



Building Disputes

CHANGES IN THE LAW

For many years, the prospect of suing a builder was a daunting one and the legal process was slow and not user friendly. It was often a question of sending a letter before action and then waiting for a reply. If none was received, a Claimant had the unenviable task of deciding how long he or she must wait before taking the plunge and issuing Court proceedings.

The Civil Procedure Rules, which came into force in April 1999, created pre action protocols for the bringing of certain types of claim which give fixed time limits for replies and further action. In recent years, a protocol for Construction and Engineering disputes has been created. Its stated purpose is to enable both sides to exchange all of the relevant documents to their respective cases and try to avoid the need to issue proceedings wherever possible. Where litigation is unavoidable, the protocol is designed

to help the parties and the Court to efficiently manage the dispute.

HOW DOES THE PROTOCOL WORK?

The protocol works in the following way:

1. The Claimant sends a letter of claim identifying the parties, the dispute, the legal basis of the claim, what the Claimant seeks in redress and the names of any expert witnesses who have prepared reports.
2. The Defendant, or their insurer/representative, must acknowledge receipt of the Letter of Claim with 14 days and can give the name and address of a relevant insurer. If no response is received within 14 days, the Claimant can issue proceedings in Court.
3. If the Defendant does acknowledge in time, he or she must provide a full response to the claim within 28 days of the letter of claim (this

Civil

Commercial

Conveyancing

Family

Probate

period can be extended up to a maximum of 3 months by agreement). The response must specify which factual parts of the letter of claim are agreed or not agreed, which allegations of breach of duty or contract are accepted or not, whether any sums claimed are agreed and if not, why and details of any experts the Defendant has instructed. Again, if the Defendant does not provide the answer within the 28 days, the Claimant can issue proceedings.

4. The next stage of the protocol is a pre- action meeting between the parties which should take place within 4 weeks of the Claimant receiving the response to the claim. The purpose of this meeting is to narrow the issues in dispute and try to resolve the matter without proceedings. If proceedings must be commenced, the meeting can be used to decide how the proceedings can be conducted fairly and proportionately.

Please be aware that this is only a brief précis of the protocol and should not be taken as formal legal advice. If you consider you have a dispute which may fall within the Construction and Engineering Protocol, call us at Fraser Dawbarns LLP for bespoke and friendly advice.

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