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# Revision to the Pre-Action Protocol for Construction and Engineering Disputes

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A new edition of the Pre-Action Protocol for Construction and Engineering Disputes comes into force today.

Whilst the earlier Protocol has generally been viewed as a valuable tool, there have been various criticisms about its effectiveness, including the time taken to respond to claims, the lack of pre-action enforcement mechanism and the costs associated with compliance.

The new edition seeks to address these issues as follows:

- Whilst the Protocol is not voluntary, the parties can now agree to opt out.
- The Letter of Claim requirements have been modified so that only a brief and proportionate summary of the claim and relief sought is needed; an expert report is no longer expected or required.
- The Letter of Response is still due to be issued by the potential defendant within 28 days but this can only be extended by a further 28 days. Again it should only be a brief and proportionate summary.
- Time limits have been shortened and the parties cannot agree to extend any deadlines beyond 28 days in the aggregate.
- The Protocol introduces a new regime which is currently referred to as the Protocol Referee Procedure. The procedure involves the appointment of an independent referee from TECBAR or TeCSA at a fixed cost of £3,500 plus VAT to regulate compliance with the pre-action process. This is an entirely contractual procedure which the parties will need to agree to adhere to. It therefore remains to be seen if a party who fails to engage meaningfully with the Protocol will nevertheless still agree to submit to the appointment of a Protocol Referee.
- The court can only impose cost sanctions for non-compliance in exceptional circumstances, such as a flagrant or very significant disregard for the terms of the Protocol.

View the full amendments to the Pre-Action Protocol, the new Protocol and the accompanying Protocol Referee Procedure [here](#).

## Authors



**Nick Young**

*London - Walbrook*  
[nyoung@dacbeachcroft.com](mailto:nyoung@dacbeachcroft.com)



**David Bear**

*London - Walbrook*  
[dbear@dacbeachcroft.com](mailto:dbear@dacbeachcroft.com)