

PRACTICE DIRECTION – PRE-ACTION CONDUCT

http://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct#4.1

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SECTION I – INTRODUCTION

1. Aims

1.1 The aims of this Practice Direction are to –

- (1) enable parties to settle the issue between them without the need to start proceedings (that is, a court claim); and
- (2) support the efficient management by the court and the parties of proceedings that cannot be avoided.

1.2 These aims are to be achieved by encouraging the parties to –

- (1) exchange information about the issue, and
- (2) consider using a form of Alternative Dispute Resolution ('ADR').

2. Scope

2.1 This Practice Direction describes the conduct the court will normally expect of the prospective parties prior to the start of proceedings.

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3. Definitions

3.1 In this Practice Direction together with the Annexes –

(1) ‘proceedings’ means any proceedings started under Part 7 or Part 8 of the Civil Procedure Rules 1998 (‘CPR’);

(2) ‘claimant’ and ‘defendant’ refer to the respective parties to potential proceedings;

(3) ‘ADR’ means alternative dispute resolution, and is the collective description of methods of resolving disputes otherwise than through the normal trial process; (see paragraph 8.2 for further information); and

(4) ‘compliance’ means acting in accordance with, as applicable, the principles set out in Section III of this Practice Direction, the requirements in Section IV and a relevant pre-action protocol. The words ‘comply’ and ‘complied’ should be construed accordingly.

SECTION II – THE APPROACH OF THE COURTS

4. Compliance

4.1 The CPR enable the court to take into account the extent of the parties’ compliance with this Practice Direction or a relevant pre-action protocol (see paragraph 5.2) when giving directions for the management of claims (see CPR rule 3.1(4) and (5)) and when making orders about who should pay costs (see CPR rule 44.2(5)(a)).

4.2 The court will expect the parties to have complied with this Practice Direction or any relevant pre-action protocol. The court may ask the parties to explain what steps were taken to comply prior to the start of the claim. Where there has been a failure of compliance by a party the court may ask that party to provide an explanation.

Assessment of compliance

4.3 When considering compliance the court will –

(1) be concerned about whether the parties have complied in substance with the relevant principles and requirements and is not likely to be concerned with minor or technical shortcomings;

(2) consider the proportionality of the steps taken compared to the size and importance of the matter;

(3) take account of the urgency of the matter. Where a matter is urgent (for example, an application for an injunction) the court will expect the parties to comply only to the extent that it is reasonable to do so. (Paragraph 9.5 and 9.6 of this Practice Direction concern urgency caused by limitation periods.)

Examples of non-compliance

4.4 The court may decide that there has been a failure of compliance by a party because, for example, that party has –

(1) not provided sufficient information to enable the other party to understand the issues;

- (2) not acted within a time limit set out in a relevant pre-action protocol, or, where no specific time limit applies, within a reasonable period;
- (3) unreasonably refused to consider ADR (paragraph 8 in Part III of this Practice Direction and the pre-action protocols all contain similar provisions about ADR); or
- (4) without good reason, not disclosed documents requested to be disclosed.

Sanctions for non-compliance

4.5 The court will look at the overall effect of non-compliance on the other party when deciding whether to impose sanctions.

4.6 If, in the opinion of the court, there has been non-compliance, the sanctions which the court may impose include –

- (1) staying (that is suspending) the proceedings until steps which ought to have been taken have been taken;
- (2) an order that the party at fault pays the costs, or part of the costs, of the other party or parties;

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