

New Pre-Action Protocol for Debt Claims

Summary

With effect from Sunday 1st October 2017, businesses seeking to recover debts from individuals will be subject to the new 'Pre-Action Protocol for Debt Claims'. Failing to follow the Protocol, or getting it wrong, may prove to be an expensive mistake.

The Protocol is something of a 'debtor's charter' and introduces prescribed documentation that must be sent by business suppliers to debtors who are individuals (even individuals who are trading in business), as well as extended time limits for debtors to respond to claims. It does not apply to business to business debts, however.

What if I don't comply with the Protocol?

Non-compliance with the substance of the Protocol will be considered by the court when it gives directions about how the case will be managed. This gives wide-ranging powers to judges which might include calling business owners and directors to court to explain to the judge why the Protocol has been ignored and also may involve costs penalties being imposed, claims for interest being disallowed, etc.

What should I do?

- The impact of the Protocol on your business will depend, to an extent, on the profile of your debt book. If most debtors tend to pay in response to a Letter of Claim, then some may now seek extra time to pay once they have considered the rubric which accompanies the new Protocol Letter of Claim.
- If your debt book typically takes time to convert into cash, then cash flow may worsen if uncooperative debtors spin out longer the time before you could start legal proceedings, potentially **up to 74 days**.
- You should deploy credit checks before accepting valuable business from individuals (including sole traders).
- In appropriate cases you may wish to obtain third party personal guarantees, possibly backed by security, before accepting large orders.
- Take the opportunity now to consider drafting new (or revising existing) Standard Terms and Conditions.
- Bear in mind that any attempts to by-pass the new Protocol are likely to be penalised.

In a nutshell, what are the changes?

The changes to pre-action behaviour which the court will expect are extensive.

- Creditors **must** send, by post, a Protocol-compliant Letter of Claim, setting out the details about the debt and giving the debtor **30 days** from the date of the letter by which to respond. The Protocol is very prescriptive about what information the letter must provide.
- The new Protocol Letter of Claim **must** enclose three documents, being an Information Sheet, Reply Form and Financial Statement. Again, the content of all of these documents is prescribed by the Protocol.
- The debtor responds using the Reply Form, indicating whether they: (i) admit the full amount; (ii) some of it; (iii) none at all; or (iv) if s/he is unsure whether they owe the debt.
- If the debtor indicates they are seeking debt advice, a reasonable time period must be allowed for this to be obtained and proceedings should not be brought less than **30 days** from receipt of the Reply Form. If further time is required by the debtor, the creditor should allow reasonable extra time where it would be reasonable to do so in the circumstances.
- If instead the debtor requests time to pay in the Reply Form, creditor and debtor must try to reach agreement for payment by instalments, depending on the debtor's income and expenditure information. If the debtor's proposal is not agreed, the creditor **must** explain why, in writing.
- Even a partially-completed Reply Form should be seen as an attempt to engage, requiring creditor to make contact with the debtor in order to discuss the contents of the form and obtain any necessary further information needed to understand the debtor's position.
- The debtor is entitled to request documentation and/or information and the creditor must provide this (or explain why it is not available) within 30 days of receipt.
- If the parties cannot agree on whether or not the debt exists, or the amount of it, or whether it can be enforced, then alternative dispute resolution, or 'ADR', **must** be explored **before** the creditor commences court proceedings. Where the debt is large (no guidance is provided however) then the Protocol suggests mediation would be appropriate.
- If the creditor wishes to commence proceedings at a later date for an agreement which is later breached, then a fresh Letter of Claim must be sent.
- If a debtor has responded to a Letter of Claim, but agreement has not been reached, then, unless there are any exceptional circumstances, the creditor should give the debtor at least 14 days' notice before commencing court proceedings.

How can we help?

- Harrowells offer a cost-effective **fixed-fee** debt recovery service which is **compliant** with the Protocol yet **pro-active** in recovering debts for business clients. Interest and compensation, as well as costs, are added to the debt in appropriate circumstances.
- We will ensure that you comply with the Protocol and, unlike most debt recovery agencies, if debts are contested, then these can be referred to our Litigation team which is recognised by Legal 500 as being a leader in the Yorkshire region.
- We can also draft, revise and tailor to your needs Standard Terms and Conditions.
- Contact **Richard Hugill**, our Litigation Partner, on direct line **01904 698619**, or at **richard.hugill@harrowells.co.uk**, to learn about how we can help you.

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