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SUPREME COURT OF JUDICATURE

PRACTICE DIRECTION

PRE-ACTION PROTOCOLS

1. GENERAL

- 1.1. The following practice direction is issued by the Honourable Chief Justice pursuant to Part 4 of the Civil Proceedings Rules 1998 (as amended) (hereinafter referred to as the "CPR") in relation to pre-action protocols.
- 1.2. The approved pre-action protocols for specific areas of practice are annexed hereto as Appendix A, B, C and D respectively. Other pre-action protocols may subsequently be added.
- 1.3. Pre-action protocols outline the steps parties should take to seek information from and to provide information to each other about a prospective legal claim.
- 1.4. The objectives of pre-action protocols are:
 - (1) to encourage the exchange of early and full information about the prospective legal claim,
 - (2) to enable parties to avoid litigation by agreeing a settlement of the claim before the commencement of proceedings,
 - (3) to support the efficient management of proceedings under the CPR where litigation cannot be avoided.

2. COMPLIANCE WITH PROTOCOLS

- 2.1. The Court may treat the standards set out in protocols as the normal reasonable approach to pre-action conduct. The Court will expect all parties to have complied in substance with the terms of an approved protocol. If proceedings are issued the Court may take into account the failure of any party to comply with a pre-action

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protocol when deciding whether or not to make an order under Part 26 (Powers of the Court) or Part 66 (Costs-General).

- 2.2 Parties will not be expected to observe this direction in urgent claims or where a period of limitation is about to expire and the period between the expiration of the limitation period and the date the claimant instructs an attorney to act on his behalf in relation to the proposed claim is too short to allow for compliance with this direction, or for other good and sufficient reason there should not be compliance provided that the reasons for non-compliance are set out fully in the claim form or statement of case. However, in the case where the limitation period is about to expire, the claimant's attorney should give as much notice of the intention to issue proceedings as is practicable, and in appropriate cases the Court might 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.
- 2.3 The Court will expect all parties to have complied as far as reasonably possible with the terms of an approved protocol. If proceedings are issued and parties have not complied with this practice direction or a specific protocol, it will be for the Court to decide whether sanctions should be applied. The Court is not likely to be concerned with minor infringements of the practice direction or protocol. The Court is likely to look at the effect of non-compliance on the other party when deciding to impose sanctions.
- 2.4 If, in the opinion of the Court, non-compliance has led to the commencement of proceedings which might otherwise not have needed to be commenced, or has led to costs being incurred in the proceedings that might otherwise not have been incurred, the orders the Court may make include:

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(a) an order that the party at fault pay the costs of the proceedings, or part of those costs, of the other party or parties;

(b) an order that the party at fault pay those costs on an indemnity basis.

2.5 The Court will exercise its powers under paragraph 2.4 with the object of placing the innocent party in no worse a position than he would have been in if the protocol had been complied with.

2.6 Without prejudice to the generality of the foregoing the Court may take into account in determining whether compliance was not reasonably possible that any of the parties has had to obtain legal aid from the Legal Aid and Advisory Authority.

3 NON-COMPLIANCE WITH PROTOCOLS

3.1 A claimant may be found to have failed to comply with a protocol in, for example, failing to:

- (a) provide sufficient information, or
- (b) follow the procedure required by the protocol to be followed.

3.2 A defendant may be found to have failed to comply with a 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 relevant protocol;
- (b) make a full response within the time fixed for that purpose by the relevant protocol;
- (c) disclose documents required to be disclosed by the relevant protocol.

4 PRE-ACTION CONDUCT IN OTHER CASES

- 4.1 In cases not covered by an approved protocol, the court will expect the parties, in accordance with the overriding objective and the matters referred to in Part 1.1. (2) (a), (b) and (c) of the CPR, to act reasonably in exchanging information and documents relevant to the claim and generally in trying to avoid litigation.
- 4.2 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 claim letter promptly;
 - (c) the defendant giving within a reasonable time a detailed written response; and
 - (d) the parties conducting genuine and reasonable negotiations with a view to settling the claim economically and without court proceedings;
- 4.3 The claimant's letter should-
- (a) give sufficient concise details to enable the recipient to understand and investigate the claim without extensive further information;
 - (b) enclose copies of the essential documents which the claimant relies on;
 - (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;

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- (e) identify and ask for copies of any essential documents, not in his possession, which the claimant wishes to see;
 - (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 if the recipient is likely to be unrepresented, enclose a copy of the practice direction.
- 4.4 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.
- 4.5 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.
- 4.6 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 which the defendant relies on;
 - (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, not in his possession, which the defendant wishes to see; and the claimant should provide these within a reasonable time or explain in writing why he is not doing so;

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(e) state whether the defendant is prepared to enter into mediation or another alternative method of dispute resolution.

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

4.8 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.

4.9 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.

4.10 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.

5. COMMENCEMENT

a. The Court will take compliance or non-compliance with a relevant 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 started before that date.

b. Parties in a claim started after a relevant protocol came into force, who have, by work done before that date, achieved the objectives sought to be achieved by certain requirement of that protocol, need not take any further steps to comply with those requirements. They will not be considered to have not complied with the protocol for the purposes of paragraphs 2 and 3.

6. NEGOTIATIONS/SETTLEMENT:

6.1 Parties and their legal representatives are encouraged to enter into appropriate negotiations

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with a view to settling their dispute and avoiding litigation. The protocol does not specify when or how this might be done but parties should bear in mind that the courts increasingly take the view that litigation should be a last resort, and that parties should take all reasonable steps to resolve their dispute amicably before a claim is issued.

7. SERVICE

- 7.1 A claimant's letter and the defendant's response and any other communication in writing in compliance with this protocol may be personally delivered to the intended recipient or may be sent by pre-paid post or by delivery. This however is without prejudice to the parties agreeing on some other mode of transmission.
- 7.2 Where the claimant's letter or the defendant's response or other communication is sent by post, it shall be deemed to have been received by the intended recipient on the 14th day after posting.

Dated 15th the day of November 2005

Satnarine Sharma
Chief Justice

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

- 1.1 This protocol has been kept deliberately simple to promote ease of use and general acceptability. It applies where the only claim (not taking into account interest and costs) is for a specified sum of money, but it does not apply to claims for damages whether or not it is a claim arising out of an accident as a consequence of negligence for the cost of repairs executed to a vehicle or any property in, on or abutting a road or any other financial losses (See CPR Part 12.6).

LETTER OF CLAIM

- 1.2 The claimant shall send to the proposed defendant a letter of claim 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.
- 1.3 The 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 interest accrues after the date of the letter.
 - c. the amount of costs which the claimant claims.

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LETTER IN RESPONSE

- 1.4 The defendant should reply within 14 calendar days of the date of receipt of the letter indicating whether he admits the claim by filling out the defendant's form in Annex A. If there is no reply the claimant is entitled to issue proceedings.
- 1.5 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 his possession on which he relies. If he relies on documents which are not in his possession, he should identify the documents.
- 1.6 If the claim is admitted the defendant should provide proposals for the repayment of the debt and give full particulars of his income and assets and send any documents that support the particulars, so as to enable the claimant to properly evaluate the proposal.
- 1.7 The claimant is not obliged to accept any proposal made by the defendant. If he rejects the proposal, he should notify the defendant of the rejection and the reasons for it and of his intention to commence proceedings.
- 1.8 The Court will expect the parties to act reasonably in the making and considering of proposals.
- 1.9 The admission of the claim with or without an agreement on terms of payment, of course, does not preclude the claimant from issuing a claim and obtaining judgment in accordance with CPR Part 14.

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ANNEX A
LETTER OF CLAIM

To

Defendant

Dear Sirs

Re: Claimant's full name

Claimant's full address

We are instructed by the above named to claim against you the following sums (set out details) pursuant to (set out a summary of the facts on which the claim is based and enclose relevant documents).

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

Yours faithfully

APPENDIX B**PRE-ACTION PROTOCOL FOR ROAD TRAFFIC
ACCIDENTS AND PERSONAL INJURY CLAIMS****1. GENERAL:**

1.1 The aims of the pre-action protocols are:

- (a) To foster more pre-action contact between the parties, better and earlier exchange of information and better pre-action investigation by both sides;
- (b) to put the parties in a position where they may be able to settle cases fairly and early without litigation;
- (c) to enable proceedings to run to the court's timetable and efficiently, if litigation does become necessary;

1.2 This protocol is primarily designed for road traffic accidents that include property damage and personal injury. However, the substance of the protocol, should be followed for all personal injury cases. Further parties are urged to follow the substance of the protocol so far as same may be applicable to claims arising out of road traffic accidents where there is no personal injury.

1.3 The Court will be able to treat the standards set in this protocol as the normal reasonable approach to pre-action conduct. If proceedings are issued, it will be for the court to decide whether non-compliance with a protocol should merit adverse consequences.

1.4 If the court has to consider the question of compliance after proceedings have begun, it will not be concerned with minor infringements, e.g. failure by a short period to provide relevant information. One minor breach will not exempt the "innocent" party from following the protocol. The court will look at the effect of non-compliance on the other party when deciding whether to impose sanctions.

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1.5 The timetable and the arrangements for disclosing documents and obtaining expert evidence may need to be varied to suit the circumstances of the case. Where one or both parties consider the details of the protocol is not appropriate to the case, and proceedings are subsequently issued, the court will expect an explanation as to why the protocol has not been followed, or has been varied.

1.6 The Letter Before Claim:

The specimen letter of claim at Annex A will usually be sent to the individual defendant. In practice, he/she may have no personal financial interest in the financial outcome of the claim/dispute because he/she is insured. Court imposed sanctions for non-compliance with the protocol may be ineffective against an insured. This is why the 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 letter of claim only after some delay by the insured, it would not be unreasonable for the insurer to ask the claimant for additional time to respond.

1.7 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.

1.8 Reasons for Early Issue:

The 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 an attorney close to the end of any relevant limitation period. In these circumstances, the claimant's attorney should give as much notice of the intention to issue proceedings as is practicable and the parties should consider whether the court might 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.

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1.8 Status of Letters of Claim and Response:

Letters of claim and response 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 letter of claim 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 slightly differently than in the letter of claim and response. It would not be consistent with the spirit of the 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.

1.9 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 attorney can assist by identifying in the letter of claim or in a subsequent letter the particular categories of documents which they consider are relevant.

1.10 Experts:

The protocol encourages joint selection of, and access to, experts. Most frequently this will apply to the medical expert, but on occasions also to liability experts. The protocol promotes the practice of the claimant obtaining a medical report, disclosing it to the defendant who then asks questions and/or agrees it and does not obtain his own report.

1.11 The 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 to be issued, a medical report must be attached to these proceedings. However, if necessary, after proceedings have commenced and with the 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's report should be recoverable.

2. THE PROTOCOL

LETTER OF CLAIM

- 2.1 The claimant shall send to the proposed defendant two copies of a letter of claim immediately sufficient information is available to substantiate a realistic claim whether or not he is able to address issues of quantum in detail. One copy of the letter is for the defendant, the second for passing on to his insurers.
- 2.2 The letter shall contain
 - a. a clear summary of the facts on which the claim is based;
 - b. an indication of the nature of any injuries suffered;
 - c. where the claimant was treated and the attending physician;
 - d. the date/s of receiving treatment;
 - e. the extent of injuries to date;
 - f. details of property damage;
 - h. if the claimant can address issues of quantum in detail, the quantum of the overall claim with particulars of same and supporting documents; and
 - i. any other relevant information specific to the individual case.
- 2.3 Attorneys are recommended to use a standard format for such a letter an example is at Annex A: this can be amended to suit the particular case.
- 2.4 Sufficient information should be given in order to enable the defendant's insurer/attorneys to

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commence investigations and at least put a broad valuation on the proposed claim.

- 2.5 If the claimant has information relating to the identity of the defendant's insurers, he may also send a copy of the letter of claim directly to the insurers together with a letter to the insurers enquiring as to their position with respect to the prospective claim. Where the claimant intends in road traffic accidents to institute proceedings against the insurers, the claimant may in this letter to the insurers give to them any notice of his intention to do so as required by law.

LETTER IN RESPONSE

- 2.6 The defendant ('s insurers) will have 28 days (or such longer period as may be agreed) from the date of receipt of the letter of claim to investigate the claim and reply to the letter, stating whether liability is accepted and if not, giving reasons for denial of liability including any alternative version of events relied upon. If there is no reply by the defendant or insurers within 28 days, the claimant is entitled to issue proceedings.
- 2.7 If the defendant ('s insurers) require more time to investigate the claim and reply fully to the letter of claim, the parties may of course agree to extend the time. Parties are expected to act reasonably in requesting and/or agreeing to further time.
- 2.8 Where liability is admitted, the presumption is that the defendant will be bound by this admission for all claims.
- 2.9 Where it is the intention of the claimant to institute proceedings against the insurers under Section 10A of the Motor Vehicles Insurance (Third-Party Risks) Act Chap. 48:51, the claimant is reminded of the requirement to give to the insurers 28 days notice under Section 10A(5) of the Act.

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DOCUMENTS

- 2.8 If the defendant denies liability, he should enclose with the letter of reply, documents in his 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 on disclosure during proceedings.
- 2.9 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.

SPECIAL DAMAGES

- 2.10 Where the claimant has not addressed the question of quantum in the letter of claim, 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.

EXPERTS

- 2.11 The general rule is that parties must give instructions to a single expert. So that before any party instructs an expert the parties should attempt to agree to the appointment of a joint expert.
- 2.12 here parties instruct experts of their own choice. It would be for the court to decide subsequently, if proceedings are issued, whether either party acted unreasonably.
(Part 33 deals, inter alia, with experts' evidence and the power of the court to permit parties to call an expert witness and to put into evidence an expert's report.)

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ANNEX A
LETTER OF CLAIM

To

Defendant

Dear Sirs

Re: Claimant's full name

Claimant's age:

Claimant's full address

Claimant's work identification number if any

Claimant's Employer (name and address)

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)

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.

The circumstances of the accident are:-

(brief outline)

The reason why we are alleging fault is:

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(simple explanation e.g. defective machine, broken ground)

A description of our clients' injuries is as follows:-

(brief outline)

Our client received treatment for the injuries at name and address of hospital or clinic or doctor's office etc. and name of attending physician, if known).

Our client is still suffering from the effects of his/her injury.

He is employed as (occupation) and has had the following time off work (dates of absence). His income is (insert if known).

[Or if you are our client's employers, please provide us with the usual earnings details which will enable us to calculate his financial loss.]

[We are obtaining a police report and will let you have a copy of the same upon your undertaking to meet half the fee.]

[Where the claimant's loss can be calculated: He 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 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).

At this stage of our enquiries 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

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insurers.

Finally we expect a reply to this letter within 28 days by yourselves or your insurers.

Yours faithfully

APPENDIX C**PRE-ACTION PROTOCOL FOR DEFAMATION****1. General:**

- 1.1 A pre-action protocol for Defamation is critical and of utmost importance. Too often the experience has been that a defamation matter is settled only after the matter is before the courts and which could and should have been settled long before. This is undoubtedly a waste of judicial time and also legal costs incurred by the litigant.
- 1.2 There are also rare instances where defamation actions are filed without a letter preceding the action. This again is not a desirable practice as the matter could have been easily resolved once the issues and facts were fully ventilated by the parties prior to the commencement of the action.
- 1.3 The purposes of the pre-action protocol are as follows:-
 - (1) To establish a general code of good practice with respect to defamation matters which parties should follow when litigation is being considered;

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- (2) To encourage the early exchange of full information about the prospective claim. The parties involved should disclose all relevant information about themselves pertaining to the claim. This will assist the parties in understanding each other and each other's case;
- (3) To set a timetable for responding to claims to ensure that the matter is dealt with and resolved in a speedy fashion;
- (4) To set a standard for the contents of the pre-action letter and the letter in a response to same;
- (5) To enable parties to avoid litigation by agreeing to a settlement before the commencement of proceedings of a defamation claim;
- (6) To keep the cost of resolving defamation disputes at a minimum;
- (7) To support the efficient managing of proceedings under the Civil Proceedings Rules, 1998 where litigation cannot be avoided.

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2 The Protocol

2.1 Having regard to the general nature of a defamatory action it is essential for the claimant to notify the defendant of his claim in writing at the earliest possible time. A pre-action letter should be sent to the person who allegedly made the defamatory publication at the earliest possible opportunity.

2.2 Pre-Action Letter:

The Pre Action Letter should include the following:

- Name of claimant;
- Identify whether the claim is made for slander, libel or both. If the claim is made in slander the letter should identify the person(s) who uttered the words, where and when they were uttered and also the person(s) to whom the words were communicated and if the claim is maintainable only on proof of special damage, the damage suffered;
- Details of the publication/broadcast which contained the words complained of, for example, date, time, name of newspapers, name of radio station, author's name;
- Details of the words complained of, and the meaning(s) attributed to the words;
- Where possible, the newspaper clipping or a copy of the transcript of the words complained of;
- An explanation as to why the words are defamatory;
- General details of the claimant himself, for example, job title, position, accreditation;
- Nature and details of remedies sought, for example, a retraction, apology, correction, monetary compensation.

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- Where relevant, any facts or matters which make the claimant identifiable from the words complained of as well as the details of any special facts relevant to the interpretation of the words complained of and any particular damage caused by the words complained of.

3 Defendant's letter in response:

3.1 The defendant should respond to the pre-action letter of claim as soon as reasonably possible. If the defendant believes that he would be unable to respond within 14 days (or such shorter time limit as may be specified in the letter of claim) then he should specify a reasonable date by which he intends to respond.

3.2 The defendant's response should include the following:

- Whether the claimant's claim is accepted wholly or in part;
- If the claim is accepted in whole or in part the Defendant should indicate what remedies he/she is willing to offer;
- Whether the defendant has already published a retraction or an apology;
- Whether more information is required to answer to the claimant's claim;
- If the claim is rejected the defendant should explain the reasons why it is rejected;

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- Any facts on which the defendant is likely to rely in support of any substantive defence;
- Any relevant documents on which he may be relying;
- The defendant should also include in his/her response the meaning(s) he/she attributes to the words complained of, if different from the meanings attributed to them by the claimant, and, where relevant, details of any special facts relevant to the interpretation of the words complained of.

APPENDIX D

PRE-ACTION PROTOCOL FOR ADMINISTRATIVE ORDERS1. The Protocol:

- 1.1 This protocol sets out a code of good practice and contains the steps which parties should generally follow before making a claim for judicial review or other administrative order under Part 56 of the Civil Proceeding Rules 1998 (as amended) hereinafter referred to as "CPR".
- 1.2 This protocol does not impose a greater obligation on a public body to disclose documents or give reasons for its decision than that already provided for in statute or common law. However, where the court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may take this into account in exercising its discretion pursuant to Part 66.6 or Part 26 of the CPR.
- 1.3 This protocol will not be appropriate where the defendant does not have the legal power to change the decision being challenged.
- 1.4 This protocol will not be appropriate in urgent cases, for example, where there is an urgent need for an interim order to compel a public body to act. Where it has unlawfully refused to do so a claim should be made immediately. A letter before claim will not stop the implementation of a disputed decision in all instances.
- 1.5 All claimants will need to satisfy themselves whether they should follow the protocol, depending upon the circumstances of his or her case. Where the use of the protocol is appropriate, the court will normally expect all parties to have complied with it and will take into account compliance or non-compliance when making orders for costs.
- 1.6 Where possible, it is good practice to fax to the defendant the draft Claim Form which the claimant

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intends to issue. A claimant is also normally required to notify a defendant when an interim mandatory order is being sought.

1.7 This protocol does not affect the time limits specified by Rule 56.5(2) of the CPR, the Judicial Review Act, 2000 or the Freedom of Information Act, 1999.

1.8 Applications for an administrative order may not be appropriate in every instance. Claimants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before adopting this protocol or making a claim.

2. The Letter Before Claim

2.1 Before making a claim, the claimant should send a letter to the defendant. The purpose of this letter is to identify the issues in dispute and establish whether litigation can be avoided.

2.2 Claimants should normally use the suggested standard format for the letter outlined at Annex A.

2.3 The letter should state the claimant's interest in the decision being challenged and how he is affected by it. Where the claimant intends to rely on section 7 of the Judicial Review Act, 2000 he must say so in the letter and state why the proposed claim is justifiable in the public interest. The letter should also contain the date and details of the decision, act or omission being challenged and a clear summary of the facts on which the claim is based. Without prejudice to the generality of the last sentence, the letter should, where applicable, and so far as is known to the claimant, identify the government department(s) and the public officer(s) involved in the decision or act complained of. The letter should also contain the details of any relevant information that the claimant is seeking and an explanation of why this is considered relevant.

2.4 The letter should specify the relief claimed and where damages are claimed the claimant should state the

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quantum or identify the basis on which the quantum of damages may be assessed.

- 2.5 The letter should normally contain the details of any interested parties known to the claimant. They should be sent a copy of the letter before claim for information. Claimants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before sending the letter before claim to other interested parties or making a claim.
- 2.6 A claim should not normally be made until the proposed reply date given in the letter before claim has passed, unless the circumstances of the case or enactment require more immediate action.
- 2.7 A copy of the letter should be sent to the Solicitor General.

3. The Letter in Response

- 3.1 Defendants should normally respond within 30 days using the standard format at Annex B. Failure to do so will be taken into account by the court in exercising its discretion pursuant to Part 26 or Part 66 of the CPR.
- 3.2 Where it is not possible to reply within the proposed time limit the defendant should send an interim reply and propose a reasonable extension. Where an extension is sought, reasons should be given and, where required, additional information requested. This will not affect the time limit for making a claim for judicial review nor will it bind the claimant where he or she considers this to be unreasonable. However, where the court considers that a subsequent claim is made prematurely it may impose sanctions.
- 3.3 If the claim is being conceded in full, the reply should say so in clear and unambiguous terms.
- 3.4 If the claim is being conceded in part or not being conceded at all, the reply should say so in clear and unambiguous terms, and:

(a) where appropriate, contain a new decision, clearly

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identifying what aspects of the claim are being conceded and what are not, or, give a clear timescale within which the new decision will be issued;

(b) provide a more detailed explanation for the decision, if considered appropriate to do so;

(c) address any points of dispute, or explain why they cannot be addressed;

(d) enclose any relevant documentation requested by the claimant, or explain why the documents are not being enclosed; and

(e) where appropriate, confirm whether or not they will oppose any application for an interim remedy.

3.5 The response should be sent to all interested parties identified by the claimant and contain details of any other parties who the defendant considers also have an interest.

ANNEX A

LETTER BEFORE CLAIM

SECTION 1. INFORMATION REQUIRED IN A LETTER BEFORE CLAIM

PROPOSED CLAIM FOR AN ADMINISTRATIVE ORDER

To

(Insert the name and address of the proposed defendant - see details in section 2)

2. The claimant

(Insert the title, first and last name and the address of the claimant)

3. Reference details

(When dealing with large organisations it is important to understand that the information relating to any particular individual's previous dealings with it may not be immediately available, therefore it is important to set out the relevant reference numbers for the matter in dispute and/or the identity of those within the public body who have been handling the particular matter in dispute - see details in section 3)

4. The details of the matter being challenged

(Set out clearly the matter being challenged, particularly if there has been more than one decision)

5. The issue

(Set out the date and details of the decision, or act or omission being challenged, a brief summary of the facts and why it is contented to be wrong)

6. The details of the action that the defendant is expected to take

(Set out the details of the remedy sought, including whether a review or any interim remedy are being requested)

7. The details of the legal advisers, if any, dealing with this claim

(Set out the name, address and reference details of any

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legal advisers dealing with the claim)

8 The details of any interested parties

(Set out the details of any interested parties and confirm that they have been sent a copy of this letter)

9 The details of any information sought

(Set out the details of any information that is sought. This may include a request for a fuller explanation of the reasons for the decision that is being challenged)

10 The details of any documents that are considered relevant and necessary

(Set out the details of any documentation or policy in respect of which the disclosure is sought and explain why these are relevant. If you rely on a statutory duty to disclose, this should be specified)

11 The address for reply and service of court documents

(Insert the address for the reply)

12. Proposed reply date

(The precise time will depend upon the circumstances of the individual case. However, although a shorter or longer time may be appropriate in a particular case, 30 days is a reasonable time to allow in most circumstances)

ANNEX B

RESPONSE TO A LETTER BEFORE CLAIM

INFORMATION REQUIRED IN A RESPONSE TO A LETTER BEFORE CLAIM

PROPOSED CLAIM FOR AN ADMINISTRATIVE ORDER

1 **The claimant**

(Insert the title, first and last names and the address to which any reply should be sent)

2 **From**

(Insert the name and address of the defendant)

3 **Reference details**

(Set out the relevant reference numbers for the matter in dispute and the identity of those within the public body who have been handling the issue)

4 **The details of the matter being challenged**

(Set out details of the matter being challenged, providing a fuller explanation of the decision, where this is considered appropriate)

5 **Response to the proposed claim**

(Set out whether the issue in question is conceded in part, or in full, or will be contested. Where it is not proposed to disclose any information that has been requested, explain the reason for this. Where an interim reply is being sent and there is a realistic prospect of settlement, details should be included)

6 **Details of any other interested parties**

(Identify any other parties who you consider have an interest who have not already been sent a letter by the claimant)

7 **Address for further correspondence and service of court documents**

(Set out the address for any future correspondence on this matter)