

PRE ACTION-PROTOCOL


**HIGH COURT OF JUSTICE IN NORTHERN IRELAND
AND
COUNTY COURTS OF NORTHERN IRELAND**

**PRE-ACTION PROTOCOL FOR DEFAMATION AND OTHER MEDIA AND
COMMUNICATION CLAIMS**

Application and Scope

This Pre-Action Protocol applies to all cases in the Court of Judicature and County Court involving claims in defamation, misuse of private information, breach of confidence, data protection, harassment by publication and malicious falsehood that arise from publication or threatened publication by the print or broadcast media, online, on social media, or in speech. It revokes and replaces the previous Pre-Action Protocol in Defamation issued on 14 April 2011

This Pre-Action Protocol has effect from 4th October 2022


Signed this 4th of October 2022

The Right Honourable Dame Siobhan Roisin Keegan

Lady Chief Justice

**HIGH COURT OF JUSTICE IN NORTHERN IRELAND
AND
COUNTY COURTS OF NORTHERN IRELAND**

**PRE-ACTION PROTOCOL FOR DEFAMATION AND OTHER MEDIA AND
COMMUNICATION CLAIMS**

Introduction and Interpretation

1. This Pre-Action Protocol applies to all cases involving claims in defamation, misuse of private information, breach of confidence, data protection, harassment by publication and malicious falsehood that arise from publication or threatened publication by the print or broadcast media, online, on social media, or in speech. It revokes and replaces the previous Pre-Action Protocol in Defamation issued on 14 April 2011.
2. The court will treat the standards set out in this Protocol as the normal reasonable approach of parties to a media and communications claim. 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 has been followed by the parties will assist the court in dealing with liability for costs and making other orders.
3. In this Protocol the word "he" shall include "she" or "they" and "it" or "its".

Litigants in Person

4. If a party to the claim does not have a legal representative he 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, he should send a copy of this Protocol to the litigant in person at the earliest opportunity.

Aims of the Protocol

5. The aims of this Protocol are to:
 - (a) encourage early communication of a claim;
 - (b) encourage the parties to disclose sufficient information to enable each to understand and properly identify the issues in dispute and to share information and relevant documents;
 - (c) make informed decisions as to whether and how to proceed;
 - (d) promote the early settlement of the dispute without proceedings or reduce the issues in dispute;
 - (e) set a timetable for the exchange of information relevant to the dispute;
 - (f) avoid unnecessary expense and control the costs of resolving the dispute;

- (g) set standards for the content of the correspondence.
- 6. In formulating both the letter of claim and response and in taking any subsequent steps, the parties should act reasonably to keep costs proportionate to the nature and gravity of the case and the stage the complaint has reached.
- 7. Letters of claim and responses sent pursuant to this Protocol are not intended to have the same status as a pleading.

Letter of Claim – General Note

- 8. The plaintiff should notify the defendant of his/her claim in writing at the earliest reasonable opportunity.
- 9. In respect of all causes of action falling within this Protocol, the plaintiff should include the following information:
 - i. name and address of the plaintiff and proposed defendant;
 - ii. the grounds on which the claim is based (i.e., defamation, malicious falsehood, misuse of private information, breach of confidence, data protection or harassment);
 - iii. the nature of the remedy sought;
 - iv. whether the plaintiff intends to make an application to bring his/her claim anonymously and an indication of the basis upon which any application would be made.

Letter of Claim (defamation and malicious falsehood)

- 10. The letter of claim should additionally include the following information:
 - i. sufficient details to identify the specific publication that contained the statement complained of;
 - ii. the statement complained of and, if known, the date of publication. Where possible a copy or transcript of the statement complained of should be enclosed and, in the case of slander, where and in what circumstances as far as known the statement complained of was spoken;
 - iii. for claims that include or consist of defamation where the proposed defendant is not domiciled in the United Kingdom, any facts or matters relevant to Northern Ireland being the most appropriate forum for the dispute;
 - iv. where relevant, any facts relating to the number and identity of the persons to whom the plaintiff says the statement was published;

- v. the imputation the plaintiff contends was conveyed by the statement complained of;
- vi. where relevant, details of any special facts relevant to the interpretation of the statement complained of;
- vii. factual inaccuracies or unsupportable comment within the statement complained of. The plaintiff should give a sufficient explanation to enable the defendant to understand why the statement is inaccurate or unsupportable;
- viii. where relevant, any facts or matters that make the plaintiff identifiable from the statement complained of;
- ix. in malicious falsehood claims an outline of the plaintiff's case with regard to malice;
- x. a description of the nature and amount of any financial loss that the plaintiff says has been caused, or is likely to be caused, by publication of the statement complained of;
- xi. in slander claims, how or why the plaintiff says that publication of the statement complained of has caused damage or is actionable without proof of actual loss;
- xii. in malicious falsehood claims, how or why publication of the statement has caused special damage or is likely to cause special damage.

Letter of Claim (misuse of private information, breach of confidence)

11. The letter of claim should additionally include the following information:

- i. sufficient details to identify the publication or proposed publication containing the relevant private and/or confidential information;
- ii. the information or categories of information in the publication or proposed publication in respect of which the plaintiff is said to have had a reasonable expectation of privacy or which is claimed to constitute confidential information;
- iii. details of the circumstances giving rise to a reasonable expectation of privacy (in misuse of private information claims) or confidentiality (in breach of confidence claims);
- iv. why the information is claimed to constitute information in respect of which the plaintiff has a reasonable expectation of privacy or is confidential information of a nature that should not be published or continue to be published;
- v. where an interim order to restrain publication is sought, details of any damage or distress suffered or anticipated;

- vi. in claims for misuse of private information, why it is claimed the plaintiff's right to private and family life outweighs the right to freedom of expression;
- vii. the nature and any available details of any particular damage caused or likely to be caused by the publication or proposed publication.

Letter of Claim (data protection)

12. The letter of claim should additionally include the following information:

- i. any further information necessary to identify the data subject;
- ii. the data controller to which the claim is addressed;
- iii. the information or categories of information which is claimed to constitute personal data including, where necessary, the information which is said to constitute sensitive personal data or to fall within a special category of personal data;
- iv. sufficient details to identify the relevant processing;
- v. the identification of the duty or duties which are said to have been breached and details of the manner in which they are said to have been breached, including any positive case on behalf of the plaintiff;
- vi. why the personal data ought not to be processed/further processed, if applicable;
- vii. the nature and any available details as to any particular damage caused or likely to be caused by the processing/breach of duty complained of.

Letter of Claim (Harassment where the course of conduct includes publication)

13. The letter of claim should additionally include the following information:

- i. sufficient details about the course of conduct which is claimed to constitute harassment, including sufficient details to identify the publication(s) or proposed publication(s) forming part of the course of conduct;
- ii. how or why the plaintiff says that the course of conduct amounts to harassment, including, if relevant, how or why it has caused, or is likely to cause, alarm or distress; and
- iii. where relevant, how or why and in what amount the plaintiff says that the course of conduct has caused financial loss.

The Defendant's Response to the Letter of Claim

14. The defendant should provide a full response to the letter of claim as soon as reasonably possible. If the defendant believes that he will be unable to respond within 14 days (or such shorter time limit as specified in the letter of claim), then he shall specify the date by which he intends to respond but in any event the date should not be later than 28 days from receipt of the letter of claim.
15. The response should include the following:
 - i. whether or to what extent the plaintiff's claim is accepted or rejected;
 - ii. if the claim is accepted in whole or in part, the defendant should indicate which remedies it is willing to offer;
 - iii. if more information is required, the defendant should specify precisely what information is needed to enable the claim to be dealt with and why;
 - iv. if the claim is rejected, the defendant should explain the reasons why it is rejected, including a sufficient indication of any facts on which the defendant is likely to rely in support of any substantive defence;
 - v. for defamation claims, the defamatory imputation that the defendant contends was conveyed by the statement complained of, if any;
 - vi. for malicious falsehood claims the false meaning that the defendant contends was conveyed by the statement complained of, if any;
 - vii. where the plaintiff to a proposed action has indicated his intention to make an application to bring the claim anonymously, the defendant should indicate whether the defendant accepts such an order would be appropriate and give an indication of the basis for the defendant's position.

Settlement and Alternative Dispute Resolution

16. It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR but in a desire to resolve disputes in a cost effective and timely way it is actively encouraged. The parties should consider whether some form of alternative dispute resolution would be more suitable than litigation and if so, endeavour to agree which form to adopt. The claim should not be issued prematurely when a settlement is still actively being explored.
17. The Northern Ireland Law Society and Bar Council have information on the pool of appropriately qualified mediators for defamation and other media and communication claims.
18. It is not practicable in this Protocol to address in detail how the parties might decide which method to adopt to resolve the particular dispute. However, some of the options for solving disputes without commencing proceedings are:

- (a) discussion and negotiation;
- (b) early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of defamation or an individual experienced in the subject matter of the claim);
- (c) mediation - a form of facilitated negotiation assisted by an independent neutral third party;
- (d) reference to a press regulator established to deal with complaints from members of the public about the editorial content of newspapers and magazines or an arbitration scheme operated by such a regulator or the professional body of the defendant;
- (e) offer to make amends procedure under sections 2-4 of the Defamation Act 1996.