

GENERAL PRE-ACTION PROTOCOL

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1. SCOPE

1.1 This Pre-Action Protocol applies to any dispute where no other pre-action protocol applies. The pre-action protocols are listed in the Practice Direction on pre-action protocols which supplements Part 3 of the Civil Procedure Rules (CPR).

1.2 Accordingly, this Pre-Action Protocol applies to any dispute, except disputes about—

- Personal injury
- Clinical negligence
- Construction and engineering
- Defamation
- Professional negligence
- Judicial review
- Disease and illness
- Housing disrepair
- Re-possession because of rent arrears.

2. AIMS

2.1 The aims of this Pre-Action Protocol are to:

- i) encourage the exchange of early and full information about a dispute;
- ii) enable parties to settle their dispute without the need to start a court claim; and
- iii) support the efficient management by the court and the parties of claims that cannot be avoided.

3. OVERVIEW

3.1 If a court claim is started, the court will expect all parties to have complied with this Pre-Action Protocol. In particular, the court will consider whether the parties have acted reasonably in exchanging information and documents relevant to the dispute and whether they tried to settle the dispute before the court claim was started.

3.2 The parties must attempt to settle the dispute by negotiation or some other form of dispute resolution. Where this fails to resolve the dispute the parties must then follow the steps set out in paragraph 5 below.

- 3.3 The parties should comply with this Pre-Action Protocol in a manner that is proportionate to the matters in dispute. For example, if the dispute is relatively straightforward and low value, then the parties should not make large scale requests for documents and information.
- 3.4 If the parties do not comply with this Pre-Action Protocol, the court will take this into account when determining the costs payable by a party.

4. TIME LIMITS IN THIS PRE-ACTION PROTOCOL

- 4.1 The time limits in this Pre-Action Protocol are to be treated as maximum periods. Every attempt must be made to comply with this Pre-Action Protocol as soon as practicable. If parties are able to comply earlier than the relevant time limit, they must do so.
- 4.2 Time limits in the Pre-Action Protocol may be changed by agreement between the parties. However, it should always be borne in mind that the court will expect an explanation as to why this Pre-Action Protocol has not been followed or has been varied.

5. INFORMATION ABOUT FUNDING ARRANGEMENTS

- 5.1 Where a party enters into a funding arrangement within the meaning of CPR rule 43.2(1)(k), that party must inform other parties to the dispute about this arrangement as soon as possible.

(CPR rule 44.3B(1)(c) provides that a party may not recover certain additional costs for any period during which information about a funding arrangement was not provided.)

6. ALTERNATIVE DISPUTE RESOLUTION

- 6.1 The parties must consider whether some form of alternative dispute resolution procedure might enable them to settle the dispute without starting a court claim. The court may require evidence that the parties considered some form of alternative dispute resolution. The courts take the view that starting a court claim is a step of last resort, and that claims must not be started prematurely when a settlement is still actively being explored.
- 6.2 It is not practicable in this Pre-Action Protocol to address in detail how the parties might decide to resolve a dispute. However, some of the options for resolving disputes without starting a court claim are—
- discussion and negotiation;
 - mediation (a form of negotiation with the help of an independent party);
 - early neutral evaluation (where an independent party, for example, a lawyer or an expert in the subject gives an opinion on the merits of the dispute or suggests a solution); or
 - arbitration (where an independent third party makes a binding decision).

6.3 The Legal Services Commission has published a booklet on 'Alternatives to Court', CLS Direct Information Leaflet 23 (www.clsdirect.org.uk) that lists a number of organizations that provide alternative dispute resolution services.

6.4 The parties must keep open the possibility of negotiating a settlement at all times. This still applies after a court claim has been started, up to and during any trial or final hearing.

7. STEPS TO TAKE BEFORE STARTING A COURT CLAIM

7.1 The parties to a dispute must follow the steps below before starting a court claim—

- the claimant must set out the details of the dispute in writing by sending a letter before claim to the defendant. This letter before claim is not the start of a court claim;
- the defendant must acknowledge receipt of the letter before claim in writing within 14 days of the date of the letter;
- the defendant must give a full written response to the letter before claim within a reasonable period of time. The reasonable period of time will run from the date of the letter before claim.

7.2 A 'reasonable period of time' will vary depending on the matter in dispute. Set out below is a general guide to what a court may considered to be a reasonable period of time.

- Where the dispute is straightforward, for example an unpaid debt, then a full response should be provided in less than a month and preferably in no more than a matter of weeks.
- Where a dispute requires the involvement of an insurer or other third party or where there are issues about evidence, then one month will normally be considered a reasonable period of time.
- Where the dispute is particularly complex, for example requiring specialist advice, then a period of longer than one month may be appropriate.
- A period of longer than three months in which to provide a full response will only be considered reasonable in exceptional circumstances.

Claimant's letter before claim

7.3 The claimant's letter must give concise details about the issues in dispute. This should enable the defendant to understand and investigate the claim without needing to request further information. The letter must include—

- the claimant's full name and address;
- the full name and address of each potential defendant;
- a clear summary of the facts on which the claim is based;
- the basis on which the claim is made (i.e. why the claimant says the defendant is liable);

- the nature of the remedy sought;
- if damages are claimed, a breakdown of how they have been calculated; and
- if a sum is claimed pursuant to a contract, how it has been calculated.

7.4 The letter must also—

- enclose copies of the documents on which the claimant intends to rely;
- state (if this is so) that the claimant wishes to enter into negotiation or mediation or another method of alternative dispute resolution;
- request written acknowledgment of the letter before claim within 14 days of the date of the letter;
- state the date by when a full response must be provided by the defendant;
- identify and ask for copies of any relevant documents not in the claimant's possession;
- unless the recipient is known to be legally represented—
 - enclose a copy of this Pre-Action Protocol;
 - draw attention to the court's powers to impose sanctions for failure to comply with this Pre-Action Protocol; and
 - inform the defendant that ignoring the letter before claim may lead to the claimant starting a claim and may increase the defendant's costs.

7.5 If the claimant is a business claiming a sum of money from a defendant who is an individual, the claimant must also:

- provide details of how the money can be paid (for example the method of payment and the address to which it must be sent);
- state that the defendant can contact the claimant to discuss the possibility of repaying the money over a period of time, and provide the relevant contact details; and
- inform the defendant that free independent advice and assistance can be obtained from the organisations such as those listed in the Annex.

Acknowledgment of the letter before claim

7.6 Within 14 days of the date of the letter before claim, the defendant must acknowledge its receipt in writing and must give the name and address of any insurer (if one is likely to be involved). A letter of acknowledgment need only be given where it is not practicable to give a full response to the letter before claim within 14 days.

7.7 The acknowledgement must state when the defendant will give a full written response. If the time for this response will be longer than the period stated in the letter before claim, the defendant must give reasons why a longer period is needed.

7.8 If the defendant (or insurer) does not provide a letter of acknowledgement within 14 days, the claimant will, if a court claim is then started, be considered to have complied with this Pre-Action Protocol.

Defendant's full response

7.9 The defendant's full written response must—

- accept the claim in whole or in part; or
- state that the claim is not accepted.

7.10 If the defendant does not accept the whole of the claim, the response must—

- give detailed reasons why the claim is not accepted, identifying which facts and which parts of the claim (if any) are accepted and which are disputed, and the basis of that dispute;
- state whether the defendant intends to make a counterclaim (and, if so, provide information equivalent to a claimant's letter before claim);
- state whether the defendant alleges that the claimant was wholly or partly to blame for the problem that led to the dispute and, if so, summarise the facts relied on;
- state (if this is so) that the defendant wishes to enter into negotiation or mediation or another method of alternative dispute resolution;
- enclose copies of the documents on which the defendant intends to rely;
- enclose copies of documents requested by the claimant, or explain why they are not available; and
- identify and ask for copies of any further relevant documents, which the defendant wishes to see but which are not in the defendant's possession.

7.11 If the defendant (or insurer) does not provide a full response within the period stated in the claimant's letter before claim (or any longer period stated in the defendant's letter of acknowledgement), the claimant will, if a court claim is started, be considered to have complied with this Pre-Action Protocol.

7.12 If the claimant starts a court claim before any longer period stated in the defendant's letter of acknowledgment, the court will consider whether the longer period requested by the defendant was reasonable.

Claimant's reply

7.13 The claimant must provide the documents requested by the defendant within as short a period of time as is practicable or explain in writing why the documents are not available.

7.14 The claimant must also provide a response to any counterclaim on the same basis as that on which a defendant must respond to the letter before claim (see paragraphs 7.9 to 7.11 above)

Stock Take

7.15 In following this Pre-Action Protocol, the parties will have a genuine opportunity to resolve the dispute without needing to start a court claim. But if the dispute is not resolved, the parties should undertake a further review of their respective positions to see if a court claim can still be avoided. At the very least, it should be possible to establish what issues remain in dispute so as to narrow the scope of the court claim and therefore limit potential costs.

8. EXPERTS

8.1 The CPR contain extensive provisions which strictly control the use of experts both before and after a court claim is started. These provisions are contained in:

- [CPR Part 35](#),
- [the Practice Direction supplementing Part 35](#) and
- [the Protocol for the “Instruction of Experts to give Evidence in Civil Claims” which is annexed to that Practice Direction](#).

8.2 Parties should be aware that once a court claim has started—

- expert evidence may not be used in court without the permission of the court;
- a party who instructs an expert will not necessarily be able to recover the cost from another party;
- it is the duty of an expert to help the court on the matters within that expert’s scope of expertise and this duty overrides any obligation to the person instructing or paying the expert.

8.3 Many disputes and court claims can and should be resolved without the need for advice or evidence from an expert. If the assistance of an expert is needed then the parties must, wherever possible, try to save expense by appointing only one expert.

8.4 Where either party believes that an expert is needed, the parties should consider and seek to agree whether to instruct:

- (a) a single joint expert (i.e. engaged and paid jointly by the parties whether instructed jointly or separately); or
- (b) an agreed expert (i.e. the parties agree the identity of the expert but only one party instructs the expert and pays the expert’s costs).

8.5 The parties should be aware that if a court claim is started the court has the power to direct that evidence on a particular issue is given by a single joint expert.

Instruction an expert before sending a letter before claim

8.6 Exceptionally, the claimant may need to obtain an expert’s report before sending the letter before claim to confirm whether the claimant does indeed have a dispute that is worth pursuing. Where this is the case, the letter before claim must explain that an expert’s report has been obtained and state:

- the expert's name;
 - an indication of the expert's field (for example, whether he is a surveyor or an engineer); and
 - enclose a copy of the report.
- 8.7 In such cases it may be appropriate for the defendant to obtain a report from a different expert. If so, the defendant must provide the same details (set out in paragraph 8.6 of this pre-action protocol) in the full response to the letter before claim.

Instructing an expert after sending a letter before claim

- 8.8 If the parties **do not agree** that the nomination of a single joint expert is appropriate, then the party seeking the expert evidence (the first party) must give the other party (the second party) a list of one or more experts in the relevant field of expertise whom the first party would like to instruct.
- 8.9 **Within 14 days** of receipt of the list of experts, the second party may indicate in writing an objection to one or more of the experts listed. If there remains on the list one or more experts who are acceptable, then the first party must instruct an expert from the list.
- 8.10 If the second party objects to all the listed experts, the first party may then instruct an expert of the first party's own choice. Both parties should bear in mind that if a court claim is started the court will consider whether a party has acted reasonably when instructing (or rejecting) an expert.
- 8.11 If the second party does not object to an expert nominated in the way set out above, the second party cannot then rely on separate expert evidence within that particular field unless:
- (a) the first party agrees;
 - (b) the court so directs; or
 - (c) the first party's expert report has been amended and the first party is not prepared to let the second party see the original report.

9. LIMITATION

- 9.1 The Limitation Act 1980 and other legislation set out time limits (often referred to as 'limitation periods') within which court claims must be started other than in exceptional circumstances. If the court claim is not started within that period, the claim is said to be 'time-barred' or 'statute-barred'. Whilst a claimant in such a case could still start a claim, the defendant would have a statutory defence of 'time bar'.
- 9.2 In certain disputes it may not be possible to comply with this Pre-Action Protocol before the expiry of a limitation period. In that case, and if the relevant law applicable to the matter in dispute permits, the parties should seek to agree in writing a reasonable fixed period of time in which to comply with this Pre-Action Protocol ('the protocol period'). As part of the agreement, the defendant will also agree not to raise the statutory defence of 'time bar' if the limitation period expires during the protocol period and the claimant subsequently starts a court claim.

- 9.3 If, for any reason, a court claim is started before the parties have followed the procedures in this Pre-Action Protocol, the parties should apply to the court for an order for a stay of proceedings (i.e. that the whole or part of the proceedings are suspended) while the parties follow this Pre-Action Protocol.

ANNEX

Organisation	Address	Telephone Number	e-mail Address
National Debtline	Tricorn House 51-53 Hagley Road Edgbaston Birmingham B16 8TP	FREEPHONE 0808 808 4000	www.nationaldebtline.co.uk
Consumer Credit Counselling Service (CCCS)		FREEPHONE 0800 138 1111	www.cccs.co.uk
Payplan	Kempton House Dysart Road Grantham NG31 7LE	FREEPHONE 0800 085 4298	help@payplan.com
Citizens Advice	Check your local Yellow Pages or Thomson local directory for address and telephone numbers		www.citizensadvice.org.uk
Community Legal Advice (formerly Community Legal Services Direct)		0845 344 4345	www.clsdirect.org.uk