

PRACTICE DIRECTION - PRE-ACTION PROTOCOLS

This Practice Direction supplements Part 3 of the Civil Procedure Rules

CONTENTS OF THIS PRACTICE DIRECTION

Scope	Paragraph 1
General	Paragraph 2
Aims	Paragraph 3
Compliance with Pre-Action Protocols	Paragraph 4
Commencement of Pre-Action Protocols	Paragraph 5
Specific Provisions	Paragraph 6
Disclosure	Paragraph 6.1
Information about funding arrangements	Paragraph 6.2
Experts	Paragraph 6.3
Limitation periods	Paragraph 6.4

1. SCOPE

- 1.1 This Practice Direction applies to the pre-action protocols that have been approved by the Head of Civil Justice and which are listed in paragraph 5.2 of this Practice Direction.

2. GENERAL

- 2.1 Pre-action protocols outline the steps parties must take before starting a court claim.
- 2.2 The General Pre-Action Protocol will apply in all matters where no other pre-action protocol applies.

3. AIMS

- 3.1 The aims of pre-action protocols are to—
- encourage the exchange of early and full information about a dispute;
 - enable parties to settle their dispute without the need to start a court claim; and
 - support the efficient management by the court and the parties of claims that cannot be avoided.

4. COMPLIANCE WITH PRE-ACTION PROTOCOLS

- 4.1 The Civil Procedure Rules (CPR) enable the court to take into account compliance or non-compliance with the relevant pre-action protocol when giving directions for the management of claims (see CPR rules 3.1(4) and (5) and 3.9(e)) and when making orders about who should pay costs (see CPR rule 44.3(1)(a)).
- 4.2 The court will consider whether all parties have complied in substance with the terms of a pre-action protocol.

PART 3 – PRACTICE DIRECTION E

- 4.3 The court may decide that **a claimant** has not complied with a pre-action protocol because, for example, the claimant—
- has not provided sufficient information to the defendant; or
 - has not followed the procedure set out in the relevant pre-action protocol..
- 4.4 The court may decide that **a defendant** has not complied with a pre-action protocol because, for example, the defendant—
- has not responded to the letter before claim within the time period under the relevant pre-action protocol; or
 - has not disclosed documents required to be disclosed under the relevant pre-action protocol.
- 4.5 Where an urgent application has to be made to the court (for example an application for an injunction) the court will still expect the parties to comply with the relevant pre-action protocol so far as possible. However, the court will take account of the urgency of the application when considering whether to impose sanctions for non-compliance with a pre-action protocol.
- 4.6 The court will look at the overall effect of non-compliance on the other party when deciding whether to impose sanctions. The court is not likely to be concerned with minor infringements of a protocol. If, in the opinion of the court, non-compliance has led to a court claim being started that might otherwise have been avoided, or has led to costs being incurred that might otherwise not have been incurred, the court will consider whether to impose sanctions. The orders the court may make include—
- an order that the party at fault pays the costs, or part of the costs, of the other party or parties;
 - an order that the party at fault pays those costs on an indemnity basis (which means that the receiving party does not have to show that the costs were reasonable);
 - if the party at fault is the claimant in whose favour an order for the payment of a sum of money is subsequently made, an order that the claimant is deprived of interest on all or part of that sum, and/or that interest is awarded at a lower rate than would otherwise have been awarded;
 - if the party at fault is a defendant, and an order for the payment of a sum of money is subsequently made in favour of the claimant, an order that the defendant pay interest on all or part of that sum at a higher rate, not exceeding 10% above base rate, than would otherwise have been awarded.
- 4.7 The court will exercise its powers set out in this paragraph with the object of placing the non-defaulting party in no worse a position than would have been the case if the pre-action protocol had been complied with.

5. COMMENCEMENT OF PRE-ACTION PROTOCOLS

- 5.1 The court will take into account compliance or non-compliance with a relevant pre-action protocol where the court claim was started after the relevant pre-action protocol came into force, but will not do so where the claim was started before that date.
- 5.2 The following table sets out the pre-action protocols currently in force and the dates that they came into force—

Pre-Action Protocol	Came into force
General	TBA
Possession Claims based on rent arrears	2 October 2006
Housing Disrepair	8 December 2003
Disease and Illness	8 December 2003
Judicial Review	4 March 2002
Professional Negligence	16 July 2001
Defamation	2 October 2000
Construction and Engineering	2 October 2000
Clinical Disputes	26 April 1999
Personal Injury	26 April 1999

6. SPECIFIC PROVISIONS

The following provisions apply in all disputes unless a pre-action protocol contains different provisions.

6.1 Disclosure

Documents provided by one party to another in accordance with a pre-action protocol must not be used for any purpose other than resolving the dispute, unless the disclosing party agrees.

6.2 Information about funding arrangements

- 6.2.1 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.)

6.3 Experts

- 6.3.1 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](#).

- 6.3.2 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; and
 - It is the duty of an expert to help the court on the matters within the expert's scope of expertise and this duty overrides any obligation to the person instructing or paying the expert.
- 6.3.3 Many disputes and court claims can and should be resolved without the need for advice or evidence from an expert. If an expert is needed, the parties must wherever possible try to save expense by appointing only one expert.
- 6.4 **Limitation Periods**
- 6.4.1 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'.
- 6.4.2 In certain disputes it may not be possible to comply with a pre-action protocol before the expiry of a limitation period. If, for any reason, a court claim is started before the parties have followed the procedures in the relevant 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 the relevant pre-action protocol.