

Northern Ireland - Guidance notes on pre-action protocol for commercial action

Introduction

On 6th February 2023, the [Pre-Action Protocol for Commercial Actions](#) (referred throughout these guidance notes as "PAP") was introduced for all county court matters in Northern Ireland.

Previously, the PAP applied only to matters considered to be dealt in the Commercial List in the High Court of Northern Ireland, however it has now been expanded to include Commercial Actions in the County Court as well.

"Commercial Actions" are defined in the PAP as follows;

"any cause relating to business or commercial transactions, and without prejudice to the generality of the foregoing, shall extend to and encompass any cause relating to contracts for the work of building or engineering construction, contracts relating to the engagement of architects, accountants, engineers or surveyors, the sale and supply of goods, insurance, banking, financial services, the import or export of merchandise, agency, bailment, the carriage of goods, and causes other than personal injury causes which relate to the provision of professional services generally, together with such other type of cause as the Recorder of Belfast may in future think fit to designate as "commercial actions"

This definition is extremely wide ranging in terms of what is legally deemed a "commercial action" and thus needing comply with the PAP.

In addition there is also no differentiation as to the parties to whom the PAP applies - in England and Wales, for example, there is a pre-action protocol for debt claims which applies only to individuals (including sole traders).

In contrast, in Northern Ireland the PAP appears to apply to all parties, regardless as to whether they are a sole trader or a limited company, so long as they are involved in "Commercial Actions" as defined within the PAP.

The PAP specifies that parties adherence to it will have an effect on the court's judgment when it comes to deciding on the costs liability of parties in any relevant legal actions, so it is imperative to try to adhere to the PAP before commencement any legal claim.

In this factsheet we will use the term plaintiff to mean the party who has commence the debt claim, that is to say the creditor (the party owed the money).

Aims of the PAP

The PAP aims to do the following;

1. Encourage the exchange of early and full information about the prospective legal claim between parties;
2. Enable parties to avoid litigation by seeking to agree a settlement of the claim in advance of the commencement of proceedings; and
3. To support the efficient management of proceedings in matters where litigation cannot be avoided.

The main aspects of the PAP are as follows:

A. The contents of the plaintiff/claimant's letter of claim

The PAP specifies what content must be included in a plaintiff's letter of claim or letter before action - these are summarised below:

- i. Plaintiff's name and address;
- ii. Full name and addresses of proposed defendants;
- iii. Summary of material facts on which the claim is based;
- iv. The basis on which each claim is made, insofar as to identify contractual terms and statutory provisions which are to be relied upon;
- v. The nature of the relief sought by the plaintiff, including breakdown of sums pursued if liquidated damages are sought. If sums are claimed pursuant to a contract, sufficient details must be supplied to show how these sums have been calculated. In addition, if extensions of time are sought or proposed as part of the letter of claim, these should also be clearly specified within its contents;
- vi. Where a claim has been made previously by a plaintiff and rejected by a defendant, the plaintiff should include the reasons for such rejection and supply information as to why they feel it has been wrongly rejected;
- vii. The plaintiff should include the names of any experts on whose evidence they intend to rely, which identifies the issues which are prominent in the commercial dispute; and lastly;
- viii. Any proposals for meetings between the parties should also be contained within the letter of claim/ letter before action.

Alongside the completed letter, a copy of the PAP should be attached, particularly highlighting that the defendant is required to send their response within 21 days of receipt of the letter.

B. Content of defendant's response

Within 21 days of receipt of the plaintiff's letter of claim (which can be extended up to a maximum of 42 days, if agreed between the parties), the named defendant to the action should send their response.

The response should include the following, as detailed in the PAP:

- i. The defendant's response to the facts set out in the letter of claim, whether agreed or not agreed, and if unable to comment or agree, the basis on which that absence of agreement is warranted;
- ii. Confirmation as to which claims are accepted or rejected, and if the claim has been rejected, the basis on which the claim has been rejected;
- iii. If contributory negligence is alleged by the plaintiff, a summary of the facts relied upon;
- iv. Whether the defendant intends to set off monies against the claims made, or counterclaim against the plaintiff, and if so, then proceeding to provide the same information required as per plaintiff's letter of claim;

- v. The names of any experts on whose evidence they intend to rely, which identifies the issues which are prominent in the commercial dispute; and lastly;
- vi. Any responses to proposals for meetings between the parties, and in the absence of a proposal from the plaintiff, any proposal made by the defendant.

Plaintiff's response to any counterclaim

Following receipt of a counterclaim, the plaintiff must respond within 21 days in line with the guidance contained in Paragraph 5 of the PAP.

Pre-action meeting of the parties

In accordance with the PAP, within 21 days of receipt of the defendant's letter of response, or if applicable, the plaintiff's response to counterclaim, both parties should seek to convene a meeting to discuss the issues.

Those in attendance include applicable representatives of each party (holding sufficient authority to negotiate and agree settlements) in addition to legal representatives where appropriate.

The meeting, if held, will be treated as "without prejudice", save as to confirmation that either meeting took place and the identity of those who attended, or alternatively if the parties refused to attend, their reasons for this, and if a meeting did not take place the reasons why.

Conclusion

The PAP offers parties a process and a platform to resolve their difference without the court's intervention, and to enable them to, at the very least, consider all available avenues prior to the court's involvement.

The main aim of the PAP is to fulfil the "Overriding Objective", as set out in [Order 58, Rule 1 of the County Court Rules \(Northern Ireland\) 1981](#).

The overriding objective

1. (1) The overriding objective of these Rules is to enable the Court to deal with cases justly.
 - (2) Dealing with a case justly includes, so far as is practicable
 - (a) ensuring that the parties are on an equal footing;
 - (b) saving expense;
 - (c) dealing with the case 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) ensuring that it is dealt with expeditiously and fairly; and

- (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.

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