

## Do not underestimate the significance of compliance with the Pre-Action Protocol for Construction and Engineering Disputes

In [Bovis Homes Limited v Kendrick Construction Limited](#) the court has re-iterated the importance which is to be placed on the parties complying with the Pre-Action Protocol for Construction and Engineering Disputes ("the Pre-Action Protocol") if they wish to avoid adverse costs orders being made against them.

The judge characterised the issue before the court like this: in a Pre-Action Protocol process, should a defendant who

- (i) does not request a copy of the contract documents;
- (ii) who knows that the contract incorporated a standard form which contained an arbitration agreement;
- (iii) who has no reason to believe that that agreement has been amended or deleted; and
- (iv) who has expressly considered the possibility of arbitration

nevertheless say nothing at all about that possibility and wait to see if the claim was continued by the claimant before raising the arbitration point for the first time?

The judge held that a defendant should not be encouraged to act in this way because such conduct is not in accordance with the spirit of co-operation required by, or the detailed provisions of, the Pre-Action Protocol.

Further, the judge held that it is important for parties to exchange fully their views, not only on the dispute, but, if relevant, how that dispute should be tried and this is why paragraph 4.2.1 of the Pre-Action Protocol requires a statement at an early stage of any jurisdictional or arbitration points. If an early statement is not given, the court may (and in [Bovis](#), did) take such failure into account when considering the question of costs.

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