

CONSOLIDATED PRE ACTION PROTOCOL

INTRODUCTION

1. This Protocol covers all claims in England and Wales, is intended to encourage the exchange of information between parties at an early stage and to provide a clear framework within which parties in a claim can attempt to achieve an early and appropriate resolution of the issues
2. The Courts will be able to treat the standards set in protocols as the normal reasonable approach to pre-action conduct. If proceedings are issued, it will be for the court to decide whether non-compliance with a protocol should merit adverse consequences. Guidance on the court's likely approach will be given from time to time in practice directions.
3. If the court has to consider the question of compliance after proceedings have begun, it will not be concerned with minor infringements, e.g. failure by a short period to provide relevant information. One minor breach will not exempt the 'innocent' party from following the protocol. The court will look at the effect of non-compliance on the other party when deciding whether to impose sanctions.
4. This protocol is not intended to replace other forms of pre-action dispute resolution. Where such procedures are available, parties are encouraged to consider whether they should be used. If, however, these other procedures are used and fail to resolve the dispute, the protocol should be used before litigation is started, adapting it where appropriate.

AIMS

5. The aim of this protocol is to establish a framework in which there is an early exchange of information so that the claim can be fully investigated and, if possible, resolved without the need for litigation. This protocol aims to set out a code of good practice which parties should follow when litigation is being considered. This includes:
 - (a) ensuring the parties are on an equal footing
 - (b) saving expense

SPECIFIC GUIDANCE

6. This consolidated pre-action protocol replaces the protocols set out in Schedule 1. In the Appendices at the rear of this protocol there are documents attached which relate to specific types of actions and this protocol incorporates the use of those documents in the actions specified in the Schedule.

LIMITATION

7. If by reason of complying with any part of this protocol a Claimant's claim may be time-barred under any provision of the Limitation Act 1980, or any other legislation which imposes a time limit for bringing an action, the Claimant may commence proceedings without complying with this protocol. In such circumstances, a Claimant who commences proceedings without complying with

all, or any part, of this protocol must apply to the court on notice for directions as to the timetable and form of procedure to be adopted, at the same time as he requests the court to issue proceedings. The court will consider whether to order a stay of the whole or part of the proceedings pending compliance with this protocol.

8. This protocol does not affect the time limit specified by Rule 54.5(1) of the Civil Procedure Rules which requires that any claim form in an application for judicial review must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose, however, where the Court considers that a claim is made prematurely it may impose sanctions.

INITIAL NOTIFICATION

9. As soon as the Claimant decides that he is likely to bring a claim, the Claimant should notify the proposed Defendant in writing.
10. This letter should contain the following information:
 - (a) the identity of the Claimant and any other parties
 - (b) a brief outline of the claim
 - (c) if possible, a general indication of the financial value of the potential claim and/ or any other remedy sought
11. It should suggest to the proposed Defendant that the letter should be forwarded to any appropriate insurer immediately.

In Housing Disrepair claims see the Early Notification letter in Appendix 6

RECORDS AND PRE-ACTION DISCLOSURE

12. For Personal Injury, Clinical Negligence, Disease and Illness and Housing Disrepair claims see Appendices 1,2,5 and 6 respectively.

LETTER OF CLAIM

13. Prior to commencing proceedings, the Claimant or his solicitor shall send to each proposed Defendant (if appropriate to his registered address) a copy of a letter of claim which shall contain the following information:
 - i. the Claimant's full name and address;
 - ii. the full name and address of each proposed Defendant;
 - iii. a clear summary of the facts on which each claim is based;
 - iv. the basis on which each claim is made
 - v. the nature of the relief claimed: if damages are claimed, a breakdown showing how the damages have been quantified; if a sum is claimed pursuant to a contract, how it has been calculated; if an extension of time is claimed, the period claimed;
 - vi. the names of any experts already instructed by the Claimant on whose evidence he intends to rely, identifying the issues to which that evidence will be directed. If the Claimant intends to instruct an expert but has not already done so, the Claimant should follow the procedure set out in clause 25 of this protocol.

DEFENDANT'S RESPONSE

14. Within 14 calendar days of receipt of the letter of claim, the Defendant should acknowledge its receipt in writing and may give the name and address of his insurer (if any). If there has been no acknowledgement by or on behalf of the Defendant within 14 days, the Claimant will be entitled to commence proceedings without further compliance with this Protocol.
15. If the Defendant intends to take objection to all or any part of the Claimant's claim on the grounds that (i) the court lacks jurisdiction, or (ii) the Defendant named in the letter of claim is the wrong Defendant, that objection should be raised by the Defendant within 28 days after receipt of the letter of claim. The letter of objection shall specify the parts of the claim to which the objection relates, setting out the grounds relied on, and, where appropriate, shall identify the correct Defendant (if known). Any failure to take such objection shall not prejudice the Defendant's rights to do so in any subsequent proceedings, but the court may take such failure into account when considering the question of costs.
16. Where such notice of objection is given, the Defendant is not required to send a letter of response in accordance with clause 18 in relation to the claim or those parts of it to which the objection relates (as the case may be).
17. If at any stage before the Claimant commences proceedings, the Defendant withdraws his objection, then clause 18 and the remaining part of this Protocol will apply to the claim or those parts of it to which the objection related as if the letter of claim had been received on the date on which notice of withdrawal of the objection had been given.
18. Within the time period set out in Schedule 2, or such other period as the parties may reasonably agree, the Defendant shall send a letter of response to the Claimant, which shall contain the following information:
 - (a) the facts set out in the letter of claim which are agreed or not agreed, and if not agreed, the basis of the disagreement;
 - (b) which claims are accepted and which are rejected, and if rejected, the basis of the rejection;
 - (c) if a claim is accepted in whole or in part, whether the damages, sums or other remedies claimed are accepted or rejected, and if rejected, the basis of the rejection;
 - (d) if contributory negligence is alleged against the Claimant, a summary of the facts relied on;
 - (e) whether the Defendant intends to make a counterclaim, and if so, giving the information which is required to be given in a letter of claim
 - (f) the names of any experts already instructed on whose evidence it is intended to rely, identifying the issues to which that evidence will be directed;
19. If no response is received by the Claimant within the period set out in Schedule 2 (or such other period as has been agreed between the parties), the Claimant shall be entitled to commence proceedings without further compliance with this Protocol.
20. In Judicial Review claims, where it is not possible to reply within the proposed time limit the Defendant should send an interim reply and propose a reasonable extension. Where an extension is sought, reasons should be given and, where required, additional information requested. This will not affect the time limit for making a claim for Judicial

Review specified by rule 54.5(1) of the Civil Procedure Rules, which requires that any claim form in an application for Judicial Review must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose, nor will it bind the Claimant where he or she considers this to be unreasonable. However, where the Court considers that a subsequent claim is made prematurely it may impose sanctions.

CLAIMANT'S RESPONSE TO COUNTERCLAIM

21. The Claimant shall provide a response to any counterclaim within the equivalent period allowed to the Defendant to respond to the letter of claim.

ALTERNATIVE DISPUTE RESOLUTION

22. The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.
23. It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:
 - a. Discussion and negotiation
 - b. Early neutral evaluation by an independent third party experienced in the subject matter of the claim
 - c. Mediation – a form of facilitated negotiation assisted by an independent neutral party
24. It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

EXPERTS

25. The civil justice reforms and the Civil Procedure Rules encourage economy in the use of experts and a less adversarial expert culture and parties are referred to Part 35 of the Civil Procedure Rules. The protocol recognises that a flexible approach must be adopted in the obtaining of expert reports. There will be occasions where the Claimant will need to obtain an expert report before writing the letter of claim. In such claims the Defendant may be entitled to obtain their own expert report. In some other instances it may be more appropriate to send the letter of claim before the expert report is obtained.
26. Where the parties agree the nomination of a single expert is appropriate, before any party instructs an expert he should give the other party a list of the name(s) of one or more experts in the relevant speciality whom he considers are suitable to instruct. The parties are encouraged to agree the instruction of a single expert to deal with discrete areas such as cost of care.
27. Within 14 days the other party may indicate an objection to one or more of the named experts. The first party should then instruct a mutually acceptable expert. If the Claimant

nominates an expert in the original letter of claim, the 14 days is in addition to the period for the Defendant's response to the letter of claim.

28. If the second party objects to all the listed experts, the parties may then instruct experts of their own choice. It would be for the court to decide subsequently, if proceedings are issued, whether either party had acted unreasonably.
29. If the second party does not object to an expert nominated, he shall not be entitled to rely on his own expert evidence within that particular speciality 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 disclose the original report
30. Either party may send to an agreed expert written questions on the report, relevant to the issues, via the first party's solicitors. The expert should send answers to the questions separately and direct to both parties.
31. The cost of a report from an agreed expert will usually be paid by the instructing first party: the costs of the expert replying to questions will usually be borne by the party which asks the questions.
32. Where the Defendant admits liability in whole or in part, any expert report obtained under this protocol which a party relies upon, should be disclosed to the other party.

COSTS

33. In Housing Disrepair claims, if the tenant's claim is settled without litigation on terms which justify bringing it, the landlord will pay the tenant's costs or out of pocket expenses. See the attached Statement of Costs in Appendix 6.
34. In Judicial Review claims see the attached notes on public funding for legal costs in judicial review in Appendix 4.

Judicial Review claims

34. This protocol does not impose a greater obligation on a public body to disclose documents or give reasons for its decision than that already provided for in statute or common law. However, where the court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose sanctions.
35. This protocol will not be appropriate where the Defendant does not have the legal power to change the decision being challenged, for example decisions issued by tribunals such as the Immigration Appeal Authorities.
36. This protocol will not be appropriate in urgent claims, for example, when directions have been set, or are in force, for the Claimant's removal from the UK, or where there is an urgent need for an interim order to compel a public body to act where it has unlawfully refused to do so (for example, the failure of a local housing authority to secure interim accommodation for a homeless Claimant) a claim should be made immediately. A letter before claim will not stop the implementation of a disputed decision in all instances.

37. All Claimants will need to satisfy themselves whether they should follow the protocol, depending upon the circumstances of his or her case. Where the use of the protocol is appropriate, the court will normally expect all parties to have complied with it and will take into account compliance or non-compliance when giving directions for case management of proceedings or when making orders for costs. However, even in emergency cases, it is good practice to fax to the Defendant the draft Claim Form which the Claimant intends to issue. A Claimant is also normally required to notify a Defendant when an interim mandatory order is being sought.