

**PRE-ACTION PROTOCOL FOR THE RESOLUTION OF
CLAIMS UNDER THE INHERITANCE (PROVISION FOR
FAMILY AND DEPENDANTS) (NORTHERN IRELAND)
ORDER 1979**

1.00 THE AIMS OF THE PROTOCOL

1.01 This Protocol is intended to apply to claims under the 1979 Order. It has two aims:

- (a) To encourage the resolution of disputes without recourse to hostile litigation, and
- (b) Where litigation proves unavoidable, to ensure that it is simplified by maximising the exchange of relevant information before the litigation process has commenced.

1.02 Claimants tend to issue proceedings before they have exhausted the possibility of securing a settlement short of litigation. This is often because of the relatively tight timetable fixed by the legislation for the bringing of claims. Except where the absolute time limits under article 11 of the 1979 Order arise there is no reason why the parties cannot agree that, following the intimation of a claim, proceedings can be withheld unless and until the parties have exhausted the possibility of an amicable settlement. Accordingly, the claimant in the initial letter of claim should invite the personal representatives to agree not to take any time point while the matter is under discussion or consideration. The personal representatives should endeavour to obtain the consent of all beneficiaries to this course. If consent is not forthcoming so that the claimant has to issue proceedings to prevent time running the court may take this into account when exercising its powers and discretions relating to costs. Where consent

to the withholding of proceedings is given the court can normally be expected to grant an extension of time should it subsequently become necessary to issue. Where proceedings have to be issued in order to comply with the time limits prescribed in article 11 of the 1979 Order the parties should immediately thereafter seek directions and the Court can then consider whether to stay proceedings pending compliance with the Protocol.

1.03 Parties will be expected to follow the spirit of this Protocol and seek to achieve its aims so far as is practicable in the particular case. The court may take an unjustified failure to follow the Protocol into account in the exercise of its powers and discretions relating to costs.

2.00 **Status of letters of claim and response**

2.01 A letter of claim or of response is not intended to have the same status as pleadings or affidavits. Matters may come to light as a result of investigations after the initial letter of claim has been sent or after the defendant has responded to it. These investigations could result in the pleaded case of a party differing in some respects from the case outlined in that party's letter of claim or response. It will not be consistent with the spirit of the Protocol for a party to complain about this difference provided there is no indication of an intention to mislead.

3.00 **Letters of claim**

3.01 As soon as sufficient information is available to formulate a reasoned claim the claimant shall send a letter of claim to each of the deceased's personal representatives or, where the identity of these is unknown,

to each beneficiary likely to be adversely affected by the claim.

3.02 The letter shall contain a clear summary of the claim and the facts upon which it is based and state the remedy sought by the claimant.

3.03. The use of a standard format claim letter is recommended. A sample letter is set out in the Annex. This can be tailored to suit the particular case.

3.04 The claimant should give details to the best of his ability of the matters set out in Article 5 of the 1979 Order considered to be relevant to the claim.

3.05 Copies of documents in the claimant's possession which he wishes to rely upon or which any other party is likely to wish to rely upon should, if possible, be enclosed with the letter of claim. The letter of claim may specify

classes of documents considered relevant for early disclosure by the proposed defendants. Where relevant documents are likely to be in the possession of third parties all necessary information and, if required, written authority should be provided to ensure that copies can be obtained. The sending of the letter should not be delayed because all such documents are not immediately available. The letter should indicate the nature of any documents which are not available and when they will be forwarded.

4.00 Letter of response

4.01 Each potential defendant should respond to the letter of claim within 21 days. He should indicate whether he denies or in principle admits the claim and should respond in outline to the matters of fact relied upon by the claimant and set out any particular matters of fact upon which he

relies. If a potential defendant is unable to respond within the time limit on any particular matter the initial letter of response should give the reason for the absence of a full response and state when any outstanding matter will be dealt with.

4.02 Each potential defendant should give details to the best of his ability of the matters set out in Article 5 of the 1979 Order that are considered relevant to his response to the claim.

4.03 Copies of documents in any potential defendant's possession which he wishes to rely upon or which any other party is likely to wish to rely upon should be enclosed with the letter of response. Where relevant documents are likely to be in the possession of third parties all necessary information and, if required, written authority should be provided to ensure that copies can be obtained. The sending of the letter should not be delayed

because all such documents are not immediately available. The letter should indicate the nature of any documents which are not available and when they will be forwarded.

5.00 Disclosure of documents

5.01 The aim of the early disclosure of documents by the potential 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. Legal representatives should assist by identifying in correspondence the particular documents or categories of documents which they consider are relevant and by providing copies of these where appropriate.

5.02 All documents are disclosed on the basis that they are not to be disclosed to third parties or used for any purpose other than the resolution of the dispute unless otherwise agreed in writing.

6.00 Experts

6.01 Expert evidence appropriate to such proceedings may include, for example, valuation evidence, tax-related or actuarial evidence or medical evidence.

6.02 Parties should use jointly appointed experts so far as possible. Accordingly, before any potential party (“the first party”) instructs an expert he shall give all other potential parties the name or names of one or more experts in the relevant discipline whom he considers suitable to instruct.

6.03 Within 14 days any other party may indicate an objection to one or more of such experts and suggest alternatives. The first party should then instruct a mutually acceptable expert.

6.04 If, exceptionally, a jointly instructed expert cannot be agreed the parties may instruct experts of their own choice. It will be for the court to decide subsequently, if proceedings are issued, how it should fairly deal with the costs incurred by the appointment of such experts.

6.05 No party shall be entitled to instruct on his sole behalf an expert proposed in a list of experts for joint instructions until it is clear that joint instructions cannot be agreed and thereafter the party who first submitted a list of experts shall be entitled to select one of the experts on his list as his own expert and no other party shall instruct any expert named on that list until such nomination has taken place.

6.06 If the other parties do not object to an expert suggested by the first party they shall not be entitled to rely on their own expert evidence within that particular field unless:

- (1) If proceedings are issued, the court so directs; or
- (2) The first party's expert report has been amended and the first party is not prepared to disclose the original report.

6.07 Any party may send to the agreed expert through the first party's solicitors written questions on the report relevant to the issues. Copies of all such questions and answers must simultaneously be sent to all other parties.

6.08 The cost of obtaining any report from an agreed expert will usually be paid initially by the instructing first party. The cost of an expert's replies to questions will

usually be borne initially by the party asking the questions. Where proceedings are issued the liability for costs will in the case of dispute be determined by the court.

7.00 Negotiations/mediation

7.01 Parties and their legal representatives are encouraged to enter into negotiations prior to starting proceedings. A refusal or failure without good cause to enter into meaningful negotiations prior to the issue of proceedings is likely to be highly material to the question of costs. The parties should bear in mind that the courts increasingly take the view that litigation should be a last resort and proceedings should not be issued prematurely when settlement is a reasonable prospect.

7.02 Mediation may assist in achieving a compromise, particularly in relation to disputes between family members. A failure to mediate will often risk substantially

increased costs and this can be reflected in the eventual disposal by the court. The form of any mediation will be set out in the mediation agreement between the mediator and the parties. Mediation can be used to achieve a compromise wherever and whenever negotiation is appropriate. Typically, mediation may be considered:

- (i) Before proceedings have commenced but once the issues are fairly well defined and the parties affected by them are known;
- (ii) After proceedings have commenced and affidavits have been served so that parties have a better appreciation of the issues; and
- (iii) At any critical stage in the litigation, such as after disclosure of documents, obtaining of experts' reports or otherwise in the lead-up to the trial.

The parties should seek to conclude any mediation within 42 days of the appointment of the mediator.

7.03 Since mediation negotiations are treated by courts as “without prejudice”, points disclosed during an attempt to reach a settlement will be confidential between the parties and cannot be used as evidence in any subsequent court proceedings unless expressly agreed to by the party who made the disclosure. The mediator will not divulge information without consent nor will he pass on such information to outside parties or act for either party to the dispute in subsequent proceedings.

7.04 A settlement reached pursuant to any mediation should be recorded in writing and signed by the parties or their authorised representatives at the conclusion of the mediation. Insofar as the subject matter of the dispute requires the sanction or approval of the court any

agreement achieved as a result of any mediation should be expressed to be subject to the approval of the court.

7.05 Where the position of the Inland Revenue may have a bearing on any compromise solution which is proposed, any agreement may be made conditional upon the obtaining of the Inland Revenue's attitude or the mediation adjourned to enable clarification of its position to be sought.

ANNEX

Letter of Claim

To

Dear

Re (The estate of the name of the deceased)

We are instructed on behalf of (claimant) to seek reasonable provision out of the estate of the above named deceased.

The basis of our client's claim is (brief outline).

The facts upon which are client relies are as follows:

(Set out material facts with sufficient clarity and detail for the potential defendants to make a preliminary assessment of the claim).

The details of relevant matters to which we consider the court would have regard under Article 5 of the Inheritance (Provision for Family and Dependents) (Northern Ireland)

Order 1979 insofar as they are presently known to our client are *(Deal so far as possible with each of the matters to be taken into account under Article 5)*.

(a)....

(b)...

©...

We enclose copies of documents which are relevant to the claim *(List documents)*. In accordance with the Pre-Action Protocol for the resolution of claims under the 1979 Order you must send a letter of response enclosing copies of any documents in your possession that are relevant to the claim within 21 days. We believe that the following types of documents relevant to the claim are likely to be in your possession. *(List documents)*

(a)...

(b)...

©...

Pursuant to the Protocol we invite you as personal representatives of the deceased to furnish us within 21 days of the date of this letter with copies of the following documents or alternatively all necessary information and written authority to enable us to obtain copies of those documents (*List documents required*).

Also pursuant to the Protocol we have refrained until now from issuing proceedings under the 1979 Order. Please confirm that no time point will be taken against the claimant unless and until you let us know in writing that the claimant is required to issue proceedings. If you do not so confirm we will be obliged to issue proceedings in order to comply with the time limit provided for in the 1979 Order. Under the terms of the Protocol the court will take your lack of confirmation into account in relation to the costs of those proceedings.

We suggest that you should promptly seek advice from a solicitor regarding the contents of this letter which we have also sent to:

[Names and addresses of other personal representatives or beneficiaries]

Yours faithfully