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Conduct Issues in Claims under Regulation (EC) No. 261/2004

The Claimants

What they do…	What they should do…	Our response…
Initiate legal proceedings without authority	Obtain clear instructions before proceeding to any significant step in litigation, including the decision to serve a claim form.	Refute their entitlement to further compensation. In ***Adams & Ors. v. Ford & Ors.*** (2012) it was noted that, "The legal consequence of proceedings being issued without authority is … well established. The proceedings are defective and liable to be struck out on that account…" Applying for a strike out is disproportionately expensive; rather we seek to persuade the Claimant by letter withdraw their claim or otherwise file a defence seeking our costs on the above grounds.
Bringing or pursuing a claim with no merit	Investigate the claim thoroughly before deciding whether to serve a pre-action letter or claim form.	Request that the claim is withdrawn without having to incur the unnecessary costs associated with filing a defence. Remind the claimant's solicitors of their duties under **CPR 1.1(2)(b)** (to avoid unnecessary costs) and **PD 7A.7.2** (to base the claim on facts that are known to be true). Failing that, file a defence seeking our costs on the above grounds.
Delay in taking instructions	Once evidence of a claim being without merit is provided, the claimant-solicitors should seek instructions to withdraw as soon as possible.	Failing to (promptly) withdraw a claim when it has been proved to be without merit would force the defendant to prepare and file a defence to avoid a default judgment. This would mean the defendant incurs otherwise avoidable costs, in breach of **CPR 1.1(2)(b)**.
Unilaterally discontinuing proceedings after a strong defence is filed	Investigate the claim thoroughly before deciding whether to serve a pre-action letter or claim form.	In these circumstances, the defendant is denied the opportunity to recover the costs of preparing the defence. The defendant may file an application to set aside the Notice of Discontinuance, re-opening the case; however, this is disproportionately expensive and the claimant-solicitors know this. We are writing to the claimant-solicitors acting in this manner and threatening to report the solicitors' failure to act with integrity under **SRA Code Principles 2** and **4**.
Seeking further compensation in a previously settled claim	State all the compensation sought in the particulars of claim.	Refute their entitlement to further compensation. In ***Henderson v. Henderson*** (1843) it was established that, "the Court requires the parties … to bring forward their whole case, and will not … permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case."

The County Courts

What they do…	What they should do…	Our response…
Respond to a letter or email after the deadline has passed	Respond to queries by the parties within a reasonable time, and otherwise no later than the deadline placed on the parties.	Under **CPR 1.1(2)(d)**, the Court has a duty to deal with a case justly and at proportionate cost including, so far as is practicable, ensuring that it is dealt with "expeditiously".
Give unclear or inadequate reasons for their decision	Judges have a duty to explain why they have reached a particular decision.	In ***Flannery v. Halifax Estate Agencies Ltd.*** (2000), the Court of Appeal held that a professional judge has a general duty to give reasons, and that parties should clearly understand why they had succeeded or failed.

The UK Civil Aviation Authority

What they do…	What they should do…	Our response…
Insist on a 6-year limitation period under the Regulation and consider any contractual restriction to be a limitation contravening Article 15 of the Regulation	The Regulation makes no provision in respect of limitation periods. Article 15 of the Regulation precludes any limitation of the *substantive obligations* under the Regulation, but arguably does not preclude the shortening of the limitation period.	The Swedish courts have recently held that passengers must bring claims under the Regulation within a "reasonable period". It was noted that a period of **2 months** would always be considered reasonable. This reflects a more sensible approach, which will hopefully be adopted in more jurisdictions across Europe, including England and Wales. This is especially the case given the widespread publicity that the Regulation has received in recent years and the fact that claimants will know of their cause of action as soon as it accrues.

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Anna Anatolitou
anna.anatolitou@incelaw.com