

# LETTER BEFORE ACTION - A PRACTICAL GUIDE

## Sometimes, all that is needed is a well written Letter Before Action

Taking the decision to commence legal action is never easy and sometimes the hurdles to overcome can seem daunting. The cost, risk, and time commitment can also be substantial however, in most cases it is surprising what a well-placed letter can do for you.

With over 15% of businesses facing insolvency in 2021, companies need to focus on monetising their assets but often write off unpaid debts and unperformed contracts rather than enforcing them. This is surprising when the economy is considered as a whole, because the total cost to businesses as a whole exceeds £2.5 billion a year.

Usually disputes either get acted on immediately, or they fall to the wayside. More often than not the result is the same because the initial correspondence does not correctly lay out the claim in a fashion that is readily understood, or it fails to put the recipient in fear of greater risk. In most cases, a brief legal advice can assist with both of these issues.

For this reason, the first legal letter (and the plan leading up to it) is essential to ensuring that legal action can be avoided and most certainly ensures that the best chances of success are maintained.

### ***What is a Letter Before Action?***

A Letter Before Action (also known as a Letter of Claim) is the first formal correspondence that the Court will consider as being the 'first step' in legal proceedings. This letter sets out the legal and factual basis of your claim and what you actually want to be done about it – this is often set out in the letter as the 'remedies'.

For many of our clients, legal action is only sought after a business relationship has broken down. Though harsh words may have been exchanged, the other side might

not appreciate how serious the claimant is – to help preserve the relationship, we often choose to advise how to draft a letter early on.

### ***Benefits of a Letter Before Action***

A well drafted letter before action will provide firm footing before a claim has even started by establishing the tone of a dispute, or its resolution. A poorly drafted letter can immeasurably harm a claim, hiding or complicating your legitimate points, and can sometimes create the impression that you are "not serious" about pursuing legal action.

In turn, this may encourage a defendant to believe they have a "fighting chance" or "nothing to lose" in defending the claim.

By contrast, a well written letter before action will lead the defendant to fully understand not only how serious you are in pursuing legal action, but it will enable a full and in-depth understanding of how strong your argument is (and how you wish to resolve matters).

The benefits of this cannot be underestimated. Upon receiving a letter before action, a defendant will often look to settle because they see no point in wasting both time and costs defending it. This is the best case scenario (although by no means guaranteed).

Alternatively, there can be legitimate reasons why the other side have acted as they have. Occasionally, upon sending a professionally written letter before action, we have received a response explaining why the defendant has acted as it acted. In some cases, these explanations were reasonable and formed the basis for a negotiated renewal of contractual relationships.

The importance does not stop there. If a claim progresses to court, the letter will be placed before a judge. The judge will scrutinise the contents of it to make sure that it is compliant with the Civil Procedure Rules (CPR). It should be noted that in some specific kinds of claim (personal injury, professional negligence, construction disputes etc.), there are additional court protocols governing the contents, which will also be scrutinised.

### ***What should go in a Letter Before Action?***

The CPR govern how parties to a dispute are to behave over the course of litigation. It sets out what is required for those intending to launch a claim, including the drafting of a letter before action.

As a rule, a letter before action should include full details of the background leading up to the claim, all allegations of breach of contract, negligence, misfeasance, and any remedies sought. If you are claiming for specific sums of money, these should be included too (together with interest). The defendant should be given a time limit by the claimant in which they are to respond. Again, for some

specific claims, there may be protocols setting out the deadline for any response.

All evidence that you believe supports your claim, at that time, should be attached to the letter.

You must include any specifics (such as negligence, misfeasance or mitigation) which will help you robustly assert your case in a sufficiently detailed fashion so that the court will understand you have already tried to explain your position and why you are seeking the remedy you are.

Finally, it is always appropriate to consider alternative dispute resolution. Here at Berkeley Rowe, we often suggest arbitration or mediation.



### ***HOW BERKELEY ROWE CAN ASSIST***

A well written Letter Before Action is a vital part of any litigation and, at its best, can force a settlement almost immediately. In most cases, it will be the foundation of all legal court drafting as the case develops. However, if done poorly, it can hamstring a case before it is even filed.

Instructing lawyers at an early stage will put any claim on the best possible footing, saving costs and time down the road.

Our team of expert litigators can ensure that any claim you need to bring (or defend) will be brought on the correct legal footing, robustly, quickly and effectively. If you are considering legal action or believe you may shortly, do not hesitate to speak to our litigation department. Regardless of the topic, we will have an appropriate specialist walk through what is necessary for the success of your case, without obligation.