

# **SUPPLEMENT TO**



## **ANTIGUA AND BARBUDA OFFICIAL GAZETTE**

OF THURSDAY 11th January, 2024

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**Vol. XLIV — ISSUE NO. 5**

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# **ANTIGUA AND BARBUDA HIGH COURT EDITION**



# THE ANTIGUA AND BARBUDA OFFICIAL GAZETTE

## SUPPLEMENTARY

**VOL: XLIV****Thursday 11th January, 2024****No. 5**

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**NOTICES***Antigua and Barbuda High Court Notices***EASTERN CARIBBEAN SUPREME COURT  
CIVIL PROCEDURE RULES (REVISED EDITION) 2023****PRACTICE DIRECTION 26****No. 3 of 2023****CIVIL RESTRAINT ORDERS**

This Practice Direction is made pursuant to Rule 4.2(1) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and is applicable to all the Member States and Territories in the jurisdiction of the Eastern Caribbean Supreme Court.

**1. INTRODUCTION**

1.1 This Practice Direction supplements Rule 26.2(6) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 which provides that a practice direction may set out –

- (a) the circumstances in which a court has the power to make a civil restraint order against a party to the proceedings;
- (b) the procedure where a party applies for a civil restraint order against another party; and
- (c) the consequences of the court making a civil restraint order.

1.2 This Practice Direction applies where the court is considering whether to make -

- (a) a limited civil restraint order;
- (b) an extended civil restraint order; or
- (c) a general civil restraint order,

against a party who has issued claims or made applications which are totally without merit.

**2. GENERAL**

2.1 A party to the proceedings may apply for a civil restraint order.

2.2 An application made under this Practice Direction for or pursuant to a civil restraint order must be made in accordance with Part 11 of the Civil Procedure Rules (Revised Edition) 2023.

2.3 An application by a party to the proceedings for a civil restraint order must specify the type of civil restraint order being sought.

2.4 Examples of a limited civil restraint order, an extended civil restraint order and a general civil restraint order are annexed to this Practice Direction as **Annexes A, B and C** respectively. These examples may be modified as appropriate in any particular case.

### **3. LIMITED CIVIL RESTRAINT ORDERS**

3.1 A limited civil restraint order may be made by the court where a party has made two or more applications in the same proceedings which are totally without merit.

3.2 Where the court makes a limited civil restraint order, the party against whom the order is made –

- (a) will be restrained from making any further applications in the proceedings in which the order is made without first obtaining the permission of the court;
- (b) may apply for amendment or discharge of the order provided the party has first obtained the permission of the court; and
- (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

3.3 Where a party who is subject to a limited civil restraint order makes a further application in the proceedings in which the order is made without first obtaining the permission of the court, such application will automatically be dismissed –

- (a) without the court having to make any further order; and
- (b) without the need for the other party to respond to it.

3.4 A limited civil restraint order –

- (a) is limited to the particular proceedings in which it is made; and
- (b) will remain in effect for the duration of the proceedings in which it is made, unless the court otherwise orders.

### **4. EXTENDED CIVIL RESTRAINT ORDERS**

4.1 An extended civil restraint order may be made by the court where a party has persistently issued claims or made applications which are totally without merit.

4.2 Where the court makes an extended civil restraint order, the party against whom the order is made –

- (a) will be restrained from issuing claims or making applications concerning any matter involving or relating to or touching upon or leading to the proceedings in which this order is made without first obtaining the permission of the court;

- (b) may apply for amendment or discharge of the order provided the party has first obtained the permission of the court; and
- (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

4.3 Where a party who is subject to an extended civil restraint order issues a claim or makes an application concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of the court, the claim or application will automatically be struck out or dismissed –

- (a) without the court having to make any further order; and
- (b) without the need for the other party to respond to it.

4.4 An extended civil restraint order may be made for a specified period not exceeding two years.

4.5 The court may extend the duration of an extended civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than two (2) years on any given occasion.

## **5. GENERAL CIVIL RESTRAINT ORDERS**

5.1 A general civil restraint order may be made by the court where the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate.

5.2 Where the court makes a general civil restraint order, the party against whom the order is made –

- (a) will be restrained from issuing any claim or making any application in any court without first obtaining the permission of the court;
- (b) may apply for amendment or discharge of the order provided the party has first obtained the permission of the court; and
- (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

5.3 Where a party who is subject to a general civil restraint order issues a claim or makes an application without first obtaining the permission of the court, the claim or application will automatically be struck out or dismissed –

- (a) without the court having to make any further order; and
- (b) without the need for the other party to respond to it.

5.4 A general civil restraint order will be made for a specified period not exceeding two years.

5.5 The court may extend the duration of a general civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than two (2) years on any given occasion.

#### **6. EFFECTIVE DATE**

This Practice Direction shall come into effect in a Member State or Territory on the 15<sup>th</sup> day of January, 2024.

**Dated the 15<sup>th</sup> day of December 2023**



**Dame Janice M. Pereira DBE, LL.D**

**Chief Justice**

**ANNEX A**  
**LIMITED CIVIL RESTRAINT ORDER**  
(Heading as in Form 1)

BEFORE:

MADE :

ENTERED:

**PENAL NOTICE**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT AND YOU MAY BE LIABLE TO BE IMPRISONED.]**

UPON THE APPLICATION/UPON THE COURT CONSIDERING ON ITS OWN INITIATIVE that the Defendant/Claimant

AND UPON hearing the Claimant/Defendant

AND UPON hearing the Defendant/Claimant in response (if applicable)

AND UPON FINDING THAT the Claimant/Defendant has made two or more applications in these proceedings which are totally without merit.

**IT IS ORDERED THAT:**

1. The Claimant/Defendant be restrained from making any further application in these proceedings without first obtaining the permission of the court.
2. This Order will remain in effect for the duration of the proceedings or until [insert date].
3. There is no order as to costs/Costs to be paid in the sum of [ ].

**By the Court,**

**Chief Registrar/ Registrar**

**ANNEX B**  
**EXTENDED CIVIL RESTRAINT ORDER**  
(Heading as in Form 1)

BEFORE:

MADE :

ENTERED:

PENAL NOTICE

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT AND YOU MAY BE LIABLE TO BE IMPRISONED.]**

UPON THE APPLICATION/UPON THE COURT CONSIDERING ON ITS OWN INITIATIVE that the Defendant/Claimant

AND UPON hearing the Claimant/Defendant

AND UPON hearing the Defendant/Claimant in response (if applicable)

AND UPON FINDING THAT the Claimant/Defendant has persistently issued claims or made applications which are totally without merit.

**IT IS ORDERED THAT:**

1. The Claimant/Defendant be restrained from issuing claims or making applications concerning any matter involving or relating to or touching upon or leading to the proceedings in which this order is made without first obtaining the permission of court.
2. This Order will remain in effect until [insert date].
3. There is no order as to costs/Costs to be paid in the sum of [     ].

**By the Court,**

**Chief Registrar/ Registrar**

**ANNEX C**  
**GENERAL CIVIL RESTRAINT ORDER**  
(Heading as in Form 1)

BEFORE:

MADE :

ENTERED:

PENAL NOTICE

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT AND YOU MAY BE LIABLE TO BE IMPRISONED.]**

UPON THE APPLICATION/UPON THE COURT CONSIDERING ON ITS OWN INITIATIVE that the Defendant/Claimant

AND UPON hearing the Claimant/Defendant

AND UPON hearing the Defendant/Claimant in response (if applicable)

AND UPON FINDING THAT the Claimant/Defendant persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate.

**IT IS ORDERED THAT:**

1. The Claimant/Defendant be restrained from issuing any claim or making any application without first obtaining the permission of the court.
2. This Order will remain in effect for the duration of the proceedings or until [insert date] or until further order.
3. There is no order as to costs/Costs to be paid in the sum of [     ].

**By the Court,**

**Chief Registrar/ Registrar**

**EASTERN CARIBBEAN SUPREME COURT**  
**CIVIL PROCEDURE RULES (REVISED EDITION) 2023**

**PRACTICE DIRECTION 17**

**No. 4 of 2023**

**PROCEDURE FOR APPLYING TO THE COURT  
FOR AN INTERIM ORDER**

This Practice Direction is made pursuant to Part 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and supplements rules 17.1(5) and 17.1(6) and shall be applicable to all the Member States and Territories in the jurisdiction of the Eastern Caribbean Supreme Court.

**1. INTRODUCTORY NOTE AND DEFINITIONS**

1.1 This Practice Direction outlines the procedure for applying to the court for an interim order, including, in particular:

- (a) an interim injunction;
- (b) a freezing order; and
- (c) a search order.

1.2 In this Practice Direction, unless it appears otherwise from the context —

“appropriate case” or “appropriate cases” means a case where giving notice would enable the respondent to take steps to defeat the purpose of the interim order, or a case where there has been literally no time to give notice before the interim order is required to prevent the threatened wrongful act.

“court” means a Judge of the High Court in a Member State or Territory;

“document” means a document in both physical and electronic form;

“electronic device” includes computers and other electronic devices as well as computer data storage in digital forms such as cloud computing storage;

“material” means material in both physical and electronic form;

“responsible person” means in relation to a workplace, the employer or a person who exercises managerial responsibility and in relation to any premises to be searched that is not a workplace, a person who has control of those premises, as occupier or otherwise, in connection with the carrying on by them of a trade, business or other undertaking.

**2. APPLICATION FOR AN INTERIM ORDER**

2.1 An application for an interim order is made in Form 6 and must generally state —

- (a) the nature and terms of the order sought;
- (b) the grounds on which the interim order is sought; and
- (c) the date, time and place of the hearing.

- 2.2 Unless the court directs or a rule or a practice direction provides otherwise, notice of the application must be given as soon as practicable after issue and in any event not less than 3 days before the hearing of the application.
- 2.3 An application for an interim order must be supported by evidence on affidavit unless the court otherwise orders.
- 2.4 The evidence must set out the facts on which the applicant relies for the order being sought against the respondent, including all material facts of which the court should be made aware.
- 2.5 An application for an interim order may be made without notice to the respondent in appropriate cases. Where an application is made without notice, the evidence filed in support must set out why notice was not given.

### **3. URGENT APPLICATIONS AND APPLICATIONS WITHOUT NOTICE**

- 3.1 These fall into two categories:  
(a) applications where a claim form has already been issued; and  
(b) applications where a claim form has not yet been issued,  
and, in both cases, where notice of the application has not been given to the respondent.
- 3.2 An application for an interim order is normally dealt with at a court hearing but in cases of extreme urgency may be dealt with on paper or by telephone or by other electronic means.
- 3.3 The applicant must attach to their application a certificate of urgency in the manner prescribed by rule 11.6(3) of the Civil Procedure Rules (Revised Edition) 2023.
- 3.4 The notice of application together with the evidence in support of the application and a draft order must be filed at least two hours before the hearing of the application. In appropriate cases, the court may permit a witness statement to be treated as evidence in support of the application.
- 3.5 Where the application is made before the claim has been issued, the applicant must undertake to issue a claim form immediately and in any event the court will give directions for the commencement of the claim.
- 3.6 An interim order made before the issue of a claim form should state in the title after the names of the applicant and respondent ‘the Claimant and Defendant in an Intended Action’.
- 3.7 Where possible, the claim form should be served with the interim order.

### **4. APPLICATION FOR INTERIM INJUNCTION**

- 4.1 The provisions of paragraphs 2 and 3 apply to an application for an interim injunction.
- 4.2 The evidence in support of an application for an interim injunction must set out —  
(a) the facts giving rise to the claim for injunctive relief and the precise terms of the interim injunctive relief being sought;

- (b) the facts being relied on as justifying the application being made ex parte, showing that an injunction is necessary and that the matter is urgent;
- (c) details of any notice given to the defendant or, if no notice was given, the reasons for giving not giving notice;
- (d) details of any answer asserted (or likely to be asserted) or any defences likely to be asserted by the respondent either to the substantive claim or to the interim relief; and
- (e) any facts known to the applicant which might lead the court to refuse to grant the relief.

4.3 An order for an interim injunction must set out clearly what the respondent must do or not do.

4.4 An order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until final hearing or further order.

4.5 When the court makes an order for an injunction, it should consider whether to require an undertaking by the applicant to pay any damages sustained by a person other than the respondent, including another party to the proceedings or any other person who may suffer loss as a consequence of the order.

4.6 An order for an interim injunction, unless the court orders otherwise, must contain –

(a) an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay;

(b) if the order is made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the notice of application, evidence in support and any order made as soon as practicable;

(c) if the order is made without notice to any other party, a return date for a further hearing at which the other party can be present; and

(d) if the order is made before issue of a claim, directions for the issuance of the claim.

4.7 A standard form of an interim injunction is annexed to this Practice Direction as Appendix I. This form may be modified as appropriate in any particular case.

## **5. APPLICATION FOR FREEZING ORDER**

5.1 The provisions of paragraphs 2, 3 and 4 (where appropriate) apply to an application for a freezing order.

5.2 In addition to the matters under paragraph 2.4, the evidence in support of an application for a freezing order must also—

(a) depose to facts showing a good arguable case against the defendant,

(b) identify specific assets, such as bank accounts, which the claimant wishes to be frozen; and

(c) depose to facts from which the court can conclude that there is a risk of removal of those assets from the jurisdiction or dissipation by the defendant.

5.3 A standard form of a freezing order is annexed to this Practice Direction as Appendix II. This form may be modified as appropriate in any particular case.

## **6. APPLICATION FOR A SEARCH ORDER**

6.1 The provisions of paragraphs 2 and 3 apply to an application for a search order.

6.2 Where a search order is sought, the applicant must identify an independent legal practitioner who will be responsible for serving the search order on the respondent and supervising the execution of the order. The supervising legal practitioner must not be an employee or member of the applicant's legal practitioner's law firm.

6.3 Generally, the affidavit in support of an application for a search order must state —

- (a) the address of the premises on which the search order is to be executed and whether it is a residential or commercial address;
- (b) the subject matter of the search order, including the probability that the subject matter can be found on the premises on which the search order is to be executed;
- (c) the name, address and experience of the supervising legal practitioner under paragraph 6.2;
- (d) the reasons for which a search order is being sought, including the probability that the relevant material would disappear if the order were not made; and
- (e) where the subject matter is electronically stored information (ESI), the nature/description of the ESI including the probability that the subject matter can be found on an electronic device, or any connected computer data storage forms and devices.

6.4 A standard form of a search order is annexed to this Practice Direction as Appendix III. This form may be modified as appropriate in any particular case.

6.5 The search order must be served personally by the supervising legal practitioner, unless the court otherwise orders and must be accompanied by the evidence in support and any documents capable of being copied.

6.6 Confidential exhibits need not be served but they must be made available for inspection by the respondent in the presence of the applicant's legal practitioner while the order is carried out and afterwards be retained by the respondent's legal practitioner on their undertaking not to permit the respondent to —

- (a) view them or copies of them except in their presence; or
- (b) make or take any note or record of them.

6.7 The supervising legal practitioner may only be accompanied to the premises on which the search order is to be executed by the persons mentioned in the search order.

6.8 The supervising legal practitioner must explain the terms and effect of the order to the respondent in plain language and advise them —

- (a) of their right to take legal advice and to apply to vary or discharge the order;
- (b) that they may be entitled to avail themselves of —
  - (i) legal professional privilege; and
  - (ii) the privilege against self-incrimination.

6.9 A search order may only be served between 9.00 a.m. and 5.00 p.m. from Monday to Friday, excluding bank or public holidays unless the court otherwise orders.

6.10 In executing the search order —

- (a) no material shall be removed unless clearly covered by the terms of the order;
- (b) the premises must not be searched and no material shall be removed from them except in the presence of the respondent or a person who is a duly authorised representative of the respondent;
- (c) where copies of documents are sought, the documents should be retained for no more than 2 days before returning to the owner;
- (d) where material in dispute is removed pending trial, the applicant's legal practitioner should place it in the custody of the respondent's legal practitioner on their undertaking to retain it in safekeeping and to produce it to the court when required;
- (e) the supervising legal practitioner must make a list of all material removed from the premises and supply a copy of the list to the respondent;
- (f) no material shall be removed from the premises until the respondent has had reasonable time to check the list;
- (g) if any of the listed items exists only in computer readable form, the respondent must immediately give the applicant's legal practitioner effective access to the computers, with all necessary passwords, biometric passcodes or encryption keys, to enable them to be searched, and cause the listed items to be printed out;
- (h) the applicant must take all reasonable steps to ensure that no damage is done to any electronic device;
- (i) the applicant and their representatives may not themselves search the respondent's electronic devices unless they have sufficient expertise to do so without damaging the respondent's electronic devices;
- (j) in relation to ESI, no ESI material shall be removed unless clearly covered by the terms of the order.

6.11 As soon as practicable after the execution of the search order, the supervising legal practitioner shall provide a report on the carrying out of the order to the applicant's legal practitioner and as soon as the report is received the applicant's legal practitioner shall —

- (a) serve a copy of it on the respondent; and
- (b) file a copy of it with the court.

6.12 Where the supervising legal practitioner is satisfied that full compliance with paragraphs 6.10 (f) and (g) above is impracticable, they may permit the search to proceed and items to be removed without compliance with the impracticable requirements.

## 7. EFFECTIVE DATE

This Practice Direction shall come into effect in a Member State or Territory on the 15<sup>th</sup> day of January, 2024.

**Dated the 15<sup>th</sup> day of December 2023**



**Dame Janice M. Pereira DBE, LL.D**

**APPENDIX I**  
**INTERIM INJUNCTION**

**IN THE EASTERN CARIBBEAN SUPREME COURT**

**[NAME OF MEMBER STATE OR TERRITORY]**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM No.**

**BETWEEN:**

**Claimant(s)/Applicant(s)**

**and**

**Defendant(s)/Respondent(s)**

**Before**        [       ]

**Date**         [       ]

**Entered**     [       ]

[Name, address and reference of respondent]

**PENAL NOTICE**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT AND YOU MAY BE LIABLE TO BE IMPRISONED.]**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT.]**

Any other person who knows of this order and does anything which helps or permits the respondent to breach the terms of this order may also be held to be in contempt of Court and may be imprisoned, fined or have their assets seized.

**UPON HEARING [       ]**

**THIS ORDER**

1. This is an Interim Injunction made against [ ] (“the respondent”) on [ ] by The Honourable Justice [ ] on the application of [ ] (“the applicant”). The Judge has read the Affidavit(s) listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.
2. This order was made at a hearing without notice to the respondent. The respondent has a right to apply to the court to vary or discharge the order.
3. There will be a further hearing in respect of this order on [ ] with a time estimate of [ ] minutes (“the Return Date”).
4. If there is more than one respondent—
  - (a) unless otherwise stated, references in this order to “the respondent” mean both or all of them; and
  - (b) this order is effective against any respondent on whom it is served or who is given notice of it.
5. Until the return date or further order of this court, the respondent [is restrained and an injunction is hereby granted restraining them, whether by themselves, their servants or agents, or howsoever otherwise from.....].

**OR**

Pending the return date or further order of this court, the respondent shall [ ].

6. The costs of this application are reserved to the Judge hearing the application on the return date.

**VARIATION OR DISCHARGE OF THIS ORDER**

7. Anyone served with or notified of this order may apply to the court to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant’s legal practitioner. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the applicant’s legal practitioner in advance.

**INTERPRETATION OF THIS ORDER**

8. A respondent who is an individual who is ordered not to do something must not do it themselves or in any other way. They must not do it through others acting on their behalf or on their instructions or with their encouragement.
9. A respondent who is not an individual who is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

**COMMUNICATIONS WITH THE COURT**

All communications to the court about this order should be sent to [insert email address of the relevant court office] quoting the claim number.

The court office is situated at [ ]. The offices are open between [ ] a.m. and [ ] p.m. Monday to Friday, excluding bank or public holidays. The telephone number is [ ].

**BY THE COURT**

.....  
**REGISTRAR**

**SCHEDULE A—AFFIDAVITS**

The applicant relied on the following affidavits –

[name]                      [number of affidavit]                      [date sworn]                      [filed on behalf of]

**SCHEDULE B – UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) If the court later finds that this order has caused loss to the respondent and decides that the respondent should be compensated for that loss, the applicant will comply with any order the court may make.
- (2) As soon as practicable the applicant will issue and serve a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].
- (3) The applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the applicant’s legal practitioner].
- (4) The applicant will serve upon the respondent [together with this order] [as soon as practicable]—
  - (a) copies of the affidavits and exhibits containing the evidence relied upon by the applicant, and any other documents provided to the Court on the making of the application;
  - (b) the claim form; and
  - (c) a notice of application for continuation of the order.
- (5) Anyone notified of this order will be given a copy of it by the applicant’s legal practitioner.

**NAME AND ADDRESS OF APPLICANT’S LEGAL PRACTITIONER**

The applicant’s legal practitioner is –

[Name, address, reference, and telephone numbers both in and out of office hours and e-mail address]

**APPENDIX II**  
**FREEZING ORDER**

Important Note: A freezing order is an exceptional order, and applicants are reminded of their duty of full and frank disclosure to the court. Failure to comply with that duty may lead to the discharge of the order with all attendant consequences.

**IN THE EASTERN CARIBBEAN SUPREME COURT**

**[NAME OF MEMBER STATE OR TERRITORY]**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM No.**

**BETWEEN**

**Claimant(s)/Applicant(s)**

**and**

**Defendant(s)/Respondent(s)**

**Before**        [       ]

**Date**         [       ]

**Entered**     [       ]

[Name, address and reference of respondent]

**PENAL NOTICE**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT AND YOU MAY BE LIABLE TO BE IMPRISONED.]**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT.]**

Any other person who knows of this order and does anything which helps or permits the respondent to breach the terms of this order may also be held to be in contempt of Court and may be imprisoned, fined or have their assets seized.

**UPON HEARING [ ]**

**AND UPON READING [ ]**

### **THIS ORDER**

1. This is a Freezing Order made against [ ] (“the respondent”) on [ ] by The Honourable Justice [ ] on the application of [ ] (“the applicant”). The Judge read the Affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.
2. This order was made at a hearing without notice to the respondent. The respondent has a right to apply to the Court to vary or discharge the order.
3. There will be a further hearing in respect of this order on [ ] with a time estimate of [ ] minutes (“the Return Date”<sup>11</sup>).
4. If there is more than one respondent—
  - (a) unless otherwise stated, references in this order to “the respondent” mean both or all of them; and
  - (b) this order is effective against any respondent on whom it is served or who is given notice of it.

### **FREEZING ORDER**

[For freezing order limited to assets in [ ]]

5. Until after the Return Date or further order of the Court, the respondent must not remove from [ ] or in any way dispose of, deal with or diminish the value of any of its or their assets which are in [ ] up to the value of \$

[For worldwide freezing order]

5. Until the return date or further order of the Court, the respondent must not –

(a) remove from [ ] any of their assets which are in [ ] up to the value of \$ ; or

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<sup>1</sup> Within 28 days after the freezing order was granted.

- (b) in any way dispose of, deal with or diminish the value of any of their assets whether they are in or outside [ ] up to the same value.

[For either form of freezing order]

6. Paragraph 5 applies to all the respondent's assets whether or not they are in their possession or own name, whether they are solely or jointly owned [and whether the respondent is interested in them legally, beneficially or otherwise].<sup>2</sup> For the purpose of this order the respondent's assets include any asset which they have the power, directly or indirectly, to dispose of or deal with as if it were their own. The respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with their direct or indirect instructions.

7. This prohibition includes the following assets in particular –

- (a) the property known as [title/address] or the net sale money after payment of any mortgages if it has been sold;
- (b) the property and assets of the respondent's business<sup>3</sup> [known as [name]] [carried on at [address]] or the sale money if any of them have been sold;
- (c) any money in the account numbered [account number] at [title/address]; and
- (d) any interest under any trust or similar entity including any interest which can arise by virtue of the exercise of any power of appointment, discretion or otherwise howsoever.

[For freezing order limited to assets in [ ]]

8. If the total value free of charges or other securities ("unencumbered value") of the respondent's assets in [ ] exceeds \$ , the respondent may remove any of those assets from [ ] or may dispose of or deal with them so long as the total unencumbered value of its or their assets still in [ ] remains above \$

[For worldwide freezing order]

8. (1) If the total value free of charges or other securities ("unencumbered value") of the respondent's assets in [ ] exceeds \$ , the respondent may remove any of those assets from [ ] or may dispose of or deal with them so long as the total unencumbered value of the respondent's assets still in [ ] remains above \$ .
- (2) If the total unencumbered value of the respondent's assets in [ ] does not exceed \$ , the respondent must not remove any of those assets from [ ] and

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<sup>2</sup> Whether this wider wording should be included in relation to the Order and/or the provision of information will be considered on a case by case basis.

<sup>3</sup> This sub-paragraph is designed for the business that is the business of the respondent itself or themselves but carried on under a trading or business name. It is not designed for the business of a company with separate legal personality that is owned by a respondent, and where the respondent's property and assets comprise their interest in the company rather than the property and assets of the company.

must not dispose of or deal with any of them. If the respondent has other assets outside [ ], they may dispose of or deal with those assets outside [ ] so long as the total unencumbered value of all its or their assets whether in or outside [ ] remains above \$ .

### PROVISION OF INFORMATION

9. (1) Unless paragraph (2) applies, the respondent must [within [ ] hours/days] of service of this order] and to the best of their ability inform the applicant's legal practitioner of all their assets [in [ ] [worldwide] [exceeding \$ in value<sup>4</sup>] whether in their own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.<sup>4</sup>
- (2) If the provision of any of this information is likely to incriminate the respondent, they may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of Court and may render the respondent liable to be imprisoned, fined or have its or their assets seized.
10. Within [ ] working days after being served with this order, the respondent must swear and serve on the applicant's legal practitioner an affidavit setting out the above information.<sup>5</sup>

### EXCEPTIONS TO THIS ORDER

11. (1) This order does not prohibit the respondent from spending \$ a week towards their ordinary living expenses and also \$ [or a reasonable sum] on legal advice and representation. [But before spending any money the respondent must tell the applicant's legal practitioner where the money is to come from<sup>2</sup>.]
- (2) This order does not prohibit the respondent from dealing with or disposing of any of their assets in the ordinary and proper course of business, [but before doing so the respondent must tell the applicant's legal practitioner<sup>3</sup>.]
- (3) The respondent may agree with the applicant's legal practitioner that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.
- (4) The order will cease to have effect if the respondent –
- (a) provides security by paying the sum of \$ into court, to be held to the order of the court; or
  - (b) makes provision for security in that sum by another method agreed with the applicant's legal practitioner.

### COSTS

12. The costs of this application are reserved to the Judge hearing the application on the return date.

### VARIATION OR DISCHARGE OF THIS ORDER

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<sup>4</sup> Careful consideration must be given to inserting a realistic lower limit below which value assets need not be disclosed.

<sup>5</sup> Careful consideration should be given to ensuring that this period is realistic having regard to the nature and volume of information that may be involved. It is not acceptable to invite the Court to impose unrealistic time limits, and costs orders may be made where this results in the party subject to the order having to bring the matter before a judge.

13. Anyone served with or notified of this order may apply to the court to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant's legal practitioners. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the applicant's legal practitioners in advance.

#### **INTERPRETATION OF THIS ORDER**

14. A respondent who is an individual who is ordered not to do something must not do it themselves or in any other way. They must not do it through others acting on their behalf or on their instructions or with their encouragement.
15. A respondent who is not an individual who is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

#### **PARTIES OTHER THAN THE APPLICANT AND RESPONDENT**

16. (1) Consideration should also be given to amalgamating paragraphs 9 and 10 of the draft Order, so as to require only one disclosure exercise, verified by Affidavit.  
(2) The proviso requiring advance notice should only be included where really necessary. It is not to be included otherwise.  
(3) The proviso requiring advance notice should only be included where really necessary. It is not to be included otherwise.

#### **EFFECT OF THIS ORDER**

17. It is a contempt of Court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

#### **SET OFF BY BANKS**

18. This freezing order does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this order.

#### **WITHDRAWALS BY THE RESPONDENT**

19. No bank need enquire as to the application or proposed application of any money withdrawn by the respondent if the withdrawal appears to be permitted by this order.

[For worldwide freezing order]

#### **PERSONS OUTSIDE [                      ]**

20. (1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.  
(2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court –

- (a) the respondent or its officer or its or their agent appointed by power of attorney;
- (b) any person who–
  - (i) is subject to the jurisdiction of this court;
  - (ii) has been given written notice of this order at it, her or his residence or place of business within the jurisdiction of this court; and
  - (iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and
- (c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

[For worldwide freezing order]

#### **ASSETS LOCATED OUTSIDE [                      ]**

21. Nothing in this order shall, in respect of assets located outside [                      ], prevent any third party from complying with –
- (a) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the respondent; and
  - (b) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the applicant’s legal practitioner.

#### **COMMUNICATIONS WITH THE COURT**

All communications to the court about this order should be sent to [insert email address of the relevant court office] quoting the claim number.

The court office is situated at [                      ]. The offices are open between [     ] a.m. and [     ] p.m. Monday to Friday, excluding bank or public holidays. The telephone number is [                      ].

**BY THE COURT**

.....

**REGISTRAR**

#### **SCHEDULE A – AFFIDAVITS**

The Applicant relied on the following affidavits—

[name]                      [number of affidavit]                      [date sworn]                      [filed on behalf of]

**SCHEDULE B – UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) If the court later finds that this order has caused loss to the respondent and decides that the respondent should be compensated for that loss, the applicant will comply with any order the court may make.
- (2) As soon as practicable the applicant will issue and serve a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].
- (3) The applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the applicant's legal practitioner].
- (4) The applicant will serve upon the respondent [together with this order] [as soon as practicable]—
  - i. copies of the affidavits and exhibits containing the evidence relied upon by the applicant, and any other documents provided to the court on the making of the application;
  - ii. the claim form; and
  - iii. a notice of application for continuation of the order.
- (5) Anyone notified of this order will be given a copy of it by the applicant's legal practitioner.]
- (6) The applicant will pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the applicant will comply with any order the court may make.
- (7) If this order ceases to have effect (for example, if the respondent provides security or the applicant does not provide a bank guarantee as provided for above) the applicant will immediately take all reasonable steps to inform in writing anyone to whom they have given notice of this order, or who they have reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (8) The applicant will not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in [ ] or in any other jurisdiction, other than this claim.]
- (9) The applicant will not without the permission of the court seek to enforce this order in any country outside [ ] [or seek an order of a similar nature including orders conferring a charge or other security against the respondent or the respondent's assets.]]<sup>6</sup>

**NAME AND ADDRESS OF APPLICANT'S LEGAL PRACTITIONER**

The applicant's legal practitioner is –

[Name, address, reference, telephone numbers, both in and out of office hours and e-mail]

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<sup>6</sup> Unless the court directs otherwise this paragraph should be included in Orders for worldwide freezing orders.

**APPENDIX III****SEARCH ORDER****IN THE EASTERN CARIBBEAN SUPREME COURT****[NAME OF MEMBER STATE OR TERRITORY]****IN THE HIGH COURT OF JUSTICE****CLAIM No.****BETWEEN****Claimant(s)/Applicant(s)****and****Defendant(s)/Respondent(s)****Before [ ]****Date [ ]****Entered [ ]**

[Name, address and reference of respondent]

**PENAL NOTICE****[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT AND YOU MAY BE LIABLE TO BE IMPRISONED.]****[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT]**

Any other person who knows of this order and does anything which helps or permits the respondent to breach the terms of this order may also be held to be in contempt of Court and may be imprisoned.

**UPON HEARING [ ]**

**AND UPON READING [ ]****THIS ORDER**

1. This is a Search Order made against [ ] ('the respondent') on [ ] by The Hon. Justice [ ] on the application of [ ] ('the applicant'). The Judge read the Affidavits listed in Schedule F and accepted the undertakings set out in Schedules C, D and E at the end of this order.
2. This order was made at a hearing without notice to the respondent. The respondent has a right to apply to the court to vary or discharge the order.
3. There will be a further hearing in respect of this order on [ ] ('the return date').
4. If there is more than one respondent –
  - (a) unless otherwise stated, references in this order to 'the respondent' mean both or all of them; and
  - (b) this order is effective against any respondent on whom it is served or who is given notice of it.
5. This order must be complied with –
  - (a) by the respondent;
  - (b) where the respondent is not an individual, by any director, officer, partner or responsible person of the respondent; and
  - (c) if the respondent is an individual, by any responsible person.

**THE SEARCH**

6. The respondent must permit the following persons —
  - (a) [ ] ('the Supervising Legal Practitioner');
  - (b) [ ], a legal practitioner in the firm of [ ], the applicant's legal practitioner; and
  - (c) up to [ ] other persons<sup>2</sup>being [their identity or capacity] accompanying them, (together 'the search party'),

to enter the premises mentioned in Schedule A to this order and any other premises of the respondent disclosed below and any vehicles under the respondent's control on or around the premises ('the premises') so that they can search for, inspect, photograph or photocopy, and deliver into the safekeeping of the applicant's legal practitioner all the documents, articles and any other material listed in Schedule B to this order ('the listed items').

7. Having permitted the search party to enter the premises, the respondent must allow the search party to remain on the premises until the search is complete. In the event that it becomes necessary for any of those persons to leave the premises before the search is

complete, the respondent must allow them to re-enter the premises immediately upon their seeking re-entry on the same or the following day in order to complete the search.

## **RESTRICTIONS ON SEARCH**

8. This order may not be carried out at the same time as a police search warrant.
9. Before the respondent allows anybody onto the premises to carry out this order, they are entitled to have the supervising legal practitioner explain to them what it means in plain language.
10. The respondent is entitled to seek legal advice and to ask the court to vary or discharge this order. Whilst doing so, they may ask the supervising legal practitioner to delay starting the search for up to 2 hours on such other longer period as the supervising legal practitioner may permit. However, the respondent must –
  - (a) comply with the terms of paragraph 27 below;
  - (b) not disturb or remove any listed items; and
  - (c) permit the supervising legal practitioner to enter, but not start to search.
11. (1) Before permitting entry to the premises by any person other than the supervising legal practitioner, the respondent may, for a short time (not to exceed two hours, unless the supervising legal practitioner agrees to a longer period) –
  - (a) gather together any documents they believe may be incriminating or privileged; and
  - (b) hand them to the supervising legal practitioner for them to assess whether they are incriminating or privileged as claimed.
  - (2) If the supervising legal practitioner decides that the respondent is entitled to withhold production of any of the documents on the ground that they are privileged or incriminating, they will exclude them from the search, record them in a list for inclusion in their report and return them to the respondent.
  - (3) If the supervising legal practitioner believes that the respondent may be entitled to withhold production of the whole or any part of a document on the ground that it or part of it may be privileged or incriminating, or if the respondent claims to be entitled to withhold production on those grounds, the supervising legal practitioner will exclude it from the search and retain it in their possession pending further order of the court.
12. If the respondent wishes to take legal advice and gather documents as permitted, they must first inform the supervising legal practitioner and keep them informed of the steps being taken.

13. No item may be removed from the premises until a list of the items to be removed has been prepared, and a copy of the list has been supplied to the respondent, and they have been given a reasonable opportunity to check the list.
14. The premises must not be searched, and items must not be removed from them, except in the presence of the respondent.
15. If the supervising legal practitioner is satisfied that full compliance with paragraphs 13 or 14 is not practicable, they may permit the search to proceed and items to be removed without fully complying with them.

#### **DELIVERY UP OF ARTICLES OR DOCUMENTS**

16. The respondent must immediately hand over to the applicant's legal practitioner any of the listed items, which are in their possession or under their control, save for any electronic device or hard disk integral to any electronic device. Any items the subject of a dispute as to whether they are listed items must immediately be handed over to the supervising legal practitioner for safe keeping pending resolution of the dispute or further order of the court.
17. The respondent must immediately give the search party effective access to the electronic devices on the premises, with all necessary passwords, biometric passcodes and encryption keys to enable the electronic devices to be searched. If they contain any listed items, the respondent must cause the listed items to be displayed so that they can be retrieved and copied. The respondent must provide the applicant's legal practitioner with copies of all listed items contained in the electronic devices. All reasonable steps shall be taken by the applicant and the applicant's legal practitioner to ensure that no damage is done to any electronic device or data. The applicant and their representatives may not themselves search the respondent's electronic devices unless they have sufficient expertise to do so without damaging the respondent's electronic devices.

#### **PROVISION OF INFORMATION**

18. The respondent must immediately inform the applicant's legal practitioner (in the presence of the supervising legal practitioner) so far as they are aware –
  - (a) where all the listed items are;
  - (b) the name and address of everyone who has supplied them, or offered to supply them, with listed items;
  - (c) the name and address of everyone to whom they have supplied, or offered to supply, listed items; and
  - (d) full details of the dates and quantities of every such supply and offer.
19. Within [ ] working days after being served with this order the respondent must swear and

**PROHIBITED ACTS**

20. Except for the purpose of obtaining legal advice, the respondent must not directly or indirectly inform anyone of these proceedings or of the contents of this order, or warn anyone that proceedings have been or may be brought against them by the applicant until 4:30 p.m. on the return date or further order of the court.
21. Until 4:30 p.m. on the return date the respondent must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed items otherwise than in accordance with the terms of this order.
22.  
[Insert any negative injunctions.]
23.  
[Insert any further order]

**COSTS**

24. The costs of this application are reserved to the judge hearing the application on the return date.

**RESTRICTIONS ON SERVICE**

25. This order may only be served between [ ] a.m./p.m. and [ ] a.m./p.m. [and on a weekday], excluding bank and public holidays.
26. This order must be served by the supervising legal practitioner, and paragraph 6 of the order must be carried out in their presence and under their supervision.

**VARIATION AND DISCHARGE OF THIS ORDER**

27. Anyone served with or notified of this order may apply to the court to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant's legal practitioner. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the applicant's legal practitioner in advance.

**INTERPRETATION OF THIS ORDER**

28. Any requirement that something shall be done to or in the presence of the respondent means –
- (a) if there is more than one respondent, to or in the presence of any one of them; and

(b) if a respondent is not an individual, to or in the presence of a director, officer, partner or responsible person.

29. A respondent who is an individual who is ordered not to do something must not do it themselves or in any other way. They must not do it through others acting on their behalf or on their instructions or with their encouragement.

30. A respondent who is not an individual who is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

### **COMMUNICATIONS WITH THE COURT**

All communications to the court about this order should be sent to [insert email address of the relevant court office] quoting the claim number.

The court office is situated at [ ]. The offices are open between [ ] a.m. and [ ] p.m. Monday to Friday, excluding bank or public holidays. The telephone number is [ ].

**BY THE COURT**

.....  
**REGISTRAR**

### **SCHEDULE A**

**THE PREMISES**

### **SCHEDULE B**

**THE LISTED ITEMS**

### **SCHEDULE C**

### **UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) If the court later finds that this order or carrying it out has caused loss to the respondent, and decides that the respondent should be compensated for that loss, the applicant will comply with any order the court may make. Further if the carrying out of this order has been in breach of the terms of this order or otherwise in a manner inconsistent with the

applicant's legal practitioner's duties as officers of the court, the applicant will comply with any order for damages the court may make.

- (2) As soon as practicable the applicant will issue a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].
- (3) The applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the applicant's legal practitioner].
- (4) The applicant will not, without the permission of the court, use any information or documents obtained as a result of carrying out this order nor inform anyone else of these proceedings except for the purposes of these proceedings (including adding further respondents) or commencing civil proceedings in relation to the same or related subject matter to these proceedings until after the return date.
- (5) [The applicant will maintain pending further order the sum of \$ [ ] in an account controlled by the applicant's legal practitioner.]
- (6) [The applicant will insure the items removed from the premises.]

#### **SCHEDULE D**

##### **UNDERTAKINGS GIVEN BY THE APPLICANT'S LEGAL PRACTITIONER**

- (1) The applicant's legal practitioner will provide to the supervising legal practitioner for service on the respondent –
  - (a) a copy of this order;
  - (b) the claim form (with defendant's response pack) or, if not issued, the draft produced to the court;
  - (c) an application for hearing on the return date;
  - (d) copies of the affidavits and exhibits capable of being copied containing the evidence relied upon by the applicant;
  - (e) a note of any allegation of fact made orally to the court where such allegation is not contained in the affidavits or draft affidavits read by the judge; and
  - (f) a copy of the skeleton argument produced to the court by the applicant/applicant's legal practitioner.
- (2) The applicant's legal practitioner will answer at once to the best of their ability any question as to whether a particular item is a listed item.
- (3) Subject as provided below the applicant's legal practitioner will retain in their own safe keeping all items obtained as a result of this order until the court directs otherwise.

- (4) The applicant's legal practitioner will return the originals of all documents obtained as a result of this order (except original documents which belong to the applicant) as soon as possible and in any event within [two] working days of their removal.

### **SCHEDULE E**

#### **UNDERTAKINGS GIVEN BY THE SUPERVISING LEGAL PRACTITIONER**

- (1) The supervising legal practitioner will use their best endeavours to serve this order upon the respondent and at the same time to serve upon the respondent the other documents required to be served and referred to in paragraph (1) of Schedule D.
- (2) The supervising legal practitioner will offer to explain to the person served with the order its meaning and effect fairly and in everyday language, and to inform them of their right to take legal advice (including an explanation that the respondent may be entitled to avail themselves of the privilege against self-incrimination and legal professional privilege) and to apply to vary or discharge this order as mentioned in paragraph 27 above.
- (3) The supervising legal practitioner will retain in the safe keeping of their firm all items retained by them as a result of this order until the court directs otherwise.
- (4) Unless and until the court otherwise orders, or unless otherwise necessary to comply with any duty to the court pursuant to this order, the supervising legal practitioner shall not disclose to any person any information relating to those items, and shall keep the existence of such items confidential.
- (5) Within [72] hours of completion of the search the supervising legal practitioner will make and provide to the applicant's legal practitioner, the respondent or their legal practitioner and to the judge who made this order (for the purposes of the court file) a written report on the carrying out of the order.

### **SCHEDULE F**

#### **AFFIDAVITS**

The applicant relied on the following affidavits —

[name] [number of affidavit] [date sworn] [filed on behalf of]

#### **NAME AND ADDRESS OF APPLICANT'S LEGAL PRACTITIONER**

The applicant's legal practitioner is —

[Name, address, reference, fax and telephone numbers both in and out of office hours.]

**EASTERN CARIBBEAN SUPREME COURT**  
**CIVIL PROCEDURE RULES (REVISED EDITION) 2023**

**PRACTICE DIRECTION 8**

**No. 2 of 2023**

**PRE-ACTION PROTOCOLS**

This Practice Direction is made pursuant to Rule 4.2(1) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and is applicable to all the Member States and Territories in the jurisdiction of the Eastern Caribbean Supreme Court.

**1. INTRODUCTION**

1.1 This Practice Direction supplements Rule 8.16 of the Civil Procedure Rules (Revised Edition) 2023 which enables the making of pre-action protocols to outline the steps parties should take to seek information from, and to provide information to, each other about a prospective legal claim.

1.2 Pre-action protocols seek to inform persons in a simple manner the steps that they should take before commencing proceedings for particular types of civil claims.

1.3 The approved pre-action protocols for specific types of claims are annexed to this Practice Direction as Appendices A, B, C and D. Additional pre-action protocols may be added from time to time.

1.4 The objectives of pre-action protocols are to –

- (a) encourage the early exchange of full information about the prospective legal claim;
- (b) enable parties to avoid litigation by agreeing to a settlement of the claim before the commencement of proceedings; and
- (c) support the efficient management of proceedings under the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 where litigation cannot be avoided.

**2. INTERPRETATION**

In this Practice Direction and in the Pre-Action Protocols –

- (a) ‘claimant’ shall mean intended claimant;
- (b) ‘defendant’ shall mean intended defendant;

- (c) 'electronic mail' is limited to a method of electronically transmitting information to an email address; and
- (d) 'interested parties' are persons directly affected by the claim.

### **3. COMPLIANCE WITH PROTOCOLS**

3.1 The court may treat the standards set out in pre-action protocols as the normal, reasonable approach to pre-action conduct.

3.2 Parties will not be expected to observe this Practice Direction or the pre-action protocols in urgent claims or where a period of limitation is about to expire and the period between the date the claimant instructs a legal practitioner to act on their behalf in relation to the proposed claim and the expiration of the limitation period is too short to allow for compliance with this Practice Direction or the pre-action protocols, or for other good and sufficient reason there could not be compliance provided that the reasons for the urgency and non-compliance are set out fully in the claim form or statement of case. However, in the case of urgent claims or where the limitation period is about to expire, the claimant should give as much written notice of the intention to issue proceedings as is practicable, even if it is by telephone, email, or providing an unfiled draft to the other side, and in appropriate cases the court may be invited to extend the time for service of the claimant's supporting documents, if any, and/or for service of any defence or alternatively, to stay proceedings while the recommended steps are followed.

3.3 The court will expect all parties to have complied, in a timely manner, in good faith and as far as reasonably practicable, with the terms of an approved pre-action protocol before a claim is issued. Dispensing with compliance with an approved pre-action protocol will depend on the circumstances of each case and failure to comply may influence the court's decision on costs. The court will also consider the fullness and timing of compliance when ordering costs. The court will consider whether and to what extent a party has complied with this Practice Direction or a specific pre-action protocol when determining whether sanctions should be imposed. The court is not likely to be concerned with minor infringements of the Practice Direction or pre-action protocol. The court is likely to look at the effect of non-compliance on the other party when deciding to impose sanctions.

3.4 If, in the opinion of the court, non-compliance has led to the commencement of proceedings which may have not otherwise been commenced, or has led to costs being incurred in the proceedings that may not otherwise have been incurred, the orders the court may make include -

- (a) an order that the party at fault pay the costs of the proceedings, or part of those costs, of the other party;
- (b) an order that the party at fault pay those costs on an indemnity basis; or

- (c) any such order that the court deems appropriate having regard to the facts and circumstances of the instant case.

3.5 The court will exercise its powers under paragraph 3.4 with the object of placing the party not at fault in no worse a position than they would have been in if the pre-action protocol had been complied with.

3.6 Without prejudice to the generality of the foregoing, the court in determining whether compliance was not reasonably practicable may take into account whether any of the parties has had to obtain legal aid.

#### **4. NON-COMPLIANCE WITH PROTOCOLS**

4.1 A claimant may be found to have failed to comply with a pre-action protocol in, for example, failing to -

- (a) provide sufficient information; or
- (b) follow the procedure required by the applicable pre-action protocol .

4.2 A defendant may be found to have failed to comply with a pre-action protocol in, for example, failing to -

- (a) make a preliminary response to the letter of claim within the time fixed for that purpose by the applicable pre-action protocol;
- (b) make a full response within the time fixed for that purpose by the applicable pre-action protocol; or
- (c) disclose documents required to be disclosed by the applicable pre-action protocol.

#### **5. PRE-ACTION CONDUCT IN OTHER CASES**

5.1 In cases not covered by an approved pre-action protocol, the court will expect the parties to act reasonably and promptly in exchanging information and documents relevant to the claim and generally in trying to avoid litigation.

5.2 Parties to a potential dispute should follow a reasonable procedure suitable to their particular circumstances, which is intended to avoid litigation. The procedure should not be regarded as a prelude to inevitable litigation. It should normally include -

- (a) the claimant writing to give details of the claim;
- (b) the defendant acknowledging the claimant's letter promptly;

- (c) the defendant giving a detailed written response within a reasonable time; and
- (d) the parties conducting genuine and reasonable negotiations with a view to settling the claim economically and without court proceedings.

5.3 The claimant's letter should -

- (a) give sufficient and concise details to enable the recipient to understand and investigate the claim without requiring extensive further information;
- (b) enclose copies of the essential documents on which the claimant relies;
- (c) ask for a prompt acknowledgement of the letter, followed by a full written response within a reasonable stated period - for many claims, a normal reasonable period for a full response may be one month;
- (d) state whether court proceedings will be issued if the full response is not received within the stated period;
- (e) identify and ask for copies of any essential documents in support of the claim, not in their possession;
- (f) state (if this is so) that the claimant wishes to enter into mediation or another alternative method of dispute resolution; and
- (g) draw attention to the court's powers to impose sanctions for failure to comply with this Practice Direction and enclose a copy of the Practice Direction.

5.4 Where a claimant commences a claim before the time for a defendant to provide a response has expired, the early commencement of that claim may result in a costs sanction.

5.5 The defendant should acknowledge the claimant's letter in writing within 7 days of receiving it. The acknowledgement should state when the defendant will give a full written response. If the time for this is longer than the period stated by the claimant, the defendant should give reasons why a longer period is needed.

5.6 If a response within the specified time is impractical, the defendant should send an interim response in writing requesting an extension and provide a date for the substantive response. The claimant should not unreasonably withhold their consent to an extension when appropriate grounds have been disclosed. An extension request does not affect the claimant's obligation to make the claim within the prescribed time. Where the defendant makes an extension request, the defendant may undertake not to raise issues related to delay if the claim's time period is not governed by any enactment. If the claimant refuses a request for an extension, and the Court deems the refusal unreasonable, the Court may stay the claim or impose costs sanctions.

5.7 The defendant's full written response should as appropriate -

- (a) accept the claim in whole or in part and make proposals for settlement; or
- (b) state that the claim is not accepted.

5.8 If the defendant does not accept the claim or part of it, the response should -

- (a) give detailed reasons why the claim is not accepted, identifying which of the claimant's contentions are accepted and which are in dispute;
- (b) enclose copies of the essential documents on which the defendant relies;
- (c) enclose copies of documents asked for by the claimant, or explain why they are not enclosed;
- (d) identify and ask for copies of any further essential documents to the claim, not in their possession (and the claimant should provide these within a reasonable time or explain in writing why they are not doing so); and
- (e) state whether the defendant is prepared to enter into mediation or another alternative method of dispute resolution.

5.9 If the claim remains in dispute, the parties should promptly engage in appropriate negotiations with a view to settling the dispute and avoiding litigation.

5.10 Documents disclosed by a party in accordance with this Practice Direction may not be used for any purpose other than resolving the dispute, unless the other party agrees.

5.11 The resolution of some claims, but by no means all, may need help from an expert. If an expert is needed, the parties should, wherever possible and to save expense, engage an agreed expert.

5.12 Parties should be aware that, if the matter proceeds to litigation, the court may not allow the use of an expert's report, and that the cost of it is not always recoverable.

## **6. DISCLOSURE**

A claimant shall disclose whether the cause(s) of action in the intended claim is identical to or similar to any other claim that is being or has been litigated in any court and, if so, the status or outcome of that litigation.

## **7. APPLICATION OF PROTOCOLS**

7.1 The court will take compliance or non-compliance with an applicable pre-action protocol into account where the claim was started after the coming into force of that protocol but will not do so where the claim was commenced before that date.

7.2 Parties in a claim commenced after an applicable pre-action protocol came into force, who have, by actions taken before that date, achieved the objectives sought to be achieved under that protocol, need not take any further steps to comply with those requirements. They will be considered to have complied with the pre-action protocol for the purposes of paragraphs 3 and 4 of this Practice Direction.

## **8. SERVICE**

A claimant's letter and the defendant's response and any other communication in writing in compliance with a pre-action protocol must be delivered personally to the intended recipient, unless the parties agree in writing to utilise a mode of electronic transmission such as electronic mail or some other mode of service.

## **9. EFFECTIVE DATE**

This Practice Direction shall come into effect in a Member State or Territory on the 15<sup>th</sup> day of January, 2024.

**Dated the 15<sup>th</sup> day of December 2023**



**Dame Janice M. Pereira DBE, LL.D**

**Chief Justice**

**APPENDIX A****PRE-ACTION PROTOCOL FOR CLAIMS FOR A SPECIFIED SUM OF MONEY****1. INTRODUCTION**

This pre-action protocol applies where the only claim (not taking into account interest and costs) is for a specified sum of money. It does not apply to claims for damages whether it is a claim arising out of an accident as a consequence of negligence for the cost of repairs undertaken on a vehicle or any property in, on or abutting a road or any other financial losses.

**2. CLAIMANT'S LETTER**

2.1 The claimant shall send to the defendant a letter which should contain a clear summary of the facts on which the claim is based together with any relevant statement of account and the essential documents on which the claimant relies to support the claim. A form of the claimant's letter is set out in **Annex A**. The claimant's letter must be accompanied by the defendant's response form set out in **Annex B**.

2.2 The claimant's letter shall also state —

- (a) the amount due and owing to the claimant;
- (b) where the claimant is claiming interest —
  - (i) the entitlement to interest (whether by agreement or otherwise);
  - (ii) the amount of interest due down to the date of the letter;
  - (iii) the rate(s) at which interest is calculated; and
  - (iv) the rate and the amount per diem at which the interest accrues after the date of the letter.
- (c) the amount of costs which the claimant claims.

**3. DEFENDANT'S RESPONSE**

3.1 The defendant should reply to the claimant's letter within 14 clear days<sup>1</sup> of the date of receipt of the letter indicating whether they admit the claim by filling out the defendant's response form in **Annex B**. If there is no response, the claimant is entitled to issue proceedings.

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<sup>1</sup> 'Clear days' means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

- 3.2 If the claim is not admitted, the defendant should give detailed reasons why the claim is not admitted and enclose copies of the essential documents in their possession on which they rely to dispute the claim. If they rely on documents which are not in their possession, they should identify the documents.
- 3.3 If the claim is admitted, the defendant should provide proposals for the repayment of the debt and give full particulars of their income and assets and send any documents that support the particulars, so as to enable the claimant to properly evaluate the proposal.
- 3.4 The claimant is not obliged to accept any proposal made by the defendant. If the claimant rejects the proposal, they should notify the defendant of the rejection and the reasons for it and of their intention to commence proceedings.
- 3.5 The court will expect the parties to act reasonably in the making and considering of proposals.
- 3.6 The admission of the claim with or without an agreement on terms of payment does not preclude the claimant from issuing a claim and obtaining judgment in accordance with Part 14 of the Civil Procedure Rules (Revised Edition) 2023.

**ANNEX A**  
**LETTER OF CLAIM**

[Date]

[Name of claimant]

[Full Address of claimant]

[Name of defendant]

[Address of defendant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by the above-named to claim against you the following sums: [set out details of sums claimed] .... pursuant to [set out a summary of facts on which the claim is based] [enclose relevant documents in support of claim].

You are required to respond within 14 clear days<sup>2</sup> from the date of receipt of this letter by filling out the attached form and returning it to (specify recipient). Failure to do so will result in court proceedings being commenced against you without further notice.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have authorised any legal practitioners to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Claimant/Legal Practitioners for the claimant]

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<sup>2</sup> 'Clear days' means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

**ANNEX B****DEFENDANT'S RESPONSE**

**THIS FORM SHOULD BE COMPLETED BY THE DEFENDANT OR THEIR LEGAL PRACTITIONERS AND DELIVERED TO THE CLAIMANT WITHIN 14 CLEAR DAYS OF THE DATE OF RECEIPT OF THE CLAIMANT'S LETTER.**

Do you admit owing the sum claimed? YES ☐ NO ☐

If NO, state the reasons why and provide the essential documentation to support your reasons for disputing the claim:

If YES, state your proposals for payment of the specified sum claimed, providing full particulars of your income and assets and enclosing any relevant documents:

If you are willing to discuss these proposals, please contact [name and contact information of defendant or defendant's legal practitioners] to arrange a convenient date and time for a meeting.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? YES ☐ NO ☐

If YES, specify your email address:

Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. YES ☐ NO ☐

If YES, please provide the email address to which service is to be effected:

[Date]

[Name and signature of defendant/Legal Practitioner for the defendant]

**NOTE: IF YOU DO NOT RESPOND PROCEEDINGS MAY BE COMMENCED AGAINST YOU WITHOUT FURTHER NOTICE AND YOU MAY SUFFER ADVERSE CONSEQUENCES IN COSTS AND/OR BY ANY DIRECTION OR ORDER THE COURT SEES FIT TO MAKE AGAINST YOU.**

## **APPENDIX B**

### **PRE-ACTION PROTOCOL FOR MOTOR VEHICLE ACCIDENTS AND PERSONAL INJURY CLAIMS**

#### **1. INTRODUCTION**

This pre-action protocol applies to claims arising out of motor vehicle accidents and personal injury claims generally.

#### **2. CLAIMANT'S LETTER**

- 2.1 The form of claimant's letter at Annex A will usually be sent to the defendant. In practice, the defendant may have no personal financial interest in the outcome of the dispute because the defendant is insured. Court imposed sanctions for non-compliance with the pre-action protocol may be ineffective against an insured. This is why the pre-action protocol emphasises the importance of passing the letter of claim to the insurer and the possibility that the insurance cover might be affected. If an insurer receives the claimant's letter only after some delay by the insured, it would not be unreasonable for the insurer to ask the claimant for additional time to respond.
- 2.2 The priority at letter of claim stage is for the claimant to provide sufficient information for the defendant to assess liability. Sufficient information should also be provided to enable the defendant to estimate the likely amount of the claim.

#### **3. REASONS FOR EARLY ISSUE**

The pre-action protocol recommends that a defendant be given 28 days to investigate and respond to a claim before proceedings are issued. This may not always be possible, particularly where a claimant only consults a legal practitioner close to the end of any relevant limitation period. In those circumstances, the claimant's legal practitioner should give as much notice of the intention to issue proceedings as is practicable and the parties should consider whether the court may be invited to extend the time for service of the claimant's supporting documents and for service of any defence, or alternatively, to stay the proceedings while the recommended steps are followed.

#### **4. STATUS OF CLAIMANT'S LETTER AND RESPONSE**

Claimant's letters and responses are not intended to have the same status as a statement of case in proceedings. Matters may come to light as a result of investigation after the claimant's letter has been sent, or after the defendant has responded, particularly if disclosure of documents takes place outside the recommended 28 day period. These circumstances could mean that the pleaded case of one or

both parties is presented differently than in the claimant's letter and response. It would not be consistent with the spirit of the pre-action protocol for a party to take a point on this in the proceedings, provided that there was no obvious intention by the party who changed their position to mislead the other party.

## **5. DISCLOSURE OF DOCUMENTS**

The aim of the early disclosure of documents by the 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. The claimant's legal practitioner can assist in identifying in the claimant's letter or in a subsequent letter the particular categories of documents which the claimant considers are relevant.

## **6. EXPERTS**

- 6.1 The pre-action protocol encourages joint selection of, and access to, experts. Most frequently this will apply to medical experts but on occasions also to liability experts. The pre-action protocol promotes the practice of the claimant obtaining a medical report, disclosing it to the defendant who then asks questions and/or agrees to it and does not obtain their own expert report.
- 6.2 The pre-action protocol provides for nomination of the expert by the claimant in personal injury claims because of the early stage of the proceedings and the particular nature of such claims. If proceedings have been issued, a medical report must be attached to the statement of claim. However, if necessary, after proceedings have commenced and with permission of the court, the parties may obtain further expert reports. It would be for the court to decide whether more than one expert's evidence should be admitted or whether the costs of more than one expert report should be recoverable.
- 6.3 The protocol acknowledges that the deployment of expert evidence is governed by rule 32.6 of the Civil Procedure (Revised) Rules 2023 and is subject to the court's control of case management.

## **THE PROTOCOL**

### **7. CLAIMANT'S LETTER**

- 7.1 The claimant shall send to the defendant two copies of a letter as soon as sufficient information is available to substantiate a realistic claim whether or not the claimant is able to address issues of quantum in detail. One copy of the letter is to be provided to the defendant and the other copy is for the defendant's insurer. The claimant's letter must be accompanied by the defendant's response form set out in **Annex B**.

7.2 The claimant's letter shall contain —

- (a) a summary of the facts on which the claim is based;
- (b) a summary of the nature of any injuries suffered;
- (c) details of where the claimant was treated and the name of the attending physician;
- (d) the date/s of receiving treatment;
- (e) the extent of injuries to date;
- (f) details of property damage;
- (g) if the claimant can address issues of quantum in detail, the quantum of the overall claim with particulars of same and supporting documents; and
- (h) any other relevant information specific to the individual case.

7.3 Legal practitioners are encouraged to use the standard form for the claimant's letter set out in **Annex A**, which may be modified to suit the particular circumstances of the case.

7.4 Sufficient information should be given in order to enable the defendant's insurers and legal practitioners to commence investigations and to at least put a broad valuation on the intended claim.

7.5 If the claimant has information relating to the identity of the defendant's insurers, they should also send a copy of the claimant's letter directly to the insurers together with a letter to the insurers enquiring as to their position with respect to the prospective claim. Where, in a motor vehicle accident case, the claimant intends to commence proceedings against the insurers the claimant may in their letter to the insurers give to them any notice of their intention to do so as required by law.

## **8. DEFENDANT'S RESPONSE**

8.1 The defendant or their insurers will have 28 clear days (or such longer period as may be agreed) from the date of receipt of the claimant's letter to investigate the claim and respond to the letter by filling out the defendant's response form in **Annex B**, stating whether liability is accepted and if not, giving reasons for disputing liability including any alternative version of events relied upon. If there is no response by the defendant or their insurers within 28 days, the claimant is entitled to issue proceedings.

8.2 If the defendant or their insurers requires more time to investigate the claim and respond fully to the claimant's letter, the parties may agree to extend the time. Parties are expected to act reasonably in requesting and/or agreeing to further time.

8.3 Where liability is admitted, the presumption is that the defendant will be bound by this admission for all claims.

8.4 Where it is the intention of the claimant to institute proceedings against the insurers under the relevant section of the Motor Vehicle Insurance (Third Party Risks) Act, or its equivalent in any Member State or Territory the claimant is reminded of the requirement to give to the insurers the required notice.

8.5 A defect in the defendant's response does not relieve the claimant of the burden of proving their case in accordance with this pre-action protocol and the Civil Procedure Rules (Revised Edition) 2023.

## **9. DOCUMENTS**

9.1 If the defendant denies liability, they should enclose with the letter of reply, documents in their possession which are material to the issues between the parties, and which would be likely to be ordered to be disclosed by the court, either on an application for pre-action disclosure or during proceedings.

9.2 Where the defendant admits primary liability, but alleges contributory negligence by the claimant, the defendant should give reasons supporting those allegations and disclose those documents which are relevant to the issues in dispute. The claimant should respond to the allegations of contributory negligence before proceedings are issued.

## **10. SPECIAL DAMAGES**

Where the claimant has not addressed the question of quantum in their letter, the claimant should send to the defendant as soon as practicable a schedule of damages with supporting documents, particularly where the defendant has admitted liability.

## **11. EXPERTS**

11.1 The general rule is that parties must give instructions to a single expert. This means that before any party instructs an expert the parties should attempt to agree to the appointment of a joint expert.

11.2 Where parties instruct experts of their own choice it is for the court to decide subsequently, if proceedings are issued, whether either party acted unreasonably in so doing.

**ANNEX A**  
**LETTER OF CLAIM**

[Date]

[Name of claimant]

[Full Address of claimant]

[Name of defendant]

[Full Address of defendant]

Re: Claimant's Full Name

Claimant's age

Claimant's full address

Claimant's Employer [name and address]

We are instructed by the above-named to claim damages in connection with an accident involving [motor vehicle accident or other accident giving rise to claim for personal injuries or damage to property] on the day of [year] at [place of accident which must be sufficiently detailed to establish location]

Please confirm the identity of your insurers. Please note that the insurers will need to see this letter as soon as possible and it may affect your insurance cover and/or the conduct of any subsequent legal proceedings if you do not send this letter to them.

[Set out details of the nature of the claim and the legal basis for seeking relief. The relevant facts of the claim should cover the following where applicable:

- (a) **The circumstances of the accident:** Provide a brief summary of the accident.
- (b) **The reason for alleging fault:** Provide a simple explanation e.g. defective machine, broken ground etc.
- (c) **Claimant's injuries:** Provide a brief description of the claimant's injuries.
- (d) **Treatment facility details:** name and address of hospital, clinic or doctor's office etc. and give name of the attending physician, if this is known.
- (e) **Continuity of injuries:** State whether the client is still suffering from the effects of their injuries.

- (f) **Claimant's employment:** State whether the client is employed and if so provide details of their employment and whether there was time off from work and if so state the dates of their absence. If the client is employed and their income is known, state their income; or
- (g) **If you are writing to the claimant's employers:** Request the usual earning details which will enable you to calculate the claimant financial loss.
- (h) **Police report:** State whether you are obtaining police report and if so let the defendant have a copy of the same upon their undertaking to meet half the fee.
- (i) **Where the claimant's loss can be calculated:** State the sum of money which the claimant is claiming in damages, give details identifying the claims for property damage, if any, the claims for other special damage with particulars of same and the claim for general damages with appropriate particulars.]

We have also sent a letter to [name and address] and a copy of that letter is attached. We understand their insurer is: [state name and address of insurer and claim number if known].

At this stage of our enquires we would expect the documents contained in parts [insert appropriate parts of standard disclosure list] to be relevant to this action.

A copy of this letter is attached for you to send to your insurer.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

We look forward to receiving a reply to this letter within 28 days by yourselves or your insurer.

Yours faithfully

[Claimant/Legal Practitioner for the claimant]

**ANNEX B****DEFENDANT'S RESPONSE**

**THIS FORM SHOULD BE COMPLETED BY THE DEFENDANT OR THEIR LEGAL PRACTITIONERS AND DELIVERED TO THE CLAIMANT WITHIN 28 CLEAR DAYS OF THE DATE OF RECEIPT OF THE CLAIMANT'S LETTER.**

Do you admit liability for the damages claimed? YES ☐ NO ☐

If NO, state the reasons why and provide reasons for disputing liability including any alternative version of events relied upon:

If YES, state your proposals for payment of the damages claimed, providing full particulars of your income and assets and enclosing any relevant documents:

If you are willing to discuss these proposals, please contact [name and contact information of defendant or defendant's legal practitioners] to arrange a convenient date and time for a meeting.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? YES ☐ NO ☐

If YES, specify your email address:

Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. YES ☐ NO ☐

If YES, please provide the email address to which service is to be effected:

[Date]

[Name and signature of defendant/Legal Practitioner for the defendant]

**NOTE: IF YOU DO NOT RESPOND PROCEEDINGS MAY BE COMMENCED AGAINST YOU WITHOUT FURTHER NOTICE AND YOU MAY SUFFER ADVERSE CONSEQUENCES IN COSTS AND/OR BY ANY DIRECTION OR ORDER THE COURT SEES FIT TO MAKE AGAINST YOU.**

## **APPENDIX C**

### **PRE-ACTION PROTOCOL FOR DEFAMATION CLAIMS**

#### **1. INTRODUCTION**

- 1.1. This protocol aims to establish a code of good practice for defamation cases. It is designed to encourage transparency and the early exchange of full information, set a timeline for responding to intended claims and establish standards for pre-action letters.
- 1.2. This protocol enables parties to understand and identify issues at an early stage, make informed decisions, avoid litigation by agreeing to a settlement of the claim before the commencement of proceedings and control costs. It sets out a framework for parties to follow to ensure a fair and efficient process and supports efficient case management when litigation is unavoidable.
- 1.3. Parties are expected to follow this protocol and, in determining costs, the court will consider whether and to what extent a party has complied with the protocol.
- 1.4. This protocol recognises the time-sensitive nature of defamation claims.

#### **2. LITIGANTS IN PERSON**

- 2.1. Litigants in person should still strive to comply with this protocol.
- 2.2. Parties should provide a copy of the protocol to litigants in person at the earliest opportunity when aware of their presence.

#### **3. PROPORTIONALITY**

Parties should act reasonably to keep costs proportionate to the nature and gravity of the case and the stage of the complaint.

#### **4. LETTER OF CLAIM**

- 4.1. The claimant should notify the defendant in writing of the defamation claim at the earliest opportunity after the cause of action arises.

- 4.2. The contents of the letter of claim may vary depending on the laws of the Member State or Territory but should generally follow the format set out in **Annex A**.
- 4.3. Including comprehensive information in the letter of claim is essential for the defendant to understand the nature of the claim and respond appropriately, either by offering remedies, requesting more information, or contesting the claim.

## **5. DEFENDANT’S RESPONSE TO LETTER OF CLAIM**

- 5.1. The defendant should provide a full response to the letter of claim in writing as soon as reasonably practicable but, in any event, within twenty-one (21) clear days of receipt of same. If more time is needed, the defendant should specify the intended response date.
- 5.2. The response should include whether the claim is accepted, if more information is required, the remedies offered, reasons for rejecting the claim, and an explanation of any defamatory imputations.
- 5.3. The letter in response should generally follow the format set out in **Annex B**, which outlines the requirements for the defendant's response to the letter of claim in a defamation case, emphasising the need for a timely and comprehensive response. This comprehensive response ensures that the parties have a clear understanding of each other's positions, whether the claim is accepted or disputed, and the specific areas of contention. It also allows for the exploration of potential remedies and encourages transparency in the pre-action phase of a defamation case.

## **6. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)**

Parties are encouraged to consider ADR procedures to settle disputes before resorting to court proceedings. Failure to do so may result in adverse costs consequences being made against that party as the court sees fit.

**ANNEX A**  
**LETTER OF CLAIM**

[Date]

[Full legal name of claimant]

[Full Address of claimant  
and Legal Practitioner]

[Full legal name of defendant]

[Address of defendant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by the above-named to claim damages in connection with [set out details of the nature of the claim and the legal basis for seeking remedies. This could include libel or slander and relevant legal principles. The relevant facts of the claim should cover the following where applicable:

**(a) Facts or matters relevant to the claim:** Provide briefly any facts or information relevant to the claim. This may include details about the circumstances surrounding the alleged defamation.

**(b) Identification of the specific publication:** Include sufficient details to identify the specific publication that contained the alleged defamation being complained of. This might involve providing publication names, dates, or other identifying information. In the instance of an article, illustration, document, transcript, audio or video recording or any other material being relied on, a copy of same should be attached to the letter.

**(c) The statement complained of:** Include the statement itself, and if known, the date of publication. For slander, specify where and under what circumstances the statement was made. If possible, attach a copy or transcript of the statement.

**(d) Imputation contended by the claimant:** Explain the imputation that the claimant believes was conveyed by the alleged defamation complained of. This helps clarify the nature and extent of the harm alleged.

**(e) Factual inaccuracies or unsupportable comments:** Identify any factual inaccuracies or unsupported comments within the statement. Provide a sufficient explanation to help the defendant understand why the statement is inaccurate or unsupportable.

**(f) Serious harm in defamation claims:** If the claim pertains to defamation, explain how or why the claimant believes that the statement has caused or is likely to cause serious harm. If the claimant

is a profit-making entity, provide details of any serious financial loss caused or anticipated due to the statement.

**(g) Special damage, pecuniary loss, or actionability in slander claims:** For slander or malicious falsehood claims, clarify how or why the statement has caused or is likely to cause special damage, pecuniary loss, or why it is actionable without proof of actual loss.

**(h) Outline of the claimant's case with regard to malice in malicious falsehood claims:** If the claim involves malicious falsehood, provide an outline of the claimant's case regarding malice.

**(i) Additional relevant information:** If applicable, include any facts or details that make the claimant identifiable from the statement and any special facts related to the interpretation of the statement or specific damage caused.

**(j) Confidential information and privacy claims:** In cases involving claims related to confidential information or breaches of privacy, provide details about the information or categories of information claimed to be confidential or subject to a reasonable expectation of privacy.

**(k) Identification of the publication:** Specify the publication or proposed publication that contains the relevant information. This helps to identify the context.

**(l) Circumstances giving rise to confidentiality or privacy claims:** Explain the circumstances that give rise to claims of confidentiality or a reasonable expectation of privacy, depending on the type of claim being made.

**(m) Reasons for non-disclosure and harm suffered or anticipated:** Explain why the information should not be published or continued to be published, and provide details of any damage or distress suffered or anticipated. This is relevant when seeking non-disclosure orders.

**(n) Confidential information:** For claims related to confidential information, discuss the extent to which the information is already public and any specific damage caused or anticipated.]

You are required to respond within twenty-one (21) clear days<sup>3</sup> from the date of receipt of this letter by. Failure to do so will result in court proceedings being commenced against you without further notice.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have

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<sup>3</sup> 'Clear days' means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Claimant/Legal Practitioners for the claimant]

**ANNEX B**  
**LETTER OF RESPONSE**

[Date]

[Full legal name of defendant]

[Full Address of defendant  
and Legal Practitioner]

[Full legal name of claimant]

[Address of claimant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by [defendant's name] to respond to the intended claim of [claimant's name] in respect of [set out details of the nature of the claim being responded to. The relevant details of the response should cover the following where applicable:

- (a) **Acceptance of claim:** Indicate whether the defendant accepts the claimant's claim and, if so, to what extent. This helps clarify the areas of agreement.
- (b) **Request for more information:** If the defendant requires more information to understand or address the claim, this should be clearly stated. The defendant should specify precisely what information is required to enable the claim to be addressed. They should also provide reasons for requesting this additional information.
- (c) **Offer of remedies:** If the claim is accepted, either in whole or in part, the defendant should indicate which remedies they are willing to offer to resolve the matter. These remedies could include retractions, apologies, or other appropriate actions to mitigate the harm.
- (d) **Rejection of claim:** If the defendant rejects the claim, they should explain the reasons for the rejection. This explanation should include a sufficient indication of any statutory or legal exemptions or facts on which the defendant is likely to rely as part of their substantive defence. The defendant should also include an explanation of any defamatory imputations.
- (e) **Details for service:** If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Defendant/Legal Practitioners for the defendant]

## **APPENDIX D**

### **PRE – ACTION PROTOCOL FOR ADMINISTRATIVE CLAIMS**

#### **1. INTRODUCTION**

This protocol serves as a framework for handling administrative claims in a structured and transparent manner before formal legal proceedings commence. It emphasises the importance of communication, the early exchange of full information, and good faith efforts to resolve disputes efficiently. This protocol outlines the procedures and principles that parties involved in administrative claims should follow before initiating formal litigation.

#### **2. APPLICABILITY**

This protocol applies to applications for administrative orders specified in Rule 56.1 of the Civil Procedure Rules (Revised Edition) 2023 and does not affect the obligation to make a claim without delay.

#### **3. AIM OF THE PROTOCOL**

The protocol aims to promote good practice by enabling parties to understand the dispute, identify issues, promptly share relevant documents and information, make informed decisions about commencing a claim, explore settlement options, and support efficient case management.

#### **4. TYPES OF CLAIMS**

The protocol addresses various applications for administrative orders under Part 56 of the Civil Procedure Rules (Revised Edition) 2023.

#### **5. REQUESTS FOR INFORMATION AND DOCUMENTS**

The protocol emphasises proportionality in pre-action requests for information. Such requests should be confined to information necessary to understand the nature of the claim.

#### **6. DEFENDANT’S COMPLIANCE**

A defendant should comply with requests for information as far as possible unless there is a good reason not to do so. In determining costs, the court will consider whether and to what extent the defendant has complied with requests for information.

#### **7. LETTER OF CLAIM**

- 7.1 A letter of claim should be issued without delay upon the accrual of the right to bring a claim. It should provide clear notice of the nature of the intended claim, supporting facts, and relevant documents.
- 7.2 The letter of claim is an essential step in the pre-action protocol for administrative claims and serves to notify the defendant of the nature of the intended claim. It also provides all relevant

details to the defendant to initiate communication and potentially resolve the matter without formal litigation.

- 7.3 The letter should follow the outline set out in **Annex A** to this protocol. The draft letter of claim in **Annex A** is only meant to be a guide and it may be amended accordingly to ensure that the aims of the protocol are achieved.

## **8. DELIVERY OF THE LETTER**

The letter should be sent by the normal method of communication between the parties, and if there has been no prior engagement, it should be hand-delivered and sent by electronic mail (if known).

## **9. LETTER OF RESPONSE**

- 9.1 The defendant should acknowledge receipt within seven (7) days and deliver a full response within fourteen (14) days of the acknowledgment of the letter of claim.
- 9.2 The letter of response is a crucial step in the pre-action protocol for administrative claims, and it allows the defendant to formally respond to the claimant's letter, address the issues raised by the claimant, clarify the defendant's position, and potentially work towards resolution or, if necessary, prepare for formal litigation.
- 9.3 Properly structuring the letter of response is essential for transparency and effective communication during the pre-action stage of an administrative claim. A suggested format for the response is provided in **Annex B**.

## **10. CONCESSIONS BY THE DEFENDANT**

If the defendant concedes part or all of the claim, the response should specify the concession and any actions to be taken.

## **11. NOTIFICATION TO INTERESTED PARTIES**

The letter of response should also be sent to any interested party.

## **12. LITIGANT IN PERSON**

If the claimant is a litigant in person (representing themselves without a legal practitioner), the defendant should provide a copy of this protocol along with the letter of response.

**ANNEX A**  
**LETTER OF CLAIM**

[Date]

[Name of claimant]

[Full Address of claimant]

[Name of defendant]

[Address of defendant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by the above-named to claim [specify the relief sought] in connection with [set out details of the nature of the claim and the legal basis for seeking relief. The relevant facts of the claim should cover the following where applicable:

- (a) **The defendant's reference details:** Provide reference details<sup>4</sup> related to the matter in dispute or the public body handling the matter. This helps ensure that the letter is directed to the appropriate defendant.
- (b) **The details of the claimants' legal practitioner:** If the claimant has a legal practitioner, include their name, address, and any other contact details.
- (c) **The details of the matter being challenged:** Clearly state the matter being challenged, particularly if there have been multiple decisions.
- (d) **The details of any interested parties:** Include details of any Interested Parties and confirm that they have been sent a copy of this letter.
- (e) **The issue:** Summarise the facts and relevant legal principles, providing the date and details of the decision, act, or omission being challenged. Explain why it is considered to be incorrect or unlawful.
- (f) **The details of the action the defendant is expected to take:** Describe the remedy being sought, including whether a review or any interim remedy is being requested.
- (g) **ADR proposals:** If there are any proposals for alternative dispute resolution (ADR) to resolve or narrow the dispute, include them in this section.

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<sup>4</sup> 'Reference details' refers to any corresponding file number(s) in a particular matter.

- (h) **The details of any information sought:** Specify the information that is being sought, particularly related to the identifiable issues in dispute. This may include a request for a fuller explanation of the reasons for the decision being challenged.
- (i) **The details of any documents considered relevant and necessary:** Include details of any documentation, policies or any other information for which disclosure is sought and explain why they are relevant to the claim.
- (j) **Address for response and service of court documents:** Provide the address to which the defendant should send their response. This may also be the address for the service of court documents.
- (k) **Proposed response date:** Specify the proposed date for the defendant's response. The exact time frame may vary depending on the circumstances, but fourteen (14) days is suggested as a reasonable time in most cases.
- (l) **Defendant's specific address:** Where a public body has a specific address to which these letters should be directed, the claimant must send the letter of claim to that specific address to ensure a prompt response.
- (m) **Attorney General's address:** A copy of this letter should be sent to the Attorney General of the Member State or Territory where the intended claim is for relief under the Constitution as well as any Interested Parties to the claim.]

You are required to acknowledge receipt of this letter within seven (7) days and provide a full response within fourteen (14) days of your acknowledgement. Failure to do so may result in court proceedings being commenced against you without further notice.

If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Claimant/Legal Practitioners for the claimant]

**ANNEX B**  
**LETTER OF RESPONSE**

[Date]

[Name of defendant]

[Full Address of defendant]

[Name of claimant]

[Address of claimant]

Re: [Name of claimant and brief nature of dispute]

We are instructed by the above-named to respond to the claim [set out details of the nature of the claim being responded to. The relevant facts of the response should cover the following where applicable:

- (a) **Reference details:** Set out relevant reference numbers related to the matter in dispute and specify the identity of those within the public body who have been handling the issue. This helps in ensuring that the response is properly connected to the specific case.
- (b) **The details of the matter being challenged:** Provide details of the matter being challenged, offering a more comprehensive explanation of the decision, where it is considered appropriate. This allows for a clearer understanding of the defendant's position.
- (c) **Response to the proposed claim:** Indicate whether the issue in question is conceded in part or in full, or whether it will be contested. If an interim response is being sent and there is a realistic prospect of settlement, include details. If the claimant is a litigant in person, enclose a copy of the Pre-Action Protocol with the response.
- (d) **Details of any other interested parties:** Identify any additional parties who are believed to have an interest in the matter but have not yet received a letter from the claimant. This ensures that all relevant parties are considered.
- (e) **ADR proposals:** Explain the defendant's position regarding any alternative dispute resolution (ADR) proposals made in the letter of claim and any ADR proposals put forward by the defendant. This clarifies the approach to resolving the dispute.
- (f) **Response to requests for information and documents:** Provide the defendant's answers to the requests made in the letter of claim, including reasons why any requested information or documents are not being disclosed. This section addresses the claimant's requests for information.

- (g) **Address for further correspondence and service of court documents:** Specify the address for any future correspondence regarding the matter and the service of court documents. This ensures that both parties have a clear channel of communication.]
- (h) **Details of service:** If a claim is commenced against you, are you willing to accept service of the original process and all supporting documents via email? If so, specify your email address. Please also indicate whether you have authorised any legal practitioner to accept service of the intended claim on your behalf. If so, please provide the email address to which service is to be effected.

Yours faithfully

[Defendant/Legal Practitioners for the defendant]