

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
<u>PRE-ACTION PROTOCOL FOR COMMERCIAL ACTIONS</u>

1. This Pre-Action Protocol applies to commercial actions as defined by Order 72 of the Rules of the Court of Judicature as follows -

“commercial actions” shall include any cause relating to business or commercial transactions and, without prejudice to the generality of the foregoing words, any cause relating to contracts for works of building or engineering construction, contracts of engagement of architects, engineers or quantity surveyors, the sale of goods, insurance, banking, the export or import of merchandise, shipping and other mercantile matters, agency, bailment, carriage of goods and such other causes as the Commercial Judge may think fit to enter in the Commercial List.

The Commercial List also includes causes relating to the provision of professional services and causes relating to public procurement.

2. A plaintiff shall not be required to have complied with this Protocol before commencing proceedings to the extent that the proposed proceedings -

- (i) 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,
- (ii) include a claim for interim injunctive relief,
- (iii) will be the subject of a claim for summary judgment pursuant to Order 14 of the Rules of the Court of Judicature, or
- (iv) relate to the same or substantially the same issues as have been the subject of recent Adjudication under the Construction Contracts (NI) Order 1997, as amended, or some other formal alternative dispute resolution procedure.

3. The objectives of this Protocol are -

- (i) to encourage the exchange of early and full information about the prospective legal claim;

(ii) to enable parties to avoid litigation by agreeing a settlement of the claim before commencement of proceedings; and

(iii) to support the efficient management of proceedings where litigation cannot be avoided.

4. The overriding objective applies to the pre-action period. The overriding objective, as set out in Order 1A of the Rules of the Court of Judicature, 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 expenses.

(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. A failure to comply with this Protocol may be taken into account by the Court when considering the question of costs in any legal proceedings.

6. THE PLAINTIFF'S LETTER OF CLAIM

Prior to commencing proceedings the plaintiff 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 plaintiff'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, identifying the principal contractual terms and statutory provisions relied on;

(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) where a claim has been made previously and rejected by a defendant, and the plaintiff is able to identify the reason(s) for such rejection, the plaintiff's grounds of belief as to why the claim was wrongly rejected;

(vii) the names of any experts already instructed by the plaintiff on whose evidence it is intended to rely, identifying the issues to which that evidence will be directed;

(viii) any proposal for a meeting of the parties;

(ix) a copy of this Protocol and attention shall be drawn to the requirement that the defendant provides a response within 21 days.

7. THE DEFENDANT'S RESPONSE.

Within 21 days from the date of receipt of the letter of claim, or such 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 which shall contain the following information:

(i) 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;

(ii) which claims are accepted and which are rejected, and if the defendant is unable to accept a claim, the basis on which the claim is not accepted;

(iii) if a claim is accepted in whole or in part, whether the damages, sums or extensions of time claimed are accepted or rejected, and if rejected, the basis of the rejection;

(iv) if contributory negligence is alleged against the plaintiff, a summary of the facts relied on;

(v) 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 by paragraph 6(iii) to (vi) above;

(vi) 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;

(viii) 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.

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

8. PLAINTIFF'S RESPONSE TO COUNTERCLAIM.

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 7 above, to the plaintiff's claim.

9. PRE ACTION MEETING

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

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; to consider the conduct of litigation with the aim of minimising cost and delay.

Those attending the meeting should include a representative of each party who has authority to settle or recommend settlement of the dispute and a legal representative of each party, if one has been instructed.

A pre action meeting shall be treated as 'without prejudice' save 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 refused to attend and the grounds for refusal, 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 the reason a meeting did not take place.

This Protocol shall take effect on 1 January 2013

Mr Justice Weatherup

21 December 2012

