

How do I start proceedings?

For some time, there has been in force a requirement to send a Pre-Action Protocol Letter before commencing various types of Court action. That principle has now been extended to all types of litigation, including debt collection. The letter must comply with the Rules and must give the time limits recommended. Failure to comply can result in the Court making an adverse costs order at a later date. There are some exceptional cases where it is permitted to avoid compliance, but these are few.

It is, therefore, imperative that from the outset you instruct your solicitor and that you provide full details of the person you wish to take action against, the basis of the claim, how it arose, any relevant dates – e.g. the date and time of an accident, and, where appropriate, all relevant documents should be attached to the letter. Your solicitor will then draft the required letter for your approval before sending off the final version.

The Courts require parties to proceedings to consider alternative means of resolving their dispute than taking legal action. This can include mediation and alternative dispute resolution. Indeed, adverse consequences can arise if it cannot be shown that this has been considered, or, alternatively, a satisfactory explanation for discounting this means of resolution is not given.

If a suggestion of mediation is accepted, then, for the mediation to be successful, it will almost certainly require compromise on the part of both parties. Experience has shown that at the commencement of proceedings, compromise is the last thing that parties wish to consider, but it is imperative to bear this in mind given the fact that it is very rare for a successful litigant to make a complete recovery of legal costs and it is more common for as little as 60% of the total outlay to be recovered.

There are also tactical advantages of considering settlement terms prior to the commencement of proceedings, because your solicitor can write a letter in prescribed fashion to the other side, which may give you some security at a later date both in relation to interest and costs.

All of these steps must be considered before commencing proceedings. Thereafter, if proceedings are inevitable, your solicitor will explain to you the course the action will take and the timescales involved.

Carter Bells

Carter Bells LLP Solicitors, Kings' Stone House, 12 High Street
Kingston Upon Thames, Surrey, KT1 1HD
Tel: 020 8939 4000 Fax: 020 8541 3347 DX: 31 505 Kingston
www.carterbells.co.uk