

NEW PRE-ACTION PROTOCOL FOR DEBT CLAIMS COMMENCING 1 OCTOBER 2017

The new Protocol has been under discussion for many years prior to it being finalised. The finalised Protocol aims to balance the obligations of both creditors and debtors and supplement pre-existing regulatory requirements on creditors. **Courts will expect parties to have complied with the substance of the Protocol before proceedings are issued. This note sets out key provisions in the Protocol and is not intended to be an exhaustive checklist.**

WHO DOES IT APPLY TO? (Introduction to the Protocol)

- ▶ The Protocol applies to any business (including sole traders and public bodies) claiming payment of debt from an individual (including a sole trader).
- ▶ The Protocol does not apply (a) to business-to-business debts unless the debtor is a sole trader; (b) where other protocols apply; and (c) to certain claims issued by HMRC.

THE LETTER OF CLAIM (Paragraph 3 of the Protocol)

- ▶ Before issuing legal proceedings, a creditor should send the debtor a dated Letter of Claim (LOC). The LOC should contain:
 - ▶ information about the debt and any interest or other charges
 - ▶ details of the agreement under which the debt arises (written or oral)
 - ▶ details of any assignment of the debt
 - ▶ details of any instalments that are being offered/paid and an explanation as to why existing proposals are not acceptable 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 discuss payment options
 - ▶ the address to which the completed reply form should be sent
 - ▶ a copy of an acceptable statement of account or in the absence of any statement, detail as to administration and interest charges.
- ▶ An information sheet and reply form (both set out in the Protocol) and a standard form financial statement for the debtor to complete showing their current financial situation must also be included with the LOC.

SENDING THE LOC AND RELEVANT TIME SCALES (Paragraphs 3.3 & 3.4 of the Protocol)

- ▶ The LOC should be sent by post (unless the debtor has expressly indicated a different preference).
 - ▶ If the debtor does not reply to the LOC within **30 days** of the LOC, the creditor may commence court proceedings – subject to any other obligations the creditor may have to the debtor (account should be taken of the possibility that a reply is posted towards the end of the 30 day period).
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RESPONSE BY THE DEBTOR & DISCLOSURE OF DOCUMENTS (Paragraphs 4 & 5 of the Protocol)

- ▶ The debtor should use the reply form contained in the Protocol for their response. If the debtor indicates that they are seeking debt advice, the creditor must allow a reasonable period for advice to be taken.
- ▶ The creditor should not commence proceedings until the later of either 1) **30 days** from receipt of the completed reply form or 2) **30 days** from the creditor providing any documents requested by the debtor, whichever is the later.
- ▶ Where a debtor indicates in the reply form that they require time to pay, the creditor and debtor should try to reach agreement for the debt to be paid by instalments based on the debtor's financial circumstances. Any refusal by the creditor of a proposal for repayment should include written reasons.
- ▶ A partially completed reply form should be taken by the creditor as an attempt by the debtor to engage with the matter and the creditor should attempt to contact the debtor to engage with the matter.
- ▶ The parties should exchange information and disclose documents sufficient to enable them to understand each other's position. If the debtor requests a document or information, the creditor must provide the document or information or explain why they are unavailable within **30 days** of receipt of the request.

ALTERNATIVE DISPUTE RESOLUTION (Paragraph 6 of the Protocol)

- ▶ The parties should take steps to resolve the dispute without starting court proceedings and should consider the use of Alternative Dispute Resolution (including informal processes such as simple discussions and negotiations).
- ▶ Should the creditor wish to start proceedings at a later date and after an agreement has been reached, it must send an updated LOC and start the Protocol procedure afresh.

TAKING STOCK (Paragraph 8 of the Protocol)

- ▶ Absent exceptional circumstances, where the debtor has responded to the LOC but agreement has not been reached, the creditor should give the debtor **14 days' notice** of its intention to start court proceedings.

The full Protocol can be found at www.justice.gov.uk/courts/procedure-rules/civil. Please do contact us if you have any queries.

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