

PRE-ACTION PROTOCOL FOR DEBT CLAIMS

Introduction

Most businesses will come across a bad payer at some stage. The reasons are endless and it's always been relatively easy to take action to recover money through the county court, this is especially true for lower value claims i.e. under £10k.

From 1 October 2017 there are new processes in place that businesses (including sole traders and public bodies) need to be aware of when claiming a debt from an individual (including a sole trader). It does not affect business-to-business debts. It's likely that businesses will be impacted due to the extra time and potential costs caused by compliance of this Protocol. You'll need to consider adapting your debt collection procedures as a result.

The aim is to encourage communication and exchange of information early on with a view to avoiding court proceedings. If a debtor has all the information they can make an informed decision – whether that is to make payment arrangements or to give details of why they disagree to try to avoid going to court.

The new principles are summarised in the [Pre-Action Protocol for Debt Claims](#).

Exceptions

As stated it does not affect business-to-business debts (unless the debtor is a sole trader) or where the debt is governed by another pre-action protocol, for example in respect of [construction](#) disputes or [mortgage arrears](#) possession claims.

What are the main principles?

A much more detailed letter before action is now required, and must include the following information:

- Amount of the debt
- Whether interest or charges are continuing
- If the debt arises from an oral agreement: who made the agreement; what was agreed; and when/where it was agreed
- If the debt arises from a written contract: the date of the agreement, the parties to it and enclosing a copy or stating it can be requested from the creditor/Claimant
- Details of any assignment of the debt
- Details of any instalments that are currently being paid or offered, and an explanation as to why this is not enough and why a claim is still being considered.
- Details of how the debt can be paid, and how to proceed if the debtor wishes to explore payment options
- The address to which the reply should be sent.

The letter should also enclose:

- An up-to-date statement of account for the debt
- An Information Sheet (found at Annex 1 of the protocol – see page 8 on this [link](#))
- A Reply Form (found at Annex 1 of the protocol - see page 10 on this [link](#))
- A Financial statement for the debtor to complete (example found at Annex 2 of the protocol see page 14 on this [link](#)).

It's probably wise to include copies of relevant documents to support your demand, as not doing so could encourage the debtor to make a request for copies, which will delay the matter further.

The letter must be dated, and sent out the same day or the following day.

Time scales – if there is no response

The protocol allows the debtor 30 days to respond before proceedings may be commenced. If the debtor does not respond then the creditor can issue proceedings so long as it gives 14 days' notice to the debtor of its intention to do so.

Time scales – if there is a response

The debtor should use the Reply Form, should indicate if he/she is seeking legal advice and must be allowed a reasonable period of time to do so (the 30 day period can be extended), he/she can also request copies of relevant documents and these should be exchanged to help understand each party's position as early as possible. If the document(s) is unavailable then the relevant party must explain why.

The creditor should not start court proceedings until 30 days from receipt of a completed Reply Form, or 30 days after providing documents (whichever is later). This means a debtor could delay payment for up to 60 days (or more) without your business being able to take legal action in that period.

The parties are, as usual, encouraged to consider ADR if they cannot come to an agreement about repayment of the debt. If a creditor refuses an offer of repayment, it must explain why, and must still give 14 days' notice of its intention to issue proceedings.

Failure to comply with the Protocol

If you ignore this protocol the court will take into account non-compliance of the pre-action protocol when giving directions and there may be costs sanctions. This means that your business may be ordered to pay costs or the court may halt (or stay) the legal proceedings until you have completed this process.

Useful links:

<https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf>

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