

ROYAL COURT OF JERSEY

RC17/01

Pre Action Communications

1. This Practice Direction applies to all disputes other than applications for injunctive relief made without notice to a potential defendant, applications for directions pursuant to the Trusts (Jersey) Law 1984 (as amended), administrative appeals and judicial review.
2. The purpose of this Practice Direction is to:-
 - a. encourage exchange of material information about a legal action being considered by a party; and
 - b. to allow parties an opportunity to settle a claim before the commencement of proceedings.
3. Where proceedings are commenced, the Court will treat the requirements of this Practice Direction as defining the reasonable standards expected by a party prior to commencing proceedings.
4. Where the Court is considering whether or not parties have adhered to this Practice Direction once proceedings have been commenced, the focus of the Court will be on substantial compliance and not minor departures, and whether non-compliance has prevented the objectives of this Practice Direction being achieved.
5. The Practice Direction should not be seen or used as a tactical device by one party to attempt to seek an advantage over another or to generate unnecessary costs.
6. The costs of both parties in complying with this Practice Direction shall be kept to a modest level and shall be proportionate to the complexity of the case and the amount of money at stake.

7. Where this practice direction applies prior to commencing proceedings a plaintiff or his legal adviser shall send to each proposed defendant a Claim Letter which shall contain the following information:-
- i. The plaintiff's full name and sufficient other information to enable any defendant to identify the plaintiff;
 - ii. The full name of each proposed defendant and sufficient other information to enable each defendant to be identified by any defendant;
 - iii. A clear summary of the facts and the legal basis upon which the claim, and if more than one, each claim is based;
 - iv. The amount of money claimed. The summary should be the best estimate a plaintiff is able to provide of the likely amount of damages claimed and should identify different types of loss sought;
 - v. Any invitation to meet or other proposals to allow parties to explore settlement;
8. Within 14 days of receipt of a Claim Letter a defendant must acknowledge receipt in writing and provide any contact details of the person dealing with the Claim Letter, including the name and address of any insurer.
9. If a defendant does not respond within 14 days a plaintiff may issue proceedings without having to take any further steps pursuant to this Practice Direction;
10. Where a defendant considers that the matters raised in the Claim Letter cannot or should not be determined by the Royal Court, a defendant shall set out a clear summary of why this is the case identifying which court or other forum it contends should determine the plaintiff's claim, if the matter cannot be resolved.

11. Where a defendant considers that a claim is brought too late, the defendant's response shall contain a summary of the facts relied on and the reasons why the claim is said to be out of time.
12. Where a defendant considers that the plaintiff has pursued the wrong entity, the defendant's response shall summarise why this is the case and insofar as the information is within the reasonable knowledge of the recipient of the Claim Letter, that recipient shall identify the correct defendant.
13. In all cases when acknowledging receipt of the Claim Letter, the defendant shall
 - a. as far as reasonably practical address any matters it can that fall within paragraphs 10-12; and
 - b. Indicate when it intends to provide a substantive response.
14. Any substantive response after acknowledging the claim Letter shall be provided as soon as reasonably practical - 14 days in a straightforward case and no more than 3 months for the most complex cases. The response should also address any matters falling within paragraphs 10-12 that the defendant could not address when acknowledging receipt of the Claim Letter
15. What is reasonably practical will be assessed having regard to the factual complexity of the case and what steps it is necessary for a defendant to take to respond to the Claim Letter.
16. For medical negligence cases the availability of relevant medical records and practitioners involved in any treatment referred to in the Claim Letter and the need for expert advice may be relevant factors in assessing what is reasonably practical.
17. A defendant's response shall further provide a clear summary of the facts and legal basis set out in the Claim Letter which are agreed or not agreed, including whether or not the defendant agrees the jurisdiction of the Royal Court;
18. A defendant's response shall also set out any allegations of contributory negligence or any counterclaim the defendant intends to make. Any such allegation shall contain the same level of detail as is required for the Claim Letter;

19. Where a defendant makes an allegation of contributory negligence or a counterclaim against a plaintiff a plaintiff shall respond as soon as reasonably practical and shall provide the same information as is required for the defendant's response; for straightforward claims this should be within 14 days and within 6 weeks for complex cases.
20. As far as possible any Claim Letter and any response should be clear and should describe a party's position in a straightforward and concise manner.
21. Following the exchange of the communications required by this Practice Direction the parties and their advisers shall consider whether negotiation or some form of alternative dispute resolution might enable them to settle their dispute without commencing proceedings;
22. The obligation to consider the possibility of settlement is a continuing requirement and shall apply at all times including after proceedings have commenced;
23. Where proceedings are commenced the Court may consider how far any party has taken reasonable steps to comply with the terms of this Practice Direction. Any non-compliance may be taken into account when the Court is considering orders for costs, either during the proceedings or following trial. The Court may decide there has been failure of compliance where a party has:-
- a. not provided a clear summary of the facts or legal basis upon which a claim or counterclaim is made;
 - b. not acted within a time limit set out in this Practice Direction or within a reasonable period; and/or
 - c. unreasonably refused to negotiate or consider a form of alternative dispute resolution.
24. Where a plaintiff fails to comply with this Practice Direction because of concerns about a claim being out of time if proceedings are not immediately issued and

served, the Court at any stage may take such non-compliance into account in relation to the question of costs.

This practice direction shall come into force on 1st June 2017