

Comply or it goes awry in PROFESSIONAL NEGLIGENCE CLAIMS

Whether you are a multinational corporation or a small, one-man business, if you feel you have a claim in professional negligence, then you will NEED to comply with the Ministry of Justice Pre-action Protocol in order to seek redress.



Say, for instance, you had instructed an architect to design a brand new building for your dental practice and you trusted that the architect was capable of the job because they had, apparently, designed many similar buildings for similar uses.

However, once the building was ready for use a previously unseen fault with the design became apparent and the building could not be used for the purpose required.

So, you are left without functioning premises, you are severely out of pocket, and the architect says it is not his problem.

WHAT TO DO?



1

PRELIMINARY NOTICE

The business owner/dentist (the Claimant) must write a letter to the architect describing the problems (as the claimant sees them) and detailing his intention to commence a claim. If possible the financial value of the claim should be specified.



2

LETTER OF ACKNOWLEDGEMENT

The architect (the Defendant) has 21 days to acknowledge this letter of preliminary notice. Although the defendant is not legally required to do anything further at this point, most will contact their own lawyer and/or professional indemnity insurer to ensure everyone is aware of the potential claim, should it proceed.

Sometimes, at this point, the parties can agree some way to move forward without the need for any further action - perhaps the architect could work out a fix for the building or he may offer to refund his fees in respect of the financial loss suffered by the business owner.



3

LETTER OF CLAIM

Following the defendant's Letter of Acknowledgement, and if no settlement is forthcoming, the potential claim will need thorough investigation to clarify:

- the parties involved
- the facts of the case upon which the claim is based
- all allegations against the defendant
- an explanation of how the loss was caused
- a calculation of the financial loss

Supporting documentation should be included.



4

LETTER OF ACKNOWLEDGEMENT

As before, the defendant has 21 days to acknowledge the letter of claim.



5

LETTER OF RESPONSE

The defendant has three months to respond to the Letter of Claim - this response can be a detailed (usually open) letter either denying or admitting liability, or partial liability. If liability is denied a clear statement of reasons, relating to each allegation of the claim, must be included. The defendant should include any evidence they intend to use in disputing the claim and any further information they require of the claimant.



6

LETTER OF SETTLEMENT

An out-of-court settlement is still possible at this point as the defendant has the opportunity to send a Letter of Settlement. Typically, this will be a "without prejudice" letter proposing a settlement and/or a request for further information in order to make a proposal of settlement.

If the defendant denies liability and does not include a Letter of Settlement, the claimant may wish to take the matter to court by issuing proceedings. However, in some circumstances,

especially where partial liability is admitted, negotiations may continue through ADR (alternative dispute resolution) to seek a settlement before going to court.



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NEGLIGENCE CLAIMS**

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