

## PRE-ACTION PROTOCOL FOR DEBT CLAIMS

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### INTRODUCTION

1.1 This Protocol applies to any business (including a sole trader) claiming payment of a debt from an individual (including a sole trader). It does not apply to business to business debts unless both parties are sole traders.

1.2 This Protocol describes the conduct the court will normally expect of those parties prior to the start of proceedings and includes a template in Annex 1 for the defendant's reply to the letter of claim.

### OVERVIEW OF THE PROTOCOL – GENERAL AIMS

2.1 This Protocol's objectives are to encourage the parties to:

- (a) resolve the matter without the need to start court proceedings;
- (b) exchange early and full information about the matter;

- (c) consider using an Alternative Dispute Resolution (ADR) procedure;
- (d) act in a reasonable and proportionate manner in all dealings with one another (proportionality includes only incurring costs which bear a reasonable relationship to the sums in issue); and
- (e) support the efficient management, by parties and the court, of proceedings that cannot be avoided.

### **INITIAL INFORMATION TO BE PROVIDED BY THE CLAIMANT**

3.1 The claimant should send a letter of claim to the defendant before proceedings are commenced—

- (a) containing the Notice set out at paragraph 3.2 of the Protocol;
- (b) providing details of the amount of the debt and any payments made by the debtor, including—
  - (i) whether it includes interest and, if so, setting out any interest calculation;
  - (ii) whether it includes charges and other sums and, if so, setting these out;
  - (iii) where the debt arises out of a written agreement, either a copy of that agreement or an explanation of why no copy is available; and
  - (iv) where the debt arises from an oral agreement, who made the agreement, what was agreed (including, as far as possible, what words were used) and when and where it was agreed;
- (c) providing, where relevant, details of the original debt and creditor, and any assignments of the debt together with details of the relevant notices of assignment;
- (d) if regular instalments have been offered by or on behalf of the defendant, or are being paid, explaining why a court claim is being considered;
- (e) providing details of how the money can be paid (for example the method of payment and the address to which it can be sent);
- (f) stating that the defendant can contact the claimant in order to discuss repayment options and providing the relevant contact details;
- (g) requiring the defendant to return the defendant's reply form, at Annex 1, in the self addressed envelope, enclosed with the letter of claim, within 28 days; and

(h) informing the defendant of the steps to be taken if the debt is disputed (see paragraph 5), including informing the defendant of the importance of obtaining independent advice, and that free independent advice and assistance can be obtained from various organisations, including those listed in the table below.

3.2 The claimant should enclose with the letter copies of—

- (a) this Protocol (the Pre-Action Protocol for Debt Claims);
- (b) a full statement of account, including details of—
  - (i) all interest and charges included on the outstanding balance of the debt, explaining how they have been calculated;
  - (ii) any payments already made by the debtor;
- (c) the contract or agreement between the parties; and
- (d) the defendant's reply form in the annex to this Protocol, together with a self-addressed envelope.

3.3 The following NOTICE must be included at the beginning of all letters of claim—

“This letter sets out the information that the enclosed Pre-action Protocol requires [us] [me] to send you. You are required to complete and return the reply form at the end of this letter so that [we] [I] may know your response to [our] [my] claim. If you fail to do so, and we are forced to start proceedings for the money you owe the court could order you to pay any additional court costs and/or legal fees which [we] [I] unnecessarily incur as a result.

The Civil Procedure Rules require that, before starting court proceedings, the parties should (1) exchange information about the claim and the defence to the claim (if there is one) and (2) try to settle the matter without going to court. This claim is governed by the **Pre-Action Protocol for Debt Claims** which is enclosed with this letter and is also available at

<http://www.justice.gov.uk/courts/procedure-rules/civil/protocol>.

A successful court claim against you will normally add court costs to the debt and possibly legal and/or other fees as well.

**You are strongly recommended to seek independent advice on this matter. Free independent advice and assistance can be obtained from various organisations including those listed in Annex 2 to the attached Pre-Action Protocol for Debt Claims.”**

#### **RESPONSE BY DEFENDANT**

4.1 The defendant should use the reply form in Annex 1 to this Protocol for their response, which may be continued on a separate sheet of paper, and enclose copies of any additional documents considered necessary.

4.2 If the defendant intends to seek debt advice and is unable to provide a full response within the time specified in the letter of claim, then the defendant should reply using box 1 of the reply form and state—

- (a) that the defendant is seeking advice;
- (b) from where; and
- (c) the date of any appointment for that advice

4.3 The claimant is required to allow the defendant sufficient time to seek debt advice and, in any event, at least 28 days. If a defendant is seeking specialist debt advice which cannot be obtained within 28 days, the defendant must tell the claimant, who must allow reasonable additional time to enable the defendant to obtain that advice.

#### **DISCLOSURE OF DOCUMENTS - WHERE ANY ASPECT OF THE DEBT IS DISPUTED (OTHER THAN THE TERMS OF ANY PAYMENT ARRANGEMENT)**

5.1 If the existence, enforceability, amount or any other aspect of the debt is disputed (other than the terms of payment), both parties should exchange sufficient information and disclose sufficient documents to enable them to understand each other's position.

5.2 This would include, for example, where a debt is believed to be time barred (because nothing has been paid and the existence of the debt has not been admitted in writing by the defendant for 6 years, or 12 years for debts secured, or previously secured, on property and some other debts), or a credit agreement which is

unenforceable because the claimant has not complied with the requirements of the Consumer Credit Act. (Defendants would need to seek specialist debt advice on these aspects as they involve technical issues which may be complex.)

5.3 If the parties disagree about the disclosure of any document, either party may make an application to the court under CPR 31.16 before proceedings are issued. Applications could result in the court ordering either party to pay additional court and/or other legal costs.

## **TAKING STEPS TO SETTLE THE DISPUTE AND ALTERNATIVE DISPUTE RESOLUTION**

6.1 If the parties still cannot agree about the existence, enforceability, amount or any other aspect of the debt, they should both take appropriate steps to resolve the dispute without starting proceedings and, in particular, should consider the use of an appropriate form of Alternative Dispute Resolution (ADR). Failure to do so could result in the court ordering either party to pay additional court and/or other legal costs (see paragraphs 7.2 to 7.5 below.)

6.2 ADR may simply take the form of discussion and negotiation, or it may involve some more formal process such as a complaint to the Financial Ombudsman Service.

6.3 In some cases mediation might be appropriate. Details of accredited mediation providers can be obtained from the Civil Mediation Provider Directory at [www.civilmediation.justice.gov.uk](http://www.civilmediation.justice.gov.uk). Further information can be obtained from [www.justice.gov.uk/guidance/mediation/index.htm](http://www.justice.gov.uk/guidance/mediation/index.htm). The potential costs of mediation should be considered and it is recommended that free independent advice is sought as to its suitability.

6.4 No party can be forced to attempt ADR, but the court may require evidence that some form of ADR has been considered.

6.5 Where the parties reach agreement concerning the repayment of the debt the claimant should not issue proceedings while the defendant complies with the agreement.

## **THE COURT'S GENERAL APPROACH TO COMPLIANCE**

7.1 The Civil Procedure Rules enable the court to take into account the extent of the parties compliance with this Protocol when giving directions for the management of claims (see CPR rules 1, 3.1(4) and (5)) and when making orders about who should pay costs (see CPR rule 44.3(5)(a)). Copies of the Civil Procedure Rules can be downloaded free of charge at: [www.justice.gov.uk/courts/procedure-rules/civil](http://www.justice.gov.uk/courts/procedure-rules/civil)

7.2 Where a party has not complied with this Protocol the court may make an order for costs against that party or deprive it of costs which it would otherwise have recovered.

7.3 When considering compliance the court will—

- (a) be concerned with the degree to which parties have complied in substance with the relevant principles and requirements of the Protocol and is not likely to be concerned with minor or technical shortcomings;
- (b) consider the proportionality of the steps taken compared to the size, complexity, and importance of the matter including whether any costs incurred and claimed against the other party bear a reasonable relationship to the sums in issue; and
- (c) take account of the urgency of the matter and any consequent lack of opportunity to comply.

7.4 The court will look at the overall effect of non-compliance on the other party when deciding whether to impose sanctions.

7.5 If, in the opinion of the court, there has been non-compliance, the sanctions which the court may impose include—

- (a) staying (that is suspending) the proceedings until steps which ought to have been taken have been taken;

- (b) an order that the party at fault pays the costs, or part of the costs, of the other party or parties (this may include an order under rule 27.14(2)(g) in cases allocated to the small claims track);
- (c) an order that the party at fault pays those costs on an indemnity basis (rule 44.3(3) sets out the definition of the assessment of costs on an indemnity basis);
- (d) if the party at fault is the claimant in whose favour an order for the payment of a sum of money is subsequently made, an order that the claimant is deprived of interest on all or part of that sum, and/or that interest is awarded at a lower rate than would otherwise have been awarded; and
- (e) if the party at fault is a defendant, and an order for the payment of a sum of money is subsequently made in favour of the claimant, an order that the defendant pay interest on all or part of that sum at a higher rate, not exceeding 10% above base rate, than would otherwise have been awarded.

7.6 Claimants should be aware of the creditor's responsibilities under section 40 of the Administration of Justice Act 1970 and the Consumer Protection from Unfair Trading Regulations 2008 (where they apply) not to harass debtors or treat them unfairly.

## **TAKING STOCK**

8.1 Where the parties have not been able to settle the dispute they should take stock before the claimant issues court proceedings and try to agree what remains in dispute that the court will be asked to decide.

8.2 Following this, before issuing court proceedings the claimant should give the defendant at least 14 days notice of their intention to do so.

**ANNEX 1 – DEFENDANT’S REPLY FORM**

Name:  
Address:  
Contact telephone numbers:  
E mail address:

**(You should delete or complete one or more of the BOXES as appropriate and return the form to (to be completed by the claimant)**

.....  
.....

**It is important to keep a copy of the completed form)**

<p><b>BOX 1</b></p> <p>I am obtaining advice from ..... (insert name and contact details of person or organisation giving advice) and I have an appointment with an adviser on (insert date) .....</p>
<p><b>BOX 2</b></p> <p>I admit that I owe the sum claimed. [I enclose payment.] or [I will contact the claimant to pay by (insert method of payment).....for which a receipt is required.]</p>
<p><b>BOX 3</b></p> <p>I admit that I owe part of the sum claimed (<i>insert amount admitted</i>) £..... [I enclose payment] or [I will contact the claimant to pay by debit card]. (<i>please also complete BOX 5 to explain why you deny that you do not owe the whole of the sum claimed</i>)</p>
<p><b>BOX 4</b></p> <p>I admit that I owe [the sum claimed] or [£ ....of the sum claimed] but I would like time to pay. My income is £ .... per week and my outgoings are £ .... per week. My proposals for repayment are: (<i>insert full explanation here or on an additional sheet of paper if necessary</i>):  I enclose full particulars and relevant documents in relation to my income.</p>
<p><b>BOX 5</b></p> <p>I deny that I owe the sum claimed or part of it because (<i>insert full reasons here or on an additional sheet of paper if necessary and attach copies of all relevant documents</i>):</p>
<p><b>BOX 6</b></p> <p><b>I believe that the sum claimed is time barred or otherwise unenforceable because:</b> (<i>insert full reasons here or on an additional sheet of paper if necessary and attach copies of relevant documents</i>).....</p>
<p><b>BOX 7</b></p> <p>Signature ..... Date...../...../20.....</p>

**ANNEX 2 - INDEPENDENT ADVICE ORGANISATIONS**

Organisation	Address	Telephone Number	e-mail Address/website
Citizens Advice	Check your local Yellow Pages or Thomson local directory for address and telephone numbers		<a href="http://www.adviceguide.org.uk">www.adviceguide.org.uk</a>
Civil Legal Advice (formerly Community Legal Services Direct)		0845 345 4345	<a href="http://www.gov.uk/civil-legal-advice">www.gov.uk/civil-legal-advice</a>
Stepchange Debt Charity (formally the Consumer Credit Counselling Service (CCCS))	CCCS Wade House Merrion Centre Leeds LS2 8NG	FREEPHONE 0800 138 1111	<a href="http://www.stepchange.org">www.stepchange.org</a>
National Debtline	Tricorn House 51-53 Hagley Road Edgbaston Birmingham B16 8TP	FREEPHONE 0808 808 4000	<a href="http://www.nationaldebtline.org">www.nationaldebtline.org</a>

Comments to:

[mailto:paps\\_consultations@justice.gsi.gov.uk](mailto:paps_consultations@justice.gsi.gov.uk) (please note: **PAP Debt Claims Consultation** in the subject line of your response.

or by post to:

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 102 Petty France  
 London SW1H 9AJ