

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION**

**PRE ACTION PROTOCOL
FOR PERSONAL INJURY LITIGATION**

[1] At all times during the course of civil litigation in this jurisdiction it is important to bear in mind the overriding objective set out at Order 1 Rule 1A of the Rules of the Supreme Court (Northern Ireland) 1980. In order to enable the court to deal justly with litigation that objective requires the court, so far as practicable, to:

- (a) ensure the parties are on an equal footing;
- (b) save expense;
- (c) deal with the litigation 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) ensure that the litigation is dealt with expeditiously and fairly; and
- (e) allocate to the litigation an appropriate share of the court resources, while taking into account the need to allocate resources to other cases.

[2] This pre-action protocol aims to achieve best litigation practice by encouraging:

- § More pre-action contact between the parties.
- § Better and earlier exchange of information.
- § Better pre-action investigation by both sides.
- § Placing the parties in a position where they may be able to settle cases fairly and early without litigation.
- § Enabling proceedings to proceed according to the court's timetable and efficiently, if litigation does become necessary.
- § The promotion of an overall "cards on the table" approach to litigation in the interest 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.

Letter of claim

[3] 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.

[4] The letter of claim shall contain the following information:

- (1) a clear summary of the facts upon which the claim is based;
- (2) an indication of the nature of any injuries suffered;
- (3) details of any financial loss incurred;
- (4) the plaintiff's full address and post code ;

[5] In cases of road traffic accidents the letter of claim should always provide 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.

[6] 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.**

[7] The letter of claim should seek the details of any relevant insurer and, if the identity and address of the insurer is known, a copy of the letter of claim should be sent directly to the insurer.

[8] 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".

[9] If there has been no reply by the defendant or any solicitor or insurer within 21 days, the plaintiff should proceed to issue proceedings.

[10] The defendant's solicitor/insurers 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 is denied and, if so, providing reasons for the denial of liability. If contributory negligence is being alleged by the defendant, details should be provided of what is alleged and upon what basis.

[11] 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 normally be extended up to 42 days and 6 months.

Documents

[12] If the defendant denies liability, 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 claimant, but to promote an early exchange of relevant information to help in clarifying or resolving issues in dispute. The claimant'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.

Offers to settle

[13] On receipt of a written admission of liability from the defendant, the plaintiff should proceed to complete his medical evidence and, as soon as the information is available, send his medical evidence to the defendant's representative together with a schedule of measured special damages including all relevant receipts, invoices, vouchers, etc.

[14] If no written offer of settlement is made by the defendant within 21 days of the date of posting of medical evidence the plaintiff should proceed to issue proceedings.

[15] If a written offer to settle is made by the defendant a written counter-offer may be made by the plaintiff within 21 days of the date of posting of the offer. The defendant will then have a further 21 days to either accept or reject the plaintiff's counter offer.

[16] If settlement cannot be reached between the plaintiff and the defendant, correspondence in respect of any offers may be produced to the court when the case has been disposed of so that it may be taken into account on the question of costs.

Alternative dispute resolution

[17] 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. This is likely to involve production to the court of the standard mediation correspondence, a copy of which may be obtained from the Commercial Court website, together with the parties' replies thereto. Different forms of alternative dispute resolution are available and a mediation service is provided by the Law Society of Northern Ireland. Generally, the courts take the view that litigation should be a last resort and that claims should not be issued prematurely when a settlement is still being actively explored. It is expressly recognised that no party can or should be forced to mediate or enter into any form of alternative dispute resolution.

Dated this 1st day of April 2008

Signed

Mr Justice Coghlin (Senior Queens' Bench Judge)
C.J. McCorry Master (Queens's Bench and Appeals)

Revised this 27th day of June 2008

Appendix A

LETTER OF CLAIM

To

Defendant

Dear Sirs

Re: Plaintiff's full name^[1]

Plaintiff's full address

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 clients' injuries is as follows:
(brief outline)
(In cases of road traffic accidents)
6. Our client received treatment for the injuries at (name and address of hospital). His Hospital Number is () if available
7. He is employed by **(plaintiff's employer's name and address)** and his work reference number is (). He works as **(occupation)** and has had the following time off work (dates of absence). His approximate weekly income is **(insert if known)**. (this paragraph may be deleted if no loss of earnings)
8. If you are our client's employers, **please provide us with the usual earnings details which will enable us to calculate his financial loss.**

9. We are obtaining a police report and will let you have a copy of the same **upon your undertaking to meet half the fee.**
10. We have also sent a letter of claim to (**name and address**) and a copy of that letter is attached. We understand their Insurers are (**name, address and claims number if known**)
11. At this stage of our enquiries we would expect you to disclose any documentation you hold relevant and material to this action.
12. 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

^[1] The plaintiff's address and post code need not be included if there are genuine concerns about the plaintiff's personal security.