

EASTERN CARIBBEAN SUPREME COURT
CIVIL PROCEDURE RULES (REVISED EDITION) 2023

PRACTICE DIRECTION 8

No. 2 of 2023

PRE-ACTION PROTOCOLS

This Practice Direction is made pursuant to Rule 4.2(1) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and is applicable to all the Member States and Territories in the jurisdiction of the Eastern Caribbean Supreme Court.

1. INTRODUCTION

1.1 This Practice Direction supplements Rule 8.16 of the Civil Procedure Rules (Revised Edition) 2023 which enables the making of pre-action protocols to outline the steps parties should take to seek information from, and to provide information to, each other about a prospective legal claim.

1.2 Pre-action protocols seek to inform persons in a simple manner the steps that they should take before commencing proceedings for particular types of civil claims.

1.3 The approved pre-action protocols for specific types of claims are annexed to this Practice Direction as Appendices A, B, C and D. Additional pre-action protocols may be added from time to time.

1.4 The objectives of pre-action protocols are to –

- (a) encourage the early exchange of full information about the prospective legal claim;
- (b) enable parties to avoid litigation by agreeing to a settlement of the claim before the commencement of proceedings; and
- (c) support the efficient management of proceedings under the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 where litigation cannot be avoided.

2. INTERPRETATION

In this Practice Direction and in the Pre-Action Protocols –

- (a) ‘claimant’ shall mean intended claimant;
- (b) ‘defendant’ shall mean intended defendant;

- (c) 'electronic mail' is limited to a method of electronically transmitting information to an email address; and
- (d) 'interested parties' are persons directly affected by the claim.

3. COMPLIANCE WITH PROTOCOLS

3.1 The court may treat the standards set out in pre-action protocols as the normal, reasonable approach to pre-action conduct.

3.2 Parties will not be expected to observe this Practice Direction or the pre-action protocols in urgent claims or where a period of limitation is about to expire and the period between the date the claimant instructs a legal practitioner to act on their behalf in relation to the proposed claim and the expiration of the limitation period is too short to allow for compliance with this Practice Direction or the pre-action protocols, or for other good and sufficient reason there could not be compliance provided that the reasons for the urgency and non-compliance are set out fully in the claim form or statement of case. However, in the case of urgent claims or where the limitation period is about to expire, the claimant should give as much written notice of the intention to issue proceedings as is practicable, even if it is by telephone, email, or providing an unfiled draft to the other side, and in appropriate cases the court may be invited to extend the time for service of the claimant's supporting documents, if any, and/or for service of any defence or alternatively, to stay proceedings while the recommended steps are followed.

3.3 The court will expect all parties to have complied, in a timely manner, in good faith and as far as reasonably practicable, with the terms of an approved pre-action protocol before a claim is issued. Dispensing with compliance with an approved pre-action protocol will depend on the circumstances of each case and failure to comply may influence the court's decision on costs. The court will also consider the fullness and timing of compliance when ordering costs. The court will consider whether and to what extent a party has complied with this Practice Direction or a specific pre-action protocol when determining whether sanctions should be imposed. The court is not likely to be concerned with minor infringements of the Practice Direction or pre-action protocol. The court is likely to look at the effect of non-compliance on the other party when deciding to impose sanctions.

3.4 If, in the opinion of the court, non-compliance has led to the commencement of proceedings which may have not otherwise been commenced, or has led to costs being incurred in the proceedings that may not otherwise have been incurred, the orders the court may make include -

- (a) an order that the party at fault pay the costs of the proceedings, or part of those costs, of the other party;
- (b) an order that the party at fault pay those costs on an indemnity basis; or

- (c) any such order that the court deems appropriate having regard to the facts and circumstances of the instant case.

3.5 The court will exercise its powers under paragraph 3.4 with the object of placing the party not at fault in no worse a position than they would have been in if the pre-action protocol had been complied with.

3.6 Without prejudice to the generality of the foregoing, the court in determining whether compliance was not reasonably practicable may take into account whether any of the parties has had to obtain legal aid.

4. NON-COMPLIANCE WITH PROTOCOLS

4.1 A claimant may be found to have failed to comply with a pre-action protocol in, for example, failing to -

- (a) provide sufficient information; or
- (b) follow the procedure required by the applicable pre-action protocol .

4.2 A defendant may be found to have failed to comply with a pre-action protocol in, for example, failing to -

- (a) make a preliminary response to the letter of claim within the time fixed for that purpose by the applicable pre-action protocol;
- (b) make a full response within the time fixed for that purpose by the applicable pre-action protocol; or
- (c) disclose documents required to be disclosed by the applicable pre-action protocol.

5. PRE-ACTION CONDUCT IN OTHER CASES

5.1 In cases not covered by an approved pre-action protocol, the court will expect the parties to act reasonably and promptly in exchanging information and documents relevant to the claim and generally in trying to avoid litigation.

5.2 Parties to a potential dispute should follow a reasonable procedure suitable to their particular circumstances, which is intended to avoid litigation. The procedure should not be regarded as a prelude to inevitable litigation. It should normally include -

- (a) the claimant writing to give details of the claim;
- (b) the defendant acknowledging the claimant's letter promptly;

- (c) the defendant giving a detailed written response within a reasonable time; and
- (d) the parties conducting genuine and reasonable negotiations with a view to settling the claim economically and without court proceedings.

5.3 The claimant's letter should -

- (a) give sufficient and concise details to enable the recipient to understand and investigate the claim without requiring extensive further information;
- (b) enclose copies of the essential documents on which the claimant relies;
- (c) ask for a prompt acknowledgement of the letter, followed by a full written response within a reasonable stated period - for many claims, a normal reasonable period for a full response may be one month;
- (d) state whether court proceedings will be issued if the full response is not received within the stated period;
- (e) identify and ask for copies of any essential documents in support of the claim, not in their possession;
- (f) state (if this is so) that the claimant wishes to enter into mediation or another alternative method of dispute resolution; and
- (g) draw attention to the court's powers to impose sanctions for failure to comply with this Practice Direction and enclose a copy of the Practice Direction.

5.4 Where a claimant commences a claim before the time for a defendant to provide a response has expired, the early commencement of that claim may result in a costs sanction.

5.5 The defendant should acknowledge the claimant's letter in writing within 7 days of receiving it. The acknowledgement should state when the defendant will give a full written response. If the time for this is longer than the period stated by the claimant, the defendant should give reasons why a longer period is needed.

5.6 If a response within the specified time is impractical, the defendant should send an interim response in writing requesting an extension and provide a date for the substantive response. The claimant should not unreasonably withhold their consent to an extension when appropriate grounds have been disclosed. An extension request does not affect the claimant's obligation to make the claim within the prescribed time. Where the defendant makes an extension request, the defendant may undertake not to raise issues related to delay if the claim's time period is not governed by any enactment. If the claimant refuses a request for an extension, and the Court deems the refusal unreasonable, the Court may stay the claim or impose costs sanctions.

5.7 The defendant's full written response should as appropriate -

- (a) accept the claim in whole or in part and make proposals for settlement; or
- (b) state that the claim is not accepted.

5.8 If the defendant does not accept the claim or part of it, the response should -

- (a) give detailed reasons why the claim is not accepted, identifying which of the claimant's contentions are accepted and which are in dispute;
- (b) enclose copies of the essential documents on which the defendant relies;
- (c) enclose copies of documents asked for by the claimant, or explain why they are not enclosed;
- (d) identify and ask for copies of any further essential documents to the claim, not in their possession (and the claimant should provide these within a reasonable time or explain in writing why they are not doing so); and
- (e) state whether the defendant is prepared to enter into mediation or another alternative method of dispute resolution.

5.9 If the claim remains in dispute, the parties should promptly engage in appropriate negotiations with a view to settling the dispute and avoiding litigation.

5.10 Documents disclosed by a party in accordance with this Practice Direction may not be used for any purpose other than resolving the dispute, unless the other party agrees.

5.11 The resolution of some claims, but by no means all, may need help from an expert. If an expert is needed, the parties should, wherever possible and to save expense, engage an agreed expert.

5.12 Parties should be aware that, if the matter proceeds to litigation, the court may not allow the use of an expert's report, and that the cost of it is not always recoverable.

6. DISCLOSURE

A claimant shall disclose whether the cause(s) of action in the intended claim is identical to or similar to any other claim that is being or has been litigated in any court and, if so, the status or outcome of that litigation.

7. APPLICATION OF PROTOCOLS

7.1 The court will take compliance or non-compliance with an applicable pre-action protocol into account where the claim was started after the coming into force of that protocol but will not do so where the claim was commenced before that date.

7.2 Parties in a claim commenced after an applicable pre-action protocol came into force, who have, by actions taken before that date, achieved the objectives sought to be achieved under that protocol, need not take any further steps to comply with those requirements. They will be considered to have complied with the pre-action protocol for the purposes of paragraphs 3 and 4 of this Practice Direction.

8. SERVICE

A claimant's letter and the defendant's response and any other communication in writing in compliance with a pre-action protocol must be delivered personally to the intended recipient, unless the parties agree in writing to utilise a mode of electronic transmission such as electronic mail or some other mode of service.

9. EFFECTIVE DATE

This Practice Direction shall come into effect in a Member State or Territory on the 15th day of January, 2024.

Dated the 15th day of December 2023

Sgd.

Dame Janice M. Pereira DBE, LL.D

Chief Justice

APPENDIX A

PRE-ACTION PROTOCOL FOR CLAIMS FOR A SPECIFIED SUM OF MONEY

1. INTRODUCTION

This pre-action protocol applies where the only claim (not taking into account interest and costs) is for a specified sum of money. It does not apply to claims for damages whether it is a claim arising out of an accident as a consequence of negligence for the cost of repairs undertaken on a vehicle or any property in, on or abutting a road or any other financial losses.

2. CLAIMANT'S LETTER

2.1 The claimant shall send to the defendant a letter which should contain a clear summary of the facts on which the claim is based together with any relevant statement of account and the essential documents on which the claimant relies to support the claim. A form of the claimant's letter is set out in Annex A. The claimant's letter must be accompanied by the defendant's response form set out in Annex B.

2.2 The claimant's letter shall also state —

- (a) the amount due and owing to the claimant;
- (b) where the claimant is claiming interest —
 - (i) the entitlement to interest (whether by agreement or otherwise);
 - (ii) the amount of interest due down to the date of the letter;
 - (iii) the rate(s) at which interest is calculated; and
 - (iv) the rate and the amount per diem at which the interest accrues after the date of the letter.
- (c) the amount of costs which the claimant claims.

3. DEFENDANT'S RESPONSE

3.1 The defendant should reply to the claimant's letter within 14 clear days¹ of the date of receipt of the letter indicating whether they admit the claim by filling out the defendant's response form in Annex B. If there is no response, the claimant is entitled to issue proceedings.

¹ 'Clear days' means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

- 3.2 If the claim is not admitted, the defendant should give detailed reasons why the claim is not admitted and enclose copies of the essential documents in their possession on which they rely to dispute the claim. If they rely on documents which are not in their possession, they should identify the documents.
- 3.3 If the claim is admitted, the defendant should provide proposals for the repayment of the debt and give full particulars of their income and assets and send any documents that support the particulars, so as to enable the claimant to properly evaluate the proposal.
- 3.4 The claimant is not obliged to accept any proposal made by the defendant. If the claimant rejects the proposal, they should notify the defendant of the rejection and the reasons for it and of their intention to commence proceedings.
- 3.5 The court will expect the parties to act reasonably in the making and considering of proposals.
- 3.6 The admission of the claim with or without an agreement on terms of payment does not preclude the claimant from issuing a claim and obtaining judgment in accordance with Part 14 of the Civil Procedure Rules (Revised Edition) 2023.

ANNEX A
LETTER OF CLAIM

[Date]

[Name of claimant]

[Full Address of claimant]

[Name of defendant]

[Address of defendant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by the above-named to claim against you the following sums: [set out details of sums claimed] pursuant to [set out a summary of facts on which the claim is based] [enclose relevant documents in support of claim].

You are required to respond within 14 clear days² from the date of receipt of this letter by filling out the attached form and returning it to (specify recipient). Failure to do so will result in court proceedings being commenced against you without further notice.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have authorised any legal practitioners to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Claimant/Legal Practitioners for the claimant]

² 'Clear days' means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

ANNEX B

DEFENDANT'S RESPONSE

THIS FORM SHOULD BE COMPLETED BY THE DEFENDANT OR THEIR LEGAL PRACTITIONERS AND DELIVERED TO THE CLAIMANT WITHIN 14 CLEAR DAYS OF THE DATE OF RECEIPT OF THE CLAIMANT'S LETTER.

Do you admit owing the sum claimed? YES NO

If NO, state the reasons why and provide the essential documentation to support your reasons for disputing the claim:

If YES, state your proposals for payment of the specified sum claimed, providing full particulars of your income and assets and enclosing any relevant documents:

If you are willing to discuss these proposals, please contact [name and contact information of defendant or defendant's legal practitioners] to arrange a convenient date and time for a meeting.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? YES NO

If YES, specify your email address:

Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. YES NO

If YES, please provide the email address to which service is to be effected:

[Date]

[Name and signature of defendant/Legal Practitioner for the defendant]

NOTE: IF YOU DO NOT RESPOND PROCEEDINGS MAY BE COMMENCED AGAINST YOU WITHOUT FURTHER NOTICE AND YOU MAY SUFFER ADVERSE CONSEQUENCES IN COSTS AND/OR BY ANY DIRECTION OR ORDER THE COURT SEES FIT TO MAKE AGAINST YOU.

APPENDIX B

PRE-ACTION PROTOCOL FOR MOTOR VEHICLE ACCIDENTS AND PERSONAL INJURY CLAIMS

1. INTRODUCTION

This pre-action protocol applies to claims arising out of motor vehicle accidents and personal injury claims generally.

2. CLAIMANT'S LETTER

- 2.1 The form of claimant's letter at Annex A will usually be sent to the defendant. In practice, the defendant may have no personal financial interest in the outcome of the dispute because the defendant is insured. Court imposed sanctions for non-compliance with the pre-action protocol may be ineffective against an insured. This is why the pre-action protocol emphasises the importance of passing the letter of claim to the insurer and the possibility that the insurance cover might be affected. If an insurer receives the claimant's letter only after some delay by the insured, it would not be unreasonable for the insurer to ask the claimant for additional time to respond.
- 2.2 The priority at letter of claim stage is for the claimant to provide sufficient information for the defendant to assess liability. Sufficient information should also be provided to enable the defendant to estimate the likely amount of the claim.

3. REASONS FOR EARLY ISSUE

The pre-action protocol recommends that a defendant be given 28 days to investigate and respond to a claim before proceedings are issued. This may not always be possible, particularly where a claimant only consults a legal practitioner close to the end of any relevant limitation period. In those circumstances, the claimant's legal practitioner should give as much notice of the intention to issue proceedings as is practicable and the parties should consider whether the court may be invited to extend the time for service of the claimant's supporting documents and for service of any defence, or alternatively, to stay the proceedings while the recommended steps are followed.

4. STATUS OF CLAIMANT'S LETTER AND RESPONSE

Claimant's letters and responses are not intended to have the same status as a statement of case in proceedings. Matters may come to light as a result of investigation after the claimant's letter has been sent, or after the defendant has responded, particularly if disclosure of documents takes place outside the recommended 28 day period. These circumstances could mean that the pleaded case of one or

both parties is presented differently than in the claimant's letter and response. It would not be consistent with the spirit of the pre-action protocol for a party to take a point on this in the proceedings, provided that there was no obvious intention by the party who changed their position to mislead the other party.

5. DISCLOSURE OF DOCUMENTS

The aim of the early disclosure 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 legal practitioner can assist in identifying in the claimant's letter or in a subsequent letter the particular categories of documents which the claimant considers are relevant.

6. EXPERTS

- 6.1 The pre-action protocol encourages joint selection of, and access to, experts. Most frequently this will apply to medical experts but on occasions also to liability experts. The pre-action protocol promotes the practice of the claimant obtaining a medical report, disclosing it to the defendant who then asks questions and/or agrees to it and does not obtain their own expert report.
- 6.2 The pre-action protocol provides for nomination of the expert by the claimant in personal injury claims because of the early stage of the proceedings and the particular nature of such claims. If proceedings have been issued, a medical report must be attached to the statement of claim. However, if necessary, after proceedings have commenced and with permission of the court, the parties may obtain further expert reports. It would be for the court to decide whether more than one expert's evidence should be admitted or whether the costs of more than one expert report should be recoverable.
- 6.3 The protocol acknowledges that the deployment of expert evidence is governed by rule 32.6 of the Civil Procedure (Revised) Rules 2023 and is subject to the court's control of case management.

THE PROTOCOL

7. CLAIMANT'S LETTER

- 7.1 The claimant shall send to the defendant two copies of a letter as soon as sufficient information is available to substantiate a realistic claim whether or not the claimant is able to address issues of quantum in detail. One copy of the letter is to be provided to the defendant and the other copy is for the defendant's insurer. The claimant's letter must be accompanied by the defendant's response form set out in **Annex B**.

7.2 The claimant's letter shall contain —

- (a) a summary of the facts on which the claim is based;
- (b) a summary of the nature of any injuries suffered;
- (c) details of where the claimant was treated and the name of the attending physician;
- (d) the date/s of receiving treatment;
- (e) the extent of injuries to date;
- (f) details of property damage;
- (g) if the claimant can address issues of quantum in detail, the quantum of the overall claim with particulars of same and supporting documents; and
- (h) any other relevant information specific to the individual case.

7.3 Legal practitioners are encouraged to use the standard form for the claimant's letter set out in **Annex A**, which may be modified to suit the particular circumstances of the case.

7.4 Sufficient information should be given in order to enable the defendant's insurers and legal practitioners to commence investigations and to at least put a broad valuation on the intended claim.

7.5 If the claimant has information relating to the identity of the defendant's insurers, they should also send a copy of the claimant's letter directly to the insurers together with a letter to the insurers enquiring as to their position with respect to the prospective claim. Where, in a motor vehicle accident case, the claimant intends to commence proceedings against the insurers the claimant may in their letter to the insurers give to them any notice of their intention to do so as required by law.

8. DEFENDANT'S RESPONSE

8.1 The defendant or their insurers will have 28 clear days (or such longer period as may be agreed) from the date of receipt of the claimant's letter to investigate the claim and respond to the letter by filling out the defendant's response form in **Annex B**, stating whether liability is accepted and if not, giving reasons for disputing liability including any alternative version of events relied upon. If there is no response by the defendant or their insurers within 28 days, the claimant is entitled to issue proceedings.

8.2 If the defendant or their insurers requires more time to investigate the claim and respond fully to the claimant's letter, the parties may agree to extend the time. Parties are expected to act reasonably in requesting and/or agreeing to further time.

8.3 Where liability is admitted, the presumption is that the defendant will be bound by this admission for all claims.

8.4 Where it is the intention of the claimant to institute proceedings against the insurers under the relevant section of the Motor Vehicle Insurance (Third Party Risks) Act, or its equivalent in any Member State or Territory the claimant is reminded of the requirement to give to the insurers the required notice.

8.5 A defect in the defendant's response does not relieve the claimant of the burden of proving their case in accordance with this pre-action protocol and the Civil Procedure Rules (Revised Edition) 2023.

9. DOCUMENTS

9.1 If the defendant denies liability, they should enclose with the letter of reply, documents in their possession which are material 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 disclosure or during proceedings.

9.2 Where the defendant admits primary liability, but alleges contributory negligence by the claimant, the defendant should give reasons supporting those allegations and disclose those documents which are relevant to the issues in dispute. The claimant should respond to the allegations of contributory negligence before proceedings are issued.

10. SPECIAL DAMAGES

Where the claimant has not addressed the question of quantum in their letter, the claimant should send to the defendant as soon as practicable a schedule of damages with supporting documents, particularly where the defendant has admitted liability.

11. EXPERTS

11.1 The general rule is that parties must give instructions to a single expert. This means that before any party instructs an expert the parties should attempt to agree to the appointment of a joint expert.

11.2 Where parties instruct experts of their own choice it is for the court to decide subsequently, if proceedings are issued, whether either party acted unreasonably in so doing.

ANNEX A
LETTER OF CLAIM

[Date]

[Name of claimant]

[Full Address of claimant]

[Name of defendant]

[Full Address of defendant]

Re: Claimant's Full Name

Claimant's age

Claimant's full address

Claimant's Employer [name and address]

We are instructed by the above-named to claim damages in connection with an accident involving [motor vehicle accident or other accident giving rise to claim for personal injuries or damage to property] on the day of [year] at [place of accident which must be sufficiently detailed to establish location]

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.

[Set out details of the nature of the claim and the legal basis for seeking relief. The relevant facts of the claim should cover the following where applicable:

- (a) **The circumstances of the accident:** Provide a brief summary of the accident.
- (b) **The reason for alleging fault:** Provide a simple explanation e.g. defective machine, broken ground etc.
- (c) **Claimant's injuries:** Provide a brief description of the claimant's injuries.
- (d) **Treatment facility details:** name and address of hospital, clinic or doctor's office etc. and give name of the attending physician, if this is known.
- (e) **Continuity of injuries:** State whether the client is still suffering from the effects of their injuries.

- (f) **Claimant's employment:** State whether the client is employed and if so provide details of their employment and whether there was time off from work and if so state the dates of their absence. If the client is employed and their income is known, state their income; or
- (g) **If you are writing to the claimant's employers:** Request the usual earning details which will enable you to calculate the claimant financial loss.
- (h) **Police report:** State whether you are obtaining police report and if so let the defendant have a copy of the same upon their undertaking to meet half the fee.
- (i) **Where the claimant's loss can be calculated:** State the sum of money which the claimant is claiming in damages, give details identifying the claims for property damage, if any, the claims for other special damage with particulars of same and the claim for general damages with appropriate particulars.]

We have also sent a letter to [name and address] and a copy of that letter is attached. We understand their insurer is: [state name and address of insurer and claim number if known].

At this stage of our enquires we would expect the documents contained in parts [insert appropriate parts of standard disclosure list] to be relevant to this action.

A copy of this letter is attached for you to send to your insurer.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

We look forward to receiving a reply to this letter within 28 days by yourselves or your insurer.

Yours faithfully

[Claimant/Legal Practitioner for the claimant]

ANNEX B

DEFENDANT'S RESPONSE

THIS FORM SHOULD BE COMPLETED BY THE DEFENDANT OR THEIR LEGAL PRACTITIONERS AND DELIVERED TO THE CLAIMANT WITHIN 28 CLEAR DAYS OF THE DATE OF RECEIPT OF THE CLAIMANT'S LETTER.

Do you admit liability for the damages claimed? YES NO

If NO, state the reasons why and provide reasons for disputing liability including any alternative version of events relied upon:

If YES, state your proposals for payment of the damages claimed, providing full particulars of your income and assets and enclosing any relevant documents:

If you are willing to discuss these proposals, please contact [name and contact information of defendant or defendant's legal practitioners] to arrange a convenient date and time for a meeting.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? YES NO

If YES, specify your email address:

Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. YES NO

If YES, please provide the email address to which service is to be effected:

[Date]

[Name and signature of defendant/Legal Practitioner for the defendant]

NOTE: IF YOU DO NOT RESPOND PROCEEDINGS MAY BE COMMENCED AGAINST YOU WITHOUT FURTHER NOTICE AND YOU MAY SUFFER ADVERSE CONSEQUENCES IN COSTS AND/OR BY ANY DIRECTION OR ORDER THE COURT SEES FIT TO MAKE AGAINST YOU.

APPENDIX C

PRE-ACTION PROTOCOL FOR DEFAMATION CLAIMS

1. INTRODUCTION

- 1.1. This protocol aims to establish a code of good practice for defamation cases. It is designed to encourage transparency and the early exchange of full information, set a timeline for responding to intended claims and establish standards for pre-action letters.
- 1.2. This protocol enables parties to understand and identify issues at an early stage, make informed decisions, avoid litigation by agreeing to a settlement of the claim before the commencement of proceedings and control costs. It sets out a framework for parties to follow to ensure a fair and efficient process and supports efficient case management when litigation is unavoidable.
- 1.3. Parties are expected to follow this protocol and, in determining costs, the court will consider whether and to what extent a party has complied with the protocol.
- 1.4. This protocol recognises the time-sensitive nature of defamation claims.

2. LITIGANTS IN PERSON

- 2.1. Litigants in person should still strive to comply with this protocol.
- 2.2. Parties should provide a copy of the protocol to litigants in person at the earliest opportunity when aware of their presence.

3. PROPORTIONALITY

Parties should act reasonably to keep costs proportionate to the nature and gravity of the case and the stage of the complaint.

4. LETTER OF CLAIM

- 4.1. The claimant should notify the defendant in writing of the defamation claim at the earliest opportunity after the cause of action arises.

- 4.2. The contents of the letter of claim may vary depending on the laws of the Member State or Territory but should generally follow the format set out in **Annex A**.
- 4.3. Including comprehensive information in the letter of claim is essential for the defendant to understand the nature of the claim and respond appropriately, either by offering remedies, requesting more information, or contesting the claim.

5. DEFENDANT'S RESPONSE TO LETTER OF CLAIM

- 5.1. The defendant should provide a full response to the letter of claim in writing as soon as reasonably practicable but, in any event, within twenty-one (21) clear days of receipt of same. If more time is needed, the defendant should specify the intended response date.
- 5.2. The response should include whether the claim is accepted, if more information is required, the remedies offered, reasons for rejecting the claim, and an explanation of any defamatory imputations.
- 5.3. The letter in response should generally follow the format set out in **Annex B**, which outlines the requirements for the defendant's response to the letter of claim in a defamation case, emphasising the need for a timely and comprehensive response. This comprehensive response ensures that the parties have a clear understanding of each other's positions, whether the claim is accepted or disputed, and the specific areas of contention. It also allows for the exploration of potential remedies and encourages transparency in the pre-action phase of a defamation case.

6. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

Parties are encouraged to consider ADR procedures to settle disputes before resorting to court proceedings. Failure to do so may result in adverse costs consequences being made against that party as the court sees fit.

ANNEX A
LETTER OF CLAIM

[Date]

[Full legal name of claimant]

[Full Address of claimant
and Legal Practitioner]

[Full legal name of defendant]

[Address of defendant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by the above-named to claim damages in connection with [set out details of the nature of the claim and the legal basis for seeking remedies. This could include libel or slander and relevant legal principles. The relevant facts of the claim should cover the following where applicable:

- (a) Facts or matters relevant to the claim:** Provide briefly any facts or information relevant to the claim. This may include details about the circumstances surrounding the alleged defamation.
- (b) Identification of the specific publication:** Include sufficient details to identify the specific publication that contained the alleged defamation being complained of. This might involve providing publication names, dates, or other identifying information. In the instance of an article, illustration, document, transcript, audio or video recording or any other material being relied on, a copy of same should be attached to the letter.
- (c) The statement complained of:** Include the statement itself, and if known, the date of publication. For slander, specify where and under what circumstances the statement was made. If possible, attach a copy or transcript of the statement.
- (d) Imputation contended by the claimant:** Explain the imputation that the claimant believes was conveyed by the alleged defamation complained of. This helps clarify the nature and extent of the harm alleged.
- (e) Factual inaccuracies or unsupported comments:** Identify any factual inaccuracies or unsupported comments within the statement. Provide a sufficient explanation to help the defendant understand why the statement is inaccurate or unsupported.
- (f) Serious harm in defamation claims:** If the claim pertains to defamation, explain how or why the claimant believes that the statement has caused or is likely to cause serious harm. If the claimant

is a profit-making entity, provide details of any serious financial loss caused or anticipated due to the statement.

(g) Special damage, pecuniary loss, or actionability in slander claims: For slander or malicious falsehood claims, clarify how or why the statement has caused or is likely to cause special damage, pecuniary loss, or why it is actionable without proof of actual loss.

(h) Outline of the claimant's case with regard to malice in malicious falsehood claims: If the claim involves malicious falsehood, provide an outline of the claimant's case regarding malice.

(i) Additional relevant information: If applicable, include any facts or details that make the claimant identifiable from the statement and any special facts related to the interpretation of the statement or specific damage caused.

(j) Confidential information and privacy claims: In cases involving claims related to confidential information or breaches of privacy, provide details about the information or categories of information claimed to be confidential or subject to a reasonable expectation of privacy.

(k) Identification of the publication: Specify the publication or proposed publication that contains the relevant information. This helps to identify the context.

(l) Circumstances giving rise to confidentiality or privacy claims: Explain the circumstances that give rise to claims of confidentiality or a reasonable expectation of privacy, depending on the type of claim being made.

(m) Reasons for non-disclosure and harm suffered or anticipated: Explain why the information should not be published or continued to be published, and provide details of any damage or distress suffered or anticipated. This is relevant when seeking non-disclosure orders.

(n) Confidential information: For claims related to confidential information, discuss the extent to which the information is already public and any specific damage caused or anticipated.]

You are required to respond within twenty-one (21) clear days³ from the date of receipt of this letter by. Failure to do so will result in court proceedings being commenced against you without further notice.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have

³ 'Clear days' means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Claimant/Legal Practitioners for the claimant]

**ANNEX B
LETTER OF RESPONSE**

[Date]

[Full legal name of defendant]

[Full Address of defendant
and Legal Practitioner]

[Full legal name of claimant]

[Address of claimant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by [defendant's name] to respond to the intended claim of [claimant's name] in respect of [set out details of the nature of the claim being responded to. The relevant details of the response should cover the following where applicable:

- (a) **Acceptance of claim:** Indicate whether the defendant accepts the claimant's claim and, if so, to what extent. This helps clarify the areas of agreement.
- (b) **Request for more information:** If the defendant requires more information to understand or address the claim, this should be clearly stated. The defendant should specify precisely what information is required to enable the claim to be addressed. They should also provide reasons for requesting this additional information.
- (c) **Offer of remedies:** If the claim is accepted, either in whole or in part, the defendant should indicate which remedies they are willing to offer to resolve the matter. These remedies could include retractions, apologies, or other appropriate actions to mitigate the harm.
- (d) **Rejection of claim:** If the defendant rejects the claim, they should explain the reasons for the rejection. This explanation should include a sufficient indication of any statutory or legal exemptions or facts on which the defendant is likely to rely as part of their substantive defence. The defendant should also include an explanation of any defamatory imputations.
- (e) **Details for service:** If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please

also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Defendant/Legal Practitioners for the defendant]

APPENDIX D

PRE – ACTION PROTOCOL FOR ADMINISTRATIVE CLAIMS

1. INTRODUCTION

This protocol serves as a framework for handling administrative claims in a structured and transparent manner before formal legal proceedings commence. It emphasises the importance of communication, the early exchange of full information, and good faith efforts to resolve disputes efficiently. This protocol outlines the procedures and principles that parties involved in administrative claims should follow before initiating formal litigation.

2. APPLICABILITY

This protocol applies to applications for administrative orders specified in Rule 56.1 of the Civil Procedure Rules (Revised Edition) 2023 and does not affect the obligation to make a claim without delay.

3. AIM OF THE PROTOCOL

The protocol aims to promote good practice by enabling parties to understand the dispute, identify issues, promptly share relevant documents and information, make informed decisions about commencing a claim, explore settlement options, and support efficient case management.

4. TYPES OF CLAIMS

The protocol addresses various applications for administrative orders under Part 56 of the Civil Procedure Rules (Revised Edition) 2023.

5. REQUESTS FOR INFORMATION AND DOCUMENTS

The protocol emphasises proportionality in pre-action requests for information. Such requests should be confined to information necessary to understand the nature of the claim.

6. DEFENDANT’S COMPLIANCE

A defendant should comply with requests for information as far as possible unless there is a good reason not to do so. In determining costs, the court will consider whether and to what extent the defendant has complied with requests for information.

7. LETTER OF CLAIM

7.1 A letter of claim should be issued without delay upon the accrual of the right to bring a claim. It should provide clear notice of the nature of the intended claim, supporting facts, and relevant documents.

7.2 The letter of claim is an essential step in the pre-action protocol for administrative claims and serves to notify the defendant of the nature of the intended claim. It also provides all relevant

details to the defendant to initiate communication and potentially resolve the matter without formal litigation.

- 7.3 The letter should follow the outline set out in **Annex A** to this protocol. The draft letter of claim in **Annex A** is only meant to be a guide and it may be amended accordingly to ensure that the aims of the protocol are achieved.

8. DELIVERY OF THE LETTER

The letter should be sent by the normal method of communication between the parties, and if there has been no prior engagement, it should be hand-delivered and sent by electronic mail (if known).

9. LETTER OF RESPONSE

- 9.1 The defendant should acknowledge receipt within seven (7) days and deliver a full response within fourteen (14) days of the acknowledgment of the letter of claim.
- 9.2 The letter of response is a crucial step in the pre-action protocol for administrative claims, and it allows the defendant to formally respond to the claimant's letter, address the issues raised by the claimant, clarify the defendant's position, and potentially work towards resolution or, if necessary, prepare for formal litigation.
- 9.3 Properly structuring the letter of response is essential for transparency and effective communication during the pre-action stage of an administrative claim. A suggested format for the response is provided in **Annex B**.

10. CONCESSIONS BY THE DEFENDANT

If the defendant concedes part or all of the claim, the response should specify the concession and any actions to be taken.

11. NOTIFICATION TO INTERESTED PARTIES

The letter of response should also be sent to any interested party.

12. LITIGANT IN PERSON

If the claimant is a litigant in person (representing themselves without a legal practitioner), the defendant should provide a copy of this protocol along with the letter of response.

**ANNEX A
LETTER OF CLAIM**

[Date]

[Name of claimant]

[Full Address of claimant]

[Name of defendant]

[Address of defendant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by the above-named to claim [specify the relief sought] in connection with [set out details of the nature of the claim and the legal basis for seeking relief. The relevant facts of the claim should cover the following where applicable:

- (a) **The defendant's reference details:** Provide reference details⁴ related to the matter in dispute or the public body handling the matter. This helps ensure that the letter is directed to the appropriate defendant.
- (b) **The details of the claimants' legal practitioner:** If the claimant has a legal practitioner, include their name, address, and any other contact details.
- (c) **The details of the matter being challenged:** Clearly state the matter being challenged, particularly if there have been multiple decisions.
- (d) **The details of any interested parties:** Include details of any Interested Parties and confirm that they have been sent a copy of this letter.
- (e) **The issue:** Summarise the facts and relevant legal principles, providing the date and details of the decision, act, or omission being challenged. Explain why it is considered to be incorrect or unlawful.
- (f) **The details of the action the defendant is expected to take:** Describe the remedy being sought, including whether a review or any interim remedy is being requested.
- (g) **ADR proposals:** If there are any proposals for alternative dispute resolution (ADR) to resolve or narrow the dispute, include them in this section.

⁴ 'Reference details' refers to any corresponding file number(s) in a particular matter.

- (h) **The details of any information sought:** Specify the information that is being sought, particularly related to the identifiable issues in dispute. This may include a request for a fuller explanation of the reasons for the decision being challenged.
- (i) **The details of any documents considered relevant and necessary:** Include details of any documentation, policies or any other information for which disclosure is sought and explain why they are relevant to the claim.
- (j) **Address for response and service of court documents:** Provide the address to which the defendant should send their response This may also be the address for the service of court documents.
- (k) **Proposed response date:** Specify the proposed date for the defendant's response. The exact time frame may vary depending on the circumstances, but fourteen (14) days is suggested as a reasonable time in most cases.
- (l) **Defendant's specific address:** Where a public body has a specific address to which these letters should be directed, the claimant must send the letter of claim to that specific address to ensure a prompt response.
- (m) **Attorney General's address:** A copy of this letter should be sent to the Attorney General of the Member State or Territory where the intended claim is for relief under the Constitution as well as any Interested Parties to the claim.]

You are required to acknowledge receipt of this letter within seven (7) days and provide a full response within fourteen (14) days of your acknowledgement. Failure to do so may result in court proceedings being commenced against you without further notice.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Claimant/Legal Practitioners for the claimant]

ANNEX B
LETTER OF RESPONSE

[Date]

[Name of defendant]

[Full Address of defendant]

[Name of claimant]

[Address of claimant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by the above-named to respond to the claim [set out details of the nature of the claim being responded to. The relevant facts of the response should cover the following where applicable:

- (a) **Reference details:** Set out relevant reference numbers related to the matter in dispute and specify the identity of those within the public body who have been handling the issue. This helps in ensuring that the response is properly connected to the specific case.
- (b) **The details of the matter being challenged:** Provide details of the matter being challenged, offering a more comprehensive explanation of the decision, where it is considered appropriate. This allows for a clearer understanding of the defendant's position.
- (c) **Response to the proposed claim:** Indicate whether the issue in question is conceded in part or in full, or whether it will be contested. If an interim response is being sent and there is a realistic prospect of settlement, include details. If the claimant is a litigant in person, enclose a copy of the Pre-Action Protocol with the response.
- (d) **Details of any other interested parties:** Identify any additional parties who are believed to have an interest in the matter but have not yet received a letter from the claimant. This ensures that all relevant parties are considered.
- (e) **ADR proposals:** Explain the defendant's position regarding any alternative dispute resolution (ADR) proposals made in the letter of claim and any ADR proposals put forward by the defendant. This clarifies the approach to resolving the dispute.
- (f) **Response to requests for information and documents:** Provide the defendant's answers to the requests made in the letter of claim, including reasons why any requested information or documents are not being disclosed. This section addresses the claimant's requests for information.

- (g) **Address for further correspondence and service of court documents:** Specify the address for any future correspondence regarding the matter and the service of court documents. This ensures that both parties have a clear channel of communication.]
- (h) **Details of service:** If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Defendant/Legal Practitioners for the defendant]