

RAMSKILL MARTIN

Pre-Action Protocol and Litigation

1. Introduction

There have been considerable changes in procedures in dispute resolution over the last few years, and this includes procedures in litigation. On the 2 October 2000, the Pre-Action Protocol for Construction and Engineering Disputes came into effect.

This Protocol applies to all construction and engineering disputes, including professional negligence claims against architects, engineers and quantity surveyors. There are some limited exclusions, one important exception is that it is not necessary to comply with this Protocol if you have already been through an adjudication process or you wish to enforce an adjudicator's decision.

The purpose of this Protocol is to encourage the two sides in dispute to disclose as much information as possible prior to any proceedings so that any dispute has a good chance of being resolved without reverting to litigation.

There is, as you might expect, a formal procedure to be followed which is set out in the Protocol, and if this is not followed, a claiming party may be penalised when it comes to deciding who should pay the costs of any action. Cost can often be very considerable and it is, therefore, important that these procedures are adhered to.

2. Pre-Action Procedures

ramskill martin has used the pre-action procedures to great effect. Prior to the implementation of this procedure it was very easy for a reluctant defendant to avoid negotiations or discussions about a dispute which a claimant realises could be settled during negotiations or possibly a mediation. ramskill martin can effectively help with this procedure as follows:

- Preparation of pre-action position statement
- Preparation of letter of claim, appointment of experts or counsel if required
- Representation at pre-action meeting
- Negotiations leading to resolution of dispute
- Assistance with mediation

3. Potential Effects and Advantages

If the procedure is properly followed then cases may be settled much earlier and costs saved.

A disadvantage may be seen to be that it is essential that a claim is properly prepared at the outset so that any negotiations can be effective. A claim must be sufficiently detailed so that it is taken seriously.

If a defendant does not respond to any letters of claim the claimant can commence proceeding immediately and the defendant may well be penalised in costs. The pre-action protocol also encourages mediation, see Service Profile on Mediation.

Our experience is that the protocol can be an effective tool in achieving settlement without the need for court proceedings.