

HELP – I'm being sued

Times have changed and the first indication you will receive of pending proceedings is what is known as a '**Pre-Action Protocol Letter**'. Indeed, if the Claimant (except in emergencies) does not write a letter in a prescribed form, the Court may well impose costs penalties on the Claimant at a later date.

The important thing is not to ignore the correspondence. If you ignore it, and proceedings are commenced against you, then you may well be condemned in costs.

Your response should set out your side of the case, clearly stating why you deny any allegations which are being made against you and, if it is appropriate, raising any allegations which you wish to make against the possible Claimant. It would be wise to take legal advice before responding to the letter, but make sure you observe the time limits imposed.

The Courts encourage mediation and settlement at all times but particularly before Court proceedings are commenced. Indeed, if you do not consider these options, you can be condemned in costs at a later date.

Mediation will involve paying an independent third party to listen to the arguments from both sides, with a view to trying to find some common ground and a means of resolving the dispute. These discussions are 'off the record' which means that anything which is said by the parties cannot be used in Court proceedings. It is, however, important to note that mediation often involves compromise and both sides need to approach the meeting with a view to making concessions. It is worth bearing in mind that in any Court proceedings, it is very rare for a party to recover all of the costs expended on the proceedings. Even a successful party can be out of pocket by up to 40% of the costs expended on a case, and this should be taken into account when considering mediation.

If the worst thing happens and you are involved in Court proceedings, you must respond by returning the form that accompanies the Court documentation within the time limited by the documentation. This is normally 14 days. If you fail to do so, your right to take an active role in the proceedings could be severely prejudiced. There are other time limits that follow on from this, which are beyond the scope of this article.

The key message to get across is that upon receipt of a Pre-Action Protocol Letter, or Court proceedings, you should take legal advice **immediately**. Failure to do so could result in you not receiving timely advice and your ability to defend the proceedings being thwarted, even if you have a good case.

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