

## Pre-Action Protocol in Defamation

September 2011



On 14 April 2011, the Senior Queen's Bench Judge, the Hon. Mr Justice Gillen introduced the Pre-Action Protocol in Defamation. The overriding objective of the Protocol is to ensure that the parties are on an equal footing and to save expense so that cases are dealt with justly.

It hopes to achieve these objectives by setting out a code of good practice which the parties should follow when litigation is being considered and includes a timetable for the exchange of information relevant to the dispute. It also provides advice concerning the content of the Letter of Claim and the defendant's response, with the overarching aim of keeping costs in resolving disputes proportionate.

For example, information which should be included in the initial Letter of Claim includes a sufficient explanation to enable the Defendant to appreciate why the words being complained of are inaccurate or unsupportable and the nature of the remedy sought by the Plaintiff.

Under this Pre-Action Protocol, the Defendant should provide a full response to the Letter of Claim as soon as reasonably possible, preferably within 14 days but no later than 28 days from receipt of the Letter of Claim.

The Defendant's response should include whether or not the Plaintiff's claim is accepted or rejected. If accepted, the Defendant should state whether or not it is willing to offer any of the remedies requested by the Plaintiff. If the claim is rejected, the Defendant should explain why the claim is rejected to include facts which the Defendant is likely to rely upon in support of its defence.

It is also noted in the Pre-Action Protocol that both parties should act reasonably to keep costs proportionate to the nature and gravity of the case and the stage the complaint has reached.

There is also an obligation upon the parties to consider whether some form of Alternative Dispute Resolution is more suitable than litigation. However, it is noted in the Protocol that no party can or should be forced to mediate or enter into any form of Alternative Dispute Resolution but it is actively encouraged by the judiciary as a cost-effective and timely way to resolve disputes.

Cleaver Fulton Rankin is experienced in a range of Alternative Dispute Resolution procedures and therefore is well placed to aid both Plaintiff's and Defendants through the Pre-Action Protocol. Should you feel that you require any advice concerning the taking of a claim for defamation or defence to a defamation action, please contact Fergal Maguire, or another member of our Litigation team, who will be happy to assist you.