

# **Pre-Action Protocol**

The Professional Negligence Pre-Action Protocol (the Protocol) is designed to provide a framework for the early exchange of information between a professional negligence claimant and a professional negligence defendant.

## **When does the Pre-Action Protocol apply?**

Such protocols are required in the majority of professional negligence cases. For example, the Protocol applies when claiming against solicitors, barristers, lawyers, surveyors and tax advisers. It is also applicable in cases of alleged negligence and breach of contract or fiduciary duty (breach of trust).

In fact, first-instance following of the Protocol is considered compulsory in the majority of claims, and a court is likely to take an unfavourable view of any party who has chosen not to do so.

## **What are the exceptions?**

In cases involving claims against construction professionals, architects or engineers – the Construction and Engineering Disputes Pre-Action Protocol is the appropriate procedure.

Where a claimant may be time-barred from proceeding with a claim because of the time constraints involved in a pre-action protocol, the court allows them to make an application without the appropriate procedure having been followed...

## **How does it work?**

The protocol came into force in 2001 in an attempt to reduce the need for court litigation. The Protocol aims to produce a dialogue between the parties which could help them come to mutual agreement regarding a settlement without the need for a formal hearing. The Courts' Practice Direction on Pre-Action Conduct states that commencing formal "proceedings should usually be a step of last resort".

## **The process**

- Preliminary Notice – the claimant should notify the defendant of his intentions to claim and should, where possible, include an estimate of its monetary value.
- Letter of Acknowledgement – the defendant is obliged to acknowledge receipt of the letter within 21 days.
- Letter of Claim – the Letter of Claim should provide a timeline of the circumstances leading to the dispute as well as a summary of the legal argument for damages. Documents, supporting evidence and the opinion of expert witnesses should also, where appropriate, be present with the letter.

- Letter of Acknowledgement – the defendant should acknowledge receipt of the Letter of Claim within 21 days.
- Letter of Response – the defendant should respond to the arguments and details of the Letter of Claim. This should be done within three months of the Letter of Acknowledgement. However, many defendants seek extensions to this period, often with success, and the delays caused by this are a common criticism of the Protocol. The defendant's Letter of Response should make it clear whether liability is accepted or denied for the professional negligence claim. If liability is accepted, the defendant's Letter of Response should be accompanied by a Letter of Settlement.
- Court Proceedings – in the event that the defendant denies liability, the claimant may then commence litigation using the court system.