

Pre-Action Protocol for Professional Negligence

Pursuing a [professional negligence claim](#) can be a complicated process, but it's important to ensure that the correct pre-action protocols are being followed before a case makes it to court.

The professional negligence pre-action protocol defines a series of steps and procedures that a party attempting to make a claim against another must follow. If the pre-action protocol is ignored, this could affect a claim when it's heard in court.

In this article, the expert legal team at Wilson Browne explains what pre-action protocols are, why the professional negligence pre-action protocol is so important to follow, and what might happen if it's ignored. Here's everything you need to know about the professional negligence pre-action protocol.

What Are Pre-Action Protocols?

Pre-action protocols establish a correct procedure that must be followed by anyone attempting to initiate a civil claim against another party. Pre-action protocols offer what's essentially a step-by-step process, and it's important that this process is followed before you attempt to have a case heard in court.

As the name suggests, pre-action protocols have to be followed *before* any action is taken against a party that could see a civil claim end up in a court of law. At its most basic, any pre-action protocol includes such acts as notifying a party that you intend to pursue a claim against them, sending a Letter of Claim, and allowing a preliminary investigation into the claim to be carried out by all parties.

The UK's Department of Justice has established [pre-action protocols](#) for a wide variety of potential litigation cases, including:

- Professional negligence claims
- Debt recovery claims
- Personal injury claims
- Housing conditions claims
- Package travel claims

Civil claims can be made against individuals, organisations or businesses, but they must always follow the correct pre-action protocol as outlined for the specific type of claim being made. For example, if an individual is attempting to make a claim against a professional for negligence, they must follow the professional negligence pre-action protocol.

If the party making a claim doesn't follow the pre-action protocol, then the court will consider this when the case is heard. Failure to follow the correct pre-action protocol can result in your claim being substantially reduced or, in extreme cases, thrown out entirely. Because following pre-action protocol is so important to the success of a civil claim, it's always recommended that you seek professional legal advice before taking any action against another party.

What Are the Objectives of Pre-Action Protocols?

The primary objective of a pre-action protocol is to give all parties involved in a potential claim the chance to settle their dispute outside of court. By providing a framework that can be followed by everyone making a civil claim, the justice department hopes to avoid having to hear cases in courts that could otherwise be resolved independently.

Following pre-action protocols gives both parties the opportunity to come to an agreement or make a financial settlement through a process of arbitration. This saves the courts money while also allowing them to focus on other matters, and it can save the parties involved in the dispute money, too. It's much easier for everyone involved if a claim is settled before it needs to be heard in court – you'll save on legal expenses, court costs and may even receive a larger settlement.

Pre-action protocols encourage information to be exchanged early on in proceedings, and they also encourage timetables to be set and stuck to. This not only saves everyone time, but it makes the litigation process much smoother and more efficient.

The courts place a huge emphasis on following pre-action protocols. In fact, they encourage them to such an extent that even if you win a claim, the amount could be heavily reduced to cover costs if it's felt that the case could have been settled before it was heard in court.

To summarise, the main goals of a pre-action protocol are:

- To establish a timetable for proceedings
- To avoid cases going to court
- To encourage out-of-court settlements
- To save on legal costs
- To save on court costs

What Is the Professional Negligence Pre-Action Protocol?

Professional negligence might occur when you've been let down by a skilled or qualified professional, such as an architect, solicitor or surveyor. Professional negligence claims might be made when a profession you've employed to carry out work breaks their contract, fails in their responsibilities, or breaches their duty of care towards you, their client.

Professional negligence claims have limitations attached to them and they can be complicated to pursue, so it's important to ensure that the professional negligence pre-action protocol is followed in order to create the strongest case possible.

The professional negligence pre-action protocol commonly follows these steps:

1. Preliminary Notice

The first step in the professional negligence pre-action protocol is to deliver a Preliminary Notice of your intent to make a claim to the person you're making the claim against. A Preliminary Notice is a courteous way of outlining your intent to pursue damages on the basis of professional negligence, and it should contain several key elements of information.

A Preliminary Notice takes the form of a letter, and it should always contain:

- Details of who you're pursuing a claim against
- Details of the claim you're pursuing
- Why you're pursuing a claim
- How much compensation you're seeking

At this stage, the details included in the Preliminary Notice might be brief, as the main intent is to make the defendant aware that you are pursuing a claim due to professional negligence. The defendant then has 21 days within which to acknowledge receipt of the letter, but they have no obligation to take any further action at this stage. Your [professional negligence solicitor](#) will assist with the drafting and sending of all correspondence relating to a professional negligence claim.

2. Letter of Claim

The second step in the professional negligence pre-action protocol is to produce a Letter of Claim and send it to the defendant. This is a more detailed letter than the Preliminary Notice, and it must contain as much information regarding the claim as possible.

The Letter of Claim is often relied on if the case makes it to court, and the details and information it contains need to be as accurate and factually correct as they can be. If the Letter of Claim differs significantly from what's said or pursued in court, you will have trouble winning a case.

The professional negligence pre-action protocol stipulates certain elements that have to be included in a Letter of Claim:

- The full identities of the parties you are pursuing a claim against, be they individuals, organisations or companies. It must also include the details of anyone else who may be involved in your claim.
- A detailed description of the events that form the basis of your claim of professional negligence. This section must include information on key dates in the timeline of events as well as details of any relevant written evidence you may want to rely on in court.
- Any requests for further information or evidence that the claimant wishes to receive from the defendant.
- Comprehensive details of the allegations being made against the defendant (why are they being accused of professional negligence?).
- A detailed breakdown of damages and financial loss suffered by the claimant as a result of professional negligence. A Letter of Claim must specify how the damages have been estimated and how the total figure of the claim has been reached.

A Letter of Claim may also contain details of any experts who have been asked to provide evidence for the case, in addition to any potential information concerning arbitration and a resolution of the dispute outside of the courts.

3. Letter of Acknowledgment

Once the Letter of Claim has been received by the defendant, they have 21 days to respond with a Letter of Acknowledgment. If they have yet to respond to the initial Preliminary Notice, then a Letter of Acknowledgment at this stage suffices for both.

It's important that a defendant responds within this period, else a court may see fit to issue sanctions against them in relation to the case. A Letter of Acknowledgment only needs to acknowledge receipt of the Letter of Claim, no further information or details need to be included.

4. Investigation and Letter of Response

The next stage in the professional negligence pre-action protocol is for the defendant to officially investigate the claim against them. They have 90 days to do so, giving them time to collect any evidence for their defence and any witnesses who can support them against the claimant.

The defendant must send the claimant a Letter of Response once they've investigated the claims made against them. A Letter of Response must include a written statement in response to every claim or allegation included in the Letter of Claim.

Importantly, the defendant must decide whether they agree with the claim made against them or if they refute it. If they disagree and deny that professional negligence occurred,

then they must include details and evidence that supports their denial and offers a different interpretation of events.

5. Letter of Settlement

The goal of a pre-action protocol is to avoid going to court, and at this stage the defendant may see fit to make a settlement offer if they agree that they were in the wrong.

If this is the case, then they will send the claimant, a Letter of Settlement in addition to the Letter of Response. A Letter of Settlement outlines how much of your claim they agree with, and how much financial compensation they are willing to pay.

6. Alternative Dispute Resolution

However, the case may continue if the defendant disagrees with the claims of professional negligence made against them.

In this situation, the final stage of a professional negligence pre-action protocol is to attempt to have the dispute arbitrated through a process known as Alternative Dispute Resolution. This can take many forms, with mediation and arbitration being the most common. The goal is for both parties to arrive at a mutually agreeable conclusion to the resolution.

If a dispute is still unresolved after going through an arbitration process, then the case will need to be heard in court.

Are Pre-Action Protocols Mandatory?

Pre-action protocols aren't mandatory, but this doesn't mean that they shouldn't be stringently followed. Pre-action protocols exist for a reason, with the primary goal being to save everyone involved in a dispute – including the claimant, the defendants, the legal teams and the courts – time and money.

Pre-action protocols establish a framework for settling disputes before they are taken to court, and it's in everyone's interests for them to be adhered to. Because of the complicated nature of bringing about a claim for professional negligence, or any other claim for that matter, it's important that you always seek expert legal advice before commencing any form of proceeding. It's often quicker and more efficient for professional negligence lawyers to negotiate a settlement with defendants, rather than taking a case to court.

While they aren't mandatory, if a claimant takes a case straight to court, the court will view this negatively. Even if the claimant wins the case, they could have their claim reduced or lose a substantial portion of it in order to cover court costs. This could happen if the court believes that the pre-action protocol wasn't followed and the claim could have been settled out of court.

Contact Wilson Browne for More Information on Professional Negligence Pre-Action Protocol

Making a successful professional negligence claim can be a complicated process, so it's important to seek assistance from skilled lawyers.

With decades of legal experience, Wilson Browne's legal team can provide the advice you need to pursue a professional negligence claim – including following the professional negligence pre-action protocol.

[Contact our expert team of professional negligence lawyers today](#) to find out more.

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