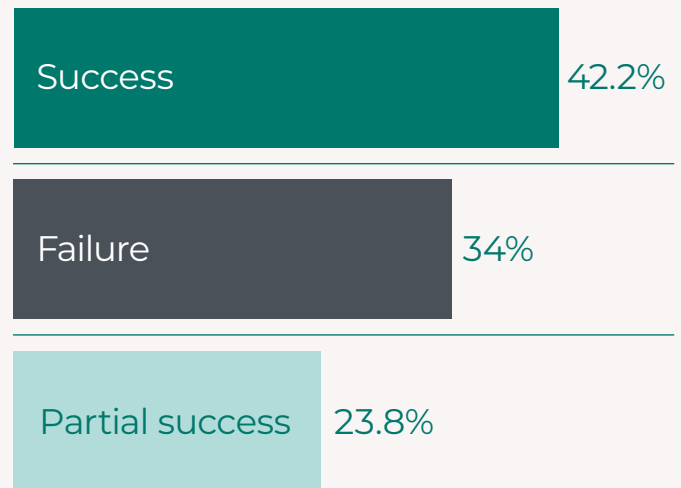
### Statutory Grounds for Security for Costs

Statutory grounds for ordering Security for Costs include:

- **Insolvency proceedings.** Rule 10.17 Insolvency (England and Wales) Rules 2016/1024 provides that where a creditor petitions for the bankruptcy of a debtor in relation to a liquidated sum payable in the future, and claims in the petition that the debtor has no reasonable prospect of being able to pay, the debtor can apply for an order that the creditor gives security for the debtor's costs.
- **Arbitration proceedings.**
  - Section 70(6) Arbitration Act 1996 provides that a court can order an applicant to provide Security for Costs of the challenge or appeal of the arbitration award (there are exceptions).
  - Arbitration tribunals have the power to order security under section 38(3) Arbitration Act 1996, and will apply to those arbitrations seated in the jurisdiction.

- It should also be noted that many arbitral Institutions empower tribunals to order Security for Costs either expressly in their rules e.g. LCIA, Rule 25.2, or by providing them with wide interim powers e.g. the ICC.

### What are the chances of succeeding in a Security for Costs application<sup>1</sup>?



<sup>1</sup> With thanks to Solomonic for the data points

### What happens when an order for Security for Costs is made?

An order for security will usually provide that the claim is stayed until security is given. Alternatively, it may specify a reasonable time within which security must be provided. If the claimant defaults, the defendant will usually apply to strike out the claim.

If the claimant succeeds and there are no adverse costs orders against it, the court will return the security. If the claim is successfully defended, the defendant may be able to use the security towards any costs awarded in its favour. Security already provided can also be dealt with expressly as part of any negotiated settlement.

If the claimant fails to provide security as ordered, the court is likely to strike out the claim, and this will often be an express term of the order.

### Appealing an order for Security for Costs

A costs order will remain in force pending any appeal unless the appeal court, or the court below, is satisfied that enforcement would cause real prejudice to the claimant if it later succeeds on appeal.

An application for permission to appeal should be made either orally in the court that made the order, or by filing it at the appropriate appeal court and serving it on the defendant within the prescribed time limits.

The claimant may apply for the order to be set aside, and the defendant may apply for it to be varied. However, a material change in circumstances will usually be required, for example where litigation costs have increased beyond expectation and additional security is sought.

## Summary of the Application Procedure

### 1. The Application

- The application can be made at any time but should be made promptly, as soon as the facts justifying the order are known.
- The application notice should be made on form N244 (or N244 CC in the Commercial Court).
- The application must state on which ground(s) the Security for Costs application relies.
- The application should be served on the claimant/respondent at least three days before the hearing, together with supporting evidence and a draft order.

### 2. Response to the Application

- In response to the application, the claimant/respondent should prepare evidence, usually in a witness statement, file it at court and serve it on the defendant/applicant.

### 3. The Hearing

- If the court decides to order Security for Costs, rather than dismiss the application, it will usually consider:
  - the amount of security (there will be costs submissions from both parties);
  - the form of security (the applicant will often identify the forms of security it prefers, but this is for the court to decide);
  - the deadline for providing security (by reference to a reasonable time period, the date of which will be inserted into the order); and
  - the consequences if security is not provided (orders will usually provide the claim to be stuck out if the ordered is not provided with in the set time).
- The court will also rule on the costs of the application (which will usually be dealt with on the day)

### 4. Service of the Order

- The order will be served on the defendant/respondent in the usual way.

This client guide was produced by the HFW Knowledge Management team. If you require further information or assistance with any of the issues covered in this guide, please contact the team at [KM@hfw.com](mailto:KM@hfw.com) or speak to your usual HFW contact.

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