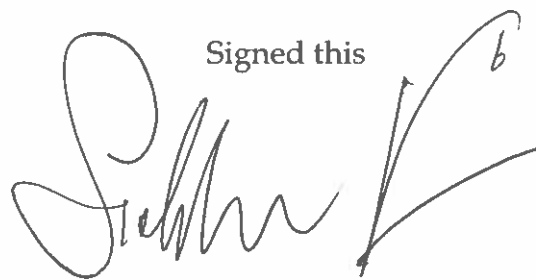


**PRE ACTION-PROTOCOL**  
**COUNTY COURTS OF NORTHERN IRELAND**  
**PRE-ACTION PROTOCOL FOR COMMERCIAL ACTIONS**

**Application and Scope**

This Pre-Action Protocol applies to all Commercial Actions in the County Court,

This Pre-Action Protocol has effect from 6 February 2023.

Signed this 6 Feb 2023  


The Right Honourable Dame Siobhan Roisin Keegan

Lady Chief Justice

**IN THE COUNTY COURT IN NORTHERN IRELAND**

**COMMERCIAL ACTIONS**

**PRE-ACTION PROTOCOL**

<b>CONTENTS</b>	<b>PARAGRAPH</b>
Introduction	1
Scope	2
Aims and Objectives	3
The Overriding Objective	4
Contents of the Plaintiff's letter of claim	5
Contents of the Defendants response	6
Plaintiffs' response to any counterclaim	7
Pre-Action meeting of the parties	8
Commencement	9

**1. INTRODUCTION**

1.1 This Pre-Action Protocol ['this protocol'] shall apply to all commercial actions in the County Court.

1.2 A commercial action is to be defined as any cause relating to business or commercial transactions and, without prejudice to the generality of the foregoing, shall extend to and encompass any cause relating to contracts for works of building or engineering construction, contracts relating to the engagement of architects, accountants, engineers, or surveyors, the sale or supply of goods, insurance, banking, financial services, the export or import of merchandise, agency, bailment, the carriage of goods, and causes other than personal injury causes which relate to the provision of professional services generally, together with such other type of cause as the Recorder of Belfast may in future think fit to designate as '*commercial actions*'.

1.3 This protocol does not alter the parties' rights and obligations.

1.4 The court will treat the standards set out in this protocol as the normal reasonable approach of parties to Commercial Actions Claims. The courts will

expect the parties to have complied with this protocol in good time before proceedings are issued. Should a claim proceed to litigation, the extent to which this protocol was followed by the parties will assist the court in dealing with liability for costs and making other orders.

1.5 In this protocol the word "he" shall include "she" or "they" and "it" or "its".

## 2. SCOPE

2.1 A plaintiff shall not be required to have complied with this protocol before commencing proceedings to the extent that the proposed proceedings:

- (a) are for the enforcement of the decision of an adjudicator to whom a dispute has been referred pursuant to the Construction Contracts (NI) Order 1997, as amended;
- (b) may include a claim for interim injunctive relief;
- (c) may relate to the same or substantially the same issues as have been the subject of a recent adjudication under the Construction Contracts (NI) Order 1997, as amended, or some other formal alternative dispute resolution procedure.

## 3. AIMS

3.1 This protocol aims to:

- (a) encourage the exchange of early and full information about the prospective legal claim;
- (b) enable parties to avoid litigation by agreeing a settlement of the claim in advance of the commencement of proceedings; and
- (c) to support the efficient management of proceedings where litigation cannot be avoided.

## 4. THE OVERRIDING OBJECTIVE

4.1 The '*overriding objective*' applies to the entirety of the pre-action period. The overriding objective, as currently set out in Order 58 Rule 1 of the County

Court Rules [Northern Ireland] 1981, is to enable the Court to deal with cases justly, which includes so far as is practicable:

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to -

- (d) the amount of money involved;
- (e) the importance of the case;
- (f) the complexity of the issues; and
- (g) the financial position of each party;
- (h) ensuring that the litigation is dealt with expeditiously and fairly;
- (i) allotting to it an appropriate share of the Court's resources, while taking into account the need to allocate resources to other cases.

## **5. CONTENT OF THE PLAINTIFF'S LETTER OF CLAIM**

5.1 Prior to the commencement of proceedings the plaintiff, or his solicitor, shall send to each proposed defendant (and if appropriate to its registered address) a copy of a letter of claim which shall contain the following information:

- (a) the plaintiff's full name and address;
- (b) the full name and address of each proposed defendant;
- (c) a clear summary of the material facts upon which each claim is based;
- (d) the basis on which each claim is made, identifying insofar as relevant the principle contractual terms and statutory provisions relied on;
- (e) the nature of the relief claimed; if liquidated damages are claimed, a breakdown should be included showing how those damages have been quantified; if a sum is claimed pursuant to a contract, sufficient details should be provided to show how that sum has been calculated; if an extension of time is sought or proposed, the period of the extension sought or proposed should also be clearly specified.
- (f) where a claim has been made previously and rejected by a defendant, the plaintiff should be able to identify the reason(s) for such rejection, the plaintiff's grounds of belief as to why the claim was wrongly rejected should also be included;
- (g) the names of any experts already instructed by the plaintiff on whose evidence it is intended to rely, identifying clearly the issues to which the evidence of any such experts will be directed;
- (h) any proposal for a meeting of the parties.

5.2 A copy of this Protocol shall be annexed to the letter of claim, and attention should be drawn to its contents, and in particular to the requirement that the defendant should provide a response in writing within 21 days.

## **6. CONTENT OF THE DEFENDANT'S RESPONSE**

6.1 Within 21 days from the date of receipt of the letter of claim, or alternatively within such further or other period as the parties may reasonably agree (up to a maximum of 42 days), the defendant shall send a letter of response to the plaintiff or his solicitor, which shall contain the following information, namely:

- (a) the facts set out in the letter of claim which are agreed or not agreed, and if the defendant is unable to agree facts, the basis of the absence of agreement;
- (b) which claims are accepted and which are rejected, and if the defendant is
- (c) unable to accept a claim, the basis on which that claim is not accepted;
- (d) if a claim is accepted in whole or in part, whether the damages, sums or extensions of time claimed or proposed are accepted or rejected, and if rejected, the basis of the rejection;
- (e) if contributory negligence is alleged against the plaintiff, a summary of the facts relied on;
- (f) whether the defendant intends to make a set-off or counterclaim, and if so then proceeding to give the same information required to be given in a letter of claim, as per the contents of paragraph 4 (iii) to (vi) above;
- (g) 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;
- (h) the response to any proposal for a meeting of the parties, and in the absence of such proposal, any proposal by the defendant for a meeting of the parties.

6.2 If no response is received by the plaintiff within the period of 21 days (or alternatively within such other period as may have been agreed between the parties), the plaintiff may commence proceedings without further compliance with this protocol.

## **7. THE PLAINTIFF'S RESPONSE TO ANY COUNTERCLAIM**

7.1 The plaintiff shall provide a letter of response to any counterclaim within 21 days, giving the information required to be given by the defendant, under paragraph 5 above, to the plaintiff's claim.

## **8. PRE-ACTION MEETING OF THE PARTIES**

8.1 Within 21 days of the defendant's letter of response, or if applicable the plaintiff's letter of response to counterclaim, the parties should convene and complete any meeting proposed.

- 8.2 The aim of the meeting will be to agree the main issues and the causes of disagreement on each issue; to consider whether some form of alternative dispute resolution would be more suitable than litigation; where expert evidence is likely to be required, to consider whether a joint expert should be appointed; and to consider the conduct of litigation with the objective of minimising cost and delay.
- 8.3 Those attending the meeting should include a representative of each party who has authority to settle or recommend settlement of the dispute together with a legal representative for each party if one has been instructed.
- 8.4 A pre-action meeting shall be treated as '*without prejudice*' save and except that a party attending a pre-action meeting may be required to disclose to the Court when and where a meeting took place, and the identity of those attending, the identity of any party who failed or refused to attend together with any grounds for refusal relied upon, the terms of any agreement between the parties and the consideration given to alternative dispute resolution. If a pre-action meeting did not take place a party may be required to disclose to the court any reason as to why or on what basis such a meeting did not take place.

## **9. DATE OF COMMENCEMENT**

- 9.1 This protocol shall take effect upon such date as shall be specified.



