

## The New Debt Recovery Protocol

Since the start of October, one may have noticed that the air has turned slightly colder and the leaves on the trees are turning brown. However, one thing you may not have noticed was that on 1 October 2017 the Ministry of Justice quietly introduced the new Pre-Action Protocol for Debt Claims ("**Protocol**").

### What is it?

The new Protocol aims to encourage early negotiations and co-operation between creditors and debtors. It tries to encourage them to use alternative dispute resolution procedures where possible, in an attempt to reduce the number of cases getting to court. It describes the conduct the court will normally expect of parties prior to the issuing of proceedings.

### Who does it apply to?

The Protocol applies to **any** business (including sole traders and public bodies) claiming payment of a debt from an **individual** (including a sole trader). It **does not** apply to business-to-business debts unless the debtor is a sole trader.

### What does it do?

The net effect of the Protocol is that it has created a prescribed procedure for recovering debts from individuals and it potentially significantly lengthens the period of time involved before a creditor will be able to issue proceedings for a debt (possibly up to a period of **74 days**).

In summary, the key points of the Protocol are as follows:

- It provides a prescribed list of information about the debt that must be included in the initial Letter of Claim sent by a creditor to a debtor.
- A debtor must be sent a copy of two new prescribed forms with the Letter of Claim, being an Information Sheet and Reply Form.
- A debtor must be sent a Financial Statement Form.
- A debtor will have **30 days** from the date of the Letter of Claim to reply, after which if no reply is received from a debtor; a creditor may start court proceedings.
- A creditor should allow some further time from the end of the 30 day period to account for the fact that a reply may have been posted at the end of the time limit.
- If a debtor replies and indicates that they are seeking debt advice, a creditor must allow a further reasonable period for advice to be obtained, which should not be less than **30 days** from receipt from the debtor of the Reply Form.

- A partially completed Reply Form should be taken by a creditor as an attempt by a debtor to engage with the matter.
- If a debtor requests a document or information, a creditor must provide it within 30 days of receipt of the request.
- If a debtor responds to the Letter of Claim but agreement is ultimately not reached, a creditor should give the debtor a further **14 days**’ notice of their intention to start court proceedings.
- If the matter cannot be resolved and proceeds to litigation, the court will expect the parties to have complied with the Protocol, if they have not, the court may impose **cost sanctions** on the non-compliant party.

### Comment

As can be seen from the above points, the Protocol has significantly lengthened the period of time which a creditor (who wishes to comply with the Protocol) has to wait before it can start court proceedings for recovery of a debt. The Protocol is stacked in a debtor’s favour and one can foresee a savvy debtor using the prescribed procedure to its advantage. When recovering debts from individuals, creditors will need to provide clear and specific information about the debt and provide copies of any underlying contractual terms. The Protocol may make it uneconomical in terms of the staff time involved to recover ‘smaller’ debts.

### Practical points

In order to avoid getting caught up in the Protocol, creditors must put in place effective credit control measures to hopefully prevent matters from having to proceed to litigation. Such measures could include:

- Taking a payment on account of all or part of the contract sum
- Shorter terms for payment (e.g. within 7 days, rather 14 days)
- Passing debts to credit control/the accounts department to follow up immediately after expiry of the initial payment term
- Holding accurate up to date contact information for debtors
- Ensuring that a written agreement is in place and a copy is kept
- If supplying goods, including a retention of title clause in the contract
- Setting credit limits
- Carrying out a credit check on a prospective client e.g. checking for CCJs

In summary, if the Protocol is not followed by creditors, if they issue court proceedings they are at risk of **cost sanctions** being imposed by the court.

To discuss this matter in further detail and how it may affect your business, please contact a member of the [Rooks Rider Solicitors Dispute Resolution](#) team.



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