

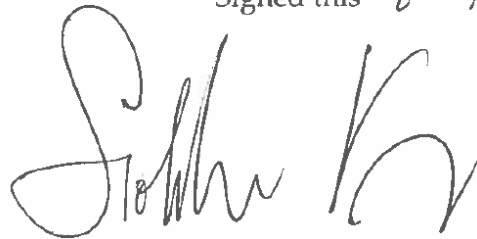
**COUNTY COURT OF NORTHERN IRELAND
PRE ACTION-PROTOCOL FOR PERSONAL INJURY AND DAMAGE ONLY
ROAD TRAFFIC ACCIDENT CLAIMS**

Application and Scope

This Pre-Action Protocol applies to all Personal Injury and Road Traffic Accident Claims in the County Court of Northern Ireland.

This Pre-Action Protocol has effect from 6 Feb 2023

Signed this 6 Feb 2023

A handwritten signature in black ink, appearing to read 'Siobhan Keegan', written in a cursive style.

The Right Honourable Dame Siobhan Roisin Keegan
Lady Chief Justice

IN THE COUNTY COURT OF NORTHERN IRELAND

PERSONAL INJURY LITIGATION AND DAMAGE-ONLY ROAD
TRAFFIC ACCIDENT CLAIMS

PRE-ACTION PROTOCOL

CONTENTS	PARAGRAPH
Introduction	1
Litigants in Person	2
Aims	3
The Overriding Objective	4
Content of the Plaintiff's letter of claim	5
Claims for Damage to a Vehicle and/ or Cost of Hire of Replacement Vehicle	6
Defendant's Response to the Letter of Claim	7
Provision of Documents	8
Rehabilitation	9
Settlement/ Alternative Dispute Resolution	10

1. INTRODUCTION

- 1.1 This Pre-Action Protocol applies to all cases involving claims in personal injury litigation and damage-only road traffic accidents.
- 1.2 This protocol does not alter the parties' rights and obligations.
- 1.3 The court will treat the standards set out in this protocol as the normal reasonable approach of parties in cases involving claims in personal injury litigation and damage-only road traffic accidents. The courts will expect the parties to have complied with this protocol before proceedings are issued.
- 1.4 In this protocol the word "*he*" shall include "*she*" or "*they*" and "*it*" or "*its*".

2. LITIGANTS IN PERSON

- 2.1 If a party to the claim does not have a legal representative they should still, insofar as reasonably possible, fully comply with this protocol. If a party to a claim becomes aware that another party is a litigant in person, they should

send a copy of this protocol to the litigant in person at the earliest opportunity.

3. AIMS

3.1 This pre-action protocol aims to achieve best litigation practice by encouraging:

- (a) more pre-action contact between the parties;
- (b) better and earlier exchange of information;
- (c) better pre-action investigation by both sides;
- (d) placing the parties in a position where they may be able to settle cases fairly and early without litigation;
- (e) enabling proceedings to proceed according to the court's timetable and efficiently, if litigation does become necessary;
- (f) the promotion of an overall "cards on the table" approach to litigation in the interests of keeping the amount invested by the participants in terms of money, time, anxiety and stress to a minimum, consistent with the requirement that the issues be resolved in accordance with accepted standards of fairness and justice.

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 –
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
- (d) ensuring that the litigation is dealt with expeditiously and fairly;
- (e) 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 After the writing of any preliminary notification letter to the defendant the plaintiff's solicitors should send to any legal or corporate representative of the proposed defendant a detailed letter of claim as soon as sufficient information is available to substantiate a realistic claim and before issues of quantum are addressed in detail.

5.2 The letter of claim shall contain the following information:

- (a) a clear summary of the facts upon which the claim is based;
- (b) an indication of the nature of any injuries suffered;
- (c) details of any financial loss incurred even where such details are necessarily provisional;

- (d) the plaintiff's full address and post code;
 - (e) the name and address of any hospital attended by the plaintiff, whether or not treatment was afforded thereat, together with the plaintiff's hospital reference number when available.
- 5.3 Solicitors are recommended to use a standard format for such a letter – an example is given at appendix A to this protocol; **this can be amended to suit the particular case.**
- 5.4 The letter of claim should seek the details of any relevant insurer and, if the identity of the insurer is known, a copy of the letter of claim should be sent directly to the insurer.
- 5.5 The fundamental purpose to be served by the letter of claim is to provide sufficient information for the defendant's insurer/solicitors to commence investigations, assess liability and at least put a broad valuation on likely "risk".
- 5.6 If there has been no reply by the defendant or any solicitor or insurer within 21 days, the plaintiff should proceed to issue proceedings.
- 5.7 If there is a limitation problem or some other reason as to why the plaintiff's position needs to be protected then the plaintiff may issue proceedings before the expiration of 21 days.

6. CLAIMS FOR DAMAGE TO A VEHICLE AND/ OR COST OF HIRE OF REPLACEMENT VEHICLE

- 6.1 If the plaintiff is claiming vehicle damage and or the cost of a replacement vehicle they will provide:
- (a) the plaintiff's date of birth;
 - (b) the details of heads of claim to be presented if available;
 - (c) the plaintiff's impecuniosity position if ascertainable;
 - (d) details of whether the vehicle is roadworthy or drivable;
 - (e) the plaintiff's occupation, if relevant. For example, if the plaintiff uses their vehicle as a taxi or primarily for business purposes.

7. THE DEFENDANT'S RESPONSE TO A LETTER OF CLAIM

- 7.1 In a personal injury claim the defendant's solicitor/insurer will have a maximum of 3 months from the date of acknowledgement of the letter of claim to investigate. No later than the end of that period the defendant's insurer/solicitors should reply, stating whether liability and/or causation is admitted or denied as appropriate and if denied, stating with sufficient clarity and detail so that the plaintiff is made aware of the defendant's case, including if the fault lies with, or an indemnity is claimed from another. If contributory negligence is being alleged by the defendant, details should be provided of what is alleged and upon what basis.
- 7.2 In a road-traffic damage only claim the defendant's solicitor/insurer will have a maximum of 2 months from the date of acknowledgement of the letter of claim to investigate. No later than the end of that period the defendant's insurer/solicitors should reply, stating whether liability is admitted or denied

as appropriate and if denied, stating with sufficient clarity and detail so that the plaintiff is made aware of the defendant's case, including if the fault lies with, or an indemnity is claimed from another. If contributory negligence is being alleged by the defendant, details should be provided of what is alleged and upon what basis.

- 7.3 In a personal injury claim where the relevant accident occurred outside Northern Ireland and/or where the defendant is outside the jurisdiction, the time periods of 21 days and 3 months will be extended up to 42 days and 6 months.
- 7.4 In a road-traffic damage only claim where the relevant accident occurred outside Northern Ireland and/or where the Defendant is outside the jurisdiction, the time periods of 21 days and 2 months will be extended to 42 days and 4 months.
- 7.5 If there is a limitation problem or some other reason as to why the plaintiff's position needs to be protected, then the plaintiff may issue proceedings before the expiration of the above time periods.
- 7.6 The above time periods will also apply to any allegations of fraud that the defendant intends to make.
- 7.7 Where liability is admitted, the defendant/insurer will be bound by this admission. The exception of this will be when, subsequently, there is evidence that the claim is fraudulent.
- 7.8 Where the plaintiff is claiming the cost of a replacement vehicle and the defendant intends to dispute need then they will state the reasons why.

8. PROVISION OF DOCUMENTS

- 8.1 If the defendant denies liability and/or causation, he ought to enclose with the letter of reply any documents in his possession which are material and relevant to the issues between the parties and which would be likely to be ordered to be disclosed by the court either on an application for pre-action discovery or on discovery during proceedings. The aim of early discovery of documents by the defendant is not to encourage "fishing expeditions" by the plaintiff, but to promote an early exchange of relevant information to help in clarifying or resolving issues in dispute. The plaintiff's solicitor can assist by identifying in the letter of claim or in a subsequent letter the particular categories of documents which are considered to be relevant.
- 8.2 Where the defendant admits liability and causation the plaintiff solicitor should, prior to issuing proceedings, disclose to the defendant particulars of the special losses that they are seeking to recover, the documents supporting same and, if applicable, any available medical evidence on which the plaintiff intends to rely.
- 8.3 If the plaintiff is claiming vehicle damage and/or the cost of a replacement vehicle the plaintiff will provide the following information, if available:
 - (a) the repair invoice;
 - (b) any depreciation report;
 - (c) the recovery agreement and invoice;
 - (d) the storage agreement and invoice;

- (e) confirmation of whether the plaintiff has transferred their own comprehensive insurance, and if so, they will provide temporary insurance invoices;
 - (f) the hire invoice and hire agreements;
 - (g) proof that they held a valid licence for 3 years prior to the accident;
 - (h) confirmation of whether they held any penalty points at the time of hire;
 - (i) confirm if they need to potentially travel outside of Northern Ireland;
 - (j) confirmation of whether the vehicle was required for purposes of taxiing, towing, or storing livestock;
 - (k) the details of additional drivers, their relationship to the plaintiff, convictions, penalty points and length of time that additional driver has held a licence;
 - (l) the reasons for high-risk charges if applicable.
- 8.4 If the plaintiff's vehicle is being repaired under a "credit repair" agreement then the plaintiff will provide the following, if available:
- (a) the date that the plaintiff's engineer was instructed;
 - (b) the date that the plaintiff's engineer inspected their vehicle;
 - (c) the date that the plaintiff's engineer completed their report;
 - (d) confirmation of the make, model, engine size, mileage of the plaintiff's vehicle at the date of accident;
 - (e) the expiry date of the MOT certificate;
 - (f) confirmation of whether the vehicle was roadworthy and driveable at inspection;
 - (g) a breakdown of hourly rate, hours spent, parts, paint/materials, specialist costs and VAT;
 - (h) the repair invoice.;
 - (i) the dates on which hire started and ended;
 - (j) confirmation of the date the plaintiff collected their vehicle, if different to the date the hire ended;
 - (k) confirmation as to whether the Plaintiff is registered for VAT.
- 8.5 The engineer/motor assessor should be served with photographs to show the vehicle including all areas of damage and (if available) repairs undertaken, which have been provided to the engineer and/or taken by the engineer.
- 8.6 Where the plaintiff's vehicle is a total loss, and the process is dealt with by an accident management company, the plaintiff will provide, if available, a copy of the engineer's report which will include:
- (a) the date the engineer was notified of the accident;
 - (b) the date of inspection and completion of the report;
 - (c) the date the pre-accident value figure was received by plaintiff or their representative;
 - (d) confirmation of the mileage at the date of accident;
 - (e) a breakdown of the estimated hourly rate, hours spent, parts/paint/materials, any specialist costs and VAT;

- (f) the pre-accident value at date of accident, salvage value at the time of accident and the salvage category code;
 - (g) details of the salvage figure;
 - (h) confirmation as to whether the Plaintiff is registered for VAT.
- 8.7 Along with the engineer's report, the plaintiff's representative will confirm the date the hire started and ended if that information is available.
- 8.8 If the damage to the plaintiff's vehicle is being dealt with under the terms of their comprehensive insurance policy then the plaintiff consents to the defendant's insurers obtaining the above details from the plaintiff's insurers if required.
- 8.9 If the plaintiff is relying on impecuniosity, they will provide the following information, if available:
- (a) three months bank/building society statements;
 - (b) three months credit union savings statements or the equivalent;
 - (c) the monthly cost of servicing any debts/loans;
 - (d) details of outgoings at the time of the accident;
 - (e) details of their earnings at the time of the accident, and if the plaintiff's earnings are not paid into a bank account, then 3 months' pay slips will be provided.

9. REHABILITATION

- 9.1 The parties are encouraged to jointly explore rehabilitation at an early stage, in appropriate cases, without prejudice to liability.

10. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

- 10.1 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. During the course of any litigation both the plaintiff and the defendant may be required by the court to produce evidence that alternative means of resolving their dispute have been considered. Different forms of alternative dispute resolution are available and a mediation service is provided by the Law Society of Northern Ireland. It is expressly recognised that no party can or should be forced to mediate or enter into any form of alternative dispute resolution.

Appendix A

LETTER OF CLAIM

To

Defendant

Dear Sirs

Re: *Plaintiff's full name*
Plaintiff's full address [The plaintiff's address and post code need not be included if there are genuine concerns about the plaintiff's personal security]

1. We are instructed by the above named to claim damages in connection with *an accident at work/road traffic accident/tripping accident on day of (year) at (place of accident which must be sufficiently detailed to establish location)*
2. Please confirm the identity of your insurers. Please note that the insurers will need to see this letter as soon as possible and it may affect your insurance cover and/or the conduct of any subsequent legal proceedings if you do not send this letter to them.
3. The circumstances of the accident are:
[brief outline]
4. The reason why we are alleging fault is:
[simple explanation e.g. defective machine, broken ground]
5. A description of our client's injuries is as follows:-
[brief outline]
6. *[in cases of road traffic accidents]* A description of the damage to vehicle/s is as follows:
[brief outline]
7. Our client is claiming for the cost of a replacement vehicle. Their date of birth is *[insert DOB]*. The vehicle *is/is not* roadworthy and driveable. Our client *is/is not* impecunious. Our client's occupation is () **(if relevant)**.
8. Our client received treatment for the injuries at *[insert name of hospital]*. His Hospital Number is *[insert if available]*.
9. Our client is employed by *[insert plaintiff's employer's name and address]* and his work reference number is *[insert if relevant/ available]*. He works as *[insert occupation]* and has had the following time off work *[insert dates of*

absence]. His approximate weekly income is [insert if known]. [this paragraph may be deleted if no loss of earnings.]

10. If you are our client's employers, **please provide us with the usual earnings details which will enable us to calculate his financial loss.**
11. We are obtaining a police report and will let you have a copy of the same **upon your undertaking to meet half the fee.**
12. We have also sent a letter of claim to *[insert name and address if relevant]* and a copy of that letter is attached. We understand their insurers are *[insert name, address and claims number if known]*.
13. At this stage of our enquiries we would expect you to disclose any documentation you hold relevant and material to this action.
14. We expect an acknowledgement of this letter within 21 days by yourself or your insurers otherwise proceedings may be issued against you without further notice and costs may be awarded against you.

Yours faithfully,
