

Pre-Action Protocols

Steps the courts expect the parties to civil litigation to take before going to court

The Importance of the Protocols

Parties are expected to litigate their dispute through the court only as a last resort, and should make every attempt to try and resolve their issues by agreement before a claim is issued.

To this end, the court has issued a number of Protocols, which serve as guidance on the steps the court will expect parties to have gone through before the issue of proceedings.

The Protocols

The court has issued several Protocols, each relating to disputes of a specific type. They encourage the parties to exchange sufficient information to enable each party to understand the other's case, and should try and resolve the matter without starting proceedings.

The Practice Direction on Pre-Action Conduct sets out the basic steps the court would expect the parties to have gone through in cases not subject to a specific Pre-action Protocol and includes:

- i. The sending of a letter of claim to the defendant setting out in writing the basis for the claim, the relevant facts and what the claimant wants from the defendant;

- ii. The written acknowledgement of the letter by the defendant within a reasonable period (usually 14 days);
- iii. The defendant's full response to the letter within a reasonable period (usually 30 days);
- iv. The claimant replying, in particular if certain information or documentation has been requested in the response.

The Pre-action Protocols that govern specific claims include:

1. Protocol for Construction and Engineering, which includes the expectation that the parties will have a pre-action meeting; and
2. Protocol for Personal injury, which contains special provisions dealing with obtaining expert medical evidence on the injuries at an early stage.

Failure to comply with Protocol

The Protocols are designed as guidance only and, generally, where a party is guilty of only a minor and insignificant departure from Protocol, the court will not punish that party.

However, where a party has disregarded significant parts of the applicable Protocol, the court can impose sanctions on the infringing party when

proceedings have been issued including:

- Staying (suspending) proceedings until the Protocol has been followed;
- Ordering that the infringing party pays the other party's costs, or part of them;
- Ordering that a party pays the other's cost on a generous basis (the 'indemnity basis');
- Depriving a successful claimant of all or part of the interest they would otherwise have been entitled to;
- Awarding interest against an unsuccessful defendant at a higher rate than would otherwise have been awarded.

The sanctions imposed can therefore be very costly, making compliance with the Protocols essential.

Our Litigation Team are experienced in resolving disputes in the most cost effective manner possible. We can provide specialist advice in a broad range of civil matters and would be happy to speak with you without commitment to see if we could help you, whatever your problem.

Please call Martin Stevens, Darren Thorneycroft or Marcus Self on 01233 625 711 for more information, or email them on ms@hallettandco.co.uk.