

The Pre-Action Protocol for Personal Injury Claims

The aims, requirements and implications of the Protocol

Introduction

The Court has set out a number of Pre-Action Protocols detailing the steps the Court would usually expect parties to a dispute to take before court proceedings are issued, one of which relates specifically to personal injury claims. There are a number of reasons why someone contemplating bringing a personal injury claim, or facing the threat of a claim, should observe the Pre-Action Protocol in relation to such claims.

The aims of the Protocol

Pre-Action Protocols are generally designed to encourage parties to:

- have more contact and correspondence with each other before proceedings are issued;
- to fully exchange information;
- to allow both parties to understand the other's case and investigate the allegations made.

The above is encouraged with a view to promoting the early settlement of claims, and ensuring that if proceedings are issued, matters can be dealt with relatively swiftly.

The Protocol relating to personal injury claims also specifically promotes the provision of medical treatment to address the needs of the claimant.

Note that there is a separate Protocol for low value personal injury claims in road traffic accidents.

The steps included

The Protocol contains several detailed steps, but below is a summary of some of them:

Early Notification

It will often be appropriate for the claimant or their solicitor to notify the defendant (or their insurers) that a claim may be made as soon as they know that is a likelihood, but before they have the opportunity to prepare a detailed letter of claim.

The letter of claim

A letter should be sent setting out the relevant facts and background of a matter, and providing:

- a clear summary of the facts and background of the matter;
- A description of the nature of the injuries suffered;
- A description of any financial loss incurred.

The information given should be sufficient to enable the defendant or their solicitor to investigate the allegations and assess what the value of the claim might be. Two copies of the letter should be sent so that the defendant can pass one of them onto their insurers.

The preliminary response

Within 21 days of the date of posting of the letter of claim the defendant should reply identifying anything it alleges is specifically missing from the letter of claim, and it should identify the defendant's insurers if any.

Investigations

The defendant (or their insurer) then has a maximum of three months from the date of the acknowledgement of the claim to investigate. By the end of that period they should reply fully, stating whether liability for the injury is denied and, if so, giving reasons for the denial. If liability is denied, the defendant should enclose documents it has which are material to the claim.

Special Damages

The claimant will send to the defendant as soon as practicable a Schedule of Special Damages with supporting documents, particularly where the defendant has admitted liability.

Experts

The Protocol sets out guidance on the procedures a party should go through before appointing an

expert to give a medical report on the claimant's injuries, including giving notice to the other party of the proposed expert, and allowing questions to be asked of the expert after the preparation of the report.

Rehabilitation

The claimant or the defendant or both shall consider as early as possible whether the claimant has reasonable needs that could be met by rehabilitation treatment or other measures.

Resolution of issues

If liability is admitted, any medical reports obtained should be disclosed to the other party. The claimant should delay issuing proceedings for 21 days from disclosure of the report (unless such delay would cause his claim to become time-

barred), to enable the parties to consider whether the claim is capable of settlement.

Failure to comply with Protocol

Where a party has disregarded significant parts of the 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 Protocol essential.

Our Personal Injury Team can provide specialist advice in all personal injury 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 on 01233 625 711 for more information, or email them on mds@hallettandco.co.uk.