



CREDITORS: WHAT YOU NEED TO KNOW ABOUT PRE-ACTION PROTOCOL FOR DEBT CLAIMS



Discover the answers to some of the frequently asked questions about the Pre-Action Protocol for Debt Claims

FAQs

We answer some of your frequently asked questions about the Pre-Action Protocol for Debt Claims.

When does the Pre-Action Protocol for Debt Claims come into force?

The Protocol applies from 1st October 2017.

Who does it apply to?

This Protocol applies to any business (including sole traders and public bodies) claiming payment of an overdue debt from an individual (any person who operates as a sole trader or partner in a partnership).

It does not apply:

- To business-to-business debts unless the debtor is a sole trader or partner
- Where the debt is covered by another Pre-Action Protocol such as Construction and Engineering or Mortgage Arrears
- To claims issued by HM Revenue and Customs that are governed by Practice Direction 7D (Claims For The Recovery Of Taxes And Duties)

Why is the Pre-Action Protocol necessary?

The Protocol aims to encourage parties to communicate issues at an early stage and resolve the matter without the need to start court proceedings.

This should keep costs reasonable and proportionate to the amounts involved.

If parties follow the Protocol and court proceedings still cannot be avoided it is hoped that the pre-

action steps will support the efficient management of proceedings.

What happens if creditors fail to comply with the Protocol?

If a matter proceeds to litigation, the court will expect the parties to have complied with this Protocol. The court will take into account non-compliance when giving directions for the management of proceedings.

Failure to comply with the Protocol may result in:

- Further delay in the collection of debts if any legal proceedings are stayed to remedy failures to comply with the Protocol
- Additional costs sanctions in terms of payment of the debtor's legal costs or a failure to recover costs, and
- Inability to recover interest from a debtor or recovery at a reduced rate

What has changed?

The Protocol has essentially formalised the pre-action process used in most simple debt claims.

Previously businesses sent a Letter Before Claim, then waited a minimum of seven days and then issued a Money Claim.

The new Pre-Action Protocol for debt claims requires creditors to undertake much more elaborate prescribed pre-action steps. The new procedure is outlined on the following page.

What does the Pre-Action Protocol involve?

The principal steps that creditors must follow are summarised below:



1. Send a Letter of Claim

The creditor should send a Letter of Claim to the debtor before proceedings are started. This letter should be clearly dated and sent on that date, or the following day if that is not reasonably possible.

All Letter of Claims should be posted unless the debtor has made an explicit request that correspondence should not be sent by post, and has provided alternative contact details. The Letter of Claim should contain full details of the debt including how it arose and how it can be paid.

It should enclose an up-to-date statement of account for the debt, or a recent one with an explanation in the Letter of Claim of any interest incurred and any administrative or other charges imposed since that statement of account was issued, sufficient to bring it up to date.

If no statements have been provided for the debt, the Letter of Claim must state the amount of interest incurred and any administrative or other charges imposed since the debt was incurred.

Creditors are also required to enclose a copy of the Information Sheet, a Reply Form and a Financial Statement Form. As well as this, if the debt arose under a written agreement, that agreement must be enclosed.



2. Wait for a response

If the debtor does not reply to the Letter of Claim within 30 days of the date at the top of the letter, the creditor may start court proceedings, subject to any remaining obligations the creditor may have to the debtor (for example, under the Financial Conduct Authority's Handbook).

You should take into account the possibility that a reply was posted towards the end of the 30-day period.



3. Engage with the debtor

The debtor should reply using the Reply Form enclosed with the Letter of Claim within 30 days. This response will highlight if there are any disputes, whether or not the debtor can pay and whether or not the debtor is seeking advice.

Where any aspect of the debt is disputed, 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 it or explain why it is unavailable, within 30 days. [Continued >](#)

The process

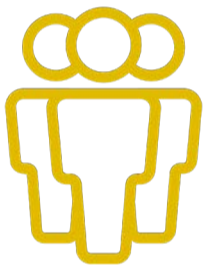
If the debtor indicates that they are seeking debt advice, the creditor must allow the debtor a reasonable period for the advice to be obtained.

Where a debtor indicates 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 income and expenditure.

If the creditor does not agree to a debtor's proposal for repayment of the debt, they should give reasons in writing.

A partially completed form should be considered an attempt by the debtor to engage with the matter. The creditor should attempt to contact the debtor to discuss this and obtain any further information needed to understand the debtor's position.

In any event, the creditor should not start court proceedings less than 30 days from receipt of the completed Reply Form or 30 days from the creditor providing any documents requested by the debtor, whichever is the latter.



4. Attempt to settle the matter

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 court proceedings and, in particular, should consider the use of an appropriate form of Alternative Dispute Resolution (ADR).

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 where the dispute concerns a debt regulated under the Consumer Credit Act 1974.

In some cases, especially where the debt is large, mediation (a third party facilitating a resolution) might be appropriate.

Details of registered mediation providers can be obtained from the Civil Mediation Provider Directory at www.civilmediation.justice.gov.uk. The potential costs of mediation should be considered in relation to the amount of the debt.

Where the parties reach agreement concerning the repayment of the debt, the creditor should not start court proceedings while the debtor complies with the agreement.

Should the creditor wish to start court proceedings at a later date, they must send an updated Letter of Claim and comply with this Protocol afresh. If documentation was sent with a Letter of Claim in the preceding 6 months, that documentation need not be sent again unless it requires updating.



5. Take stock

Where the procedure set out in this Protocol has not resolved the matter between the debtor and creditor, they should undertake a review of their respective positions to see if proceedings can be avoided and, at the very least, to narrow the issues between them.

Where the debtor has responded to the Letter of Claim but agreement has not been reached, the creditor should give the debtor at least 14 days' notice of their intention to start court proceedings, unless there are exceptional circumstances in which urgent action is required (for example, because the limitation period is about to expire).



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What does all of this mean for creditors?

Creditors should review and adapt their credit control process to ensure that it follows the new procedure. Here are some key challenges to consider:

- The Protocol increases the amount of work that must be done before even a simple debt claim is issued so additional resource may be required
- Protocol is likely to increase costs so creditors should carry out a thorough cost-benefit analysis before embarking on any litigation
- All steps of the Protocol must be followed or it could result in financial penalties
- Creditors will be required to be more pro-active when engaging with debtors to ensure information is properly exchanged, provided in the required formats and time periods met
- The new Protocol requires a considerable degree of greater patience when collecting outstanding debts as there is increased scope for delays
- As a result, there is greater pressure to ensure you act promptly when debts arise
- These additional delays can significantly impact your business's cash flow so it's wise to consider carefully when and to whom you give credit
- Additional costs and delays could be incurred, particularly if ADR is triggered

Should I be looking to go legal in light of all this?

Whilst some customers will respond to the debt recovery techniques employed by your business, others need an even firmer approach to persuade them to settle outstanding invoices. This is where legal proceedings can have the best impact.

However, due to the time-consuming and costly nature of starting court proceedings, this is often

considered as a last resort. And, with the new Protocol likely to make this process even burdensome, many businesses will understandably be put off pursuing debts.

Whilst often seen as the most expensive approach to recovering unpaid invoices, legal charges vary depending on the size of the debt involved and the action taken.

Sometimes, though, a letter before action is all that is needed to get the customer to pay.

The Pre-Action Protocol may make this stage of the process even more effective as it will encourage parties to communicate and resolve the matter without the need to go to court.

But, with so many stages to follow before a claim can be issued, the threat of pursuing legal action may no longer have the desired effect as debtors will likely be aware that they can stall proceedings.

It is important to remember that, if this stage is not successful, there is no guarantee that you will get what you are owed when it makes it to court.

For these reasons, it is important to evaluate each individual debt and pick the course of action that will best maximise its recovery.

It is also worth remembering that if this route is taken customer relationships are likely to be damaged. But you must ask yourself if you want a customer that consistently fails to pay on time.

The legal system can be complex and, with a lot of legal jargon to understand, can be off-putting for many businesses. By employing a good company to start the legal proceedings on your behalf you will have the added benefit of experts that can offer sound, practical support.



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What other options do I have?

Instead of opting for the legal route you could outsource the debt to a specialist commercial debt collection agency.

These companies excel at the recovery of particularly outstanding invoices, dedicating the time and attention to each individual customer that you may no longer be able to afford.

The name of a commercial debt collection agency alone will add further weight to your collections process and most collection services are success-only, which means you don't pay unless your money is recovered.

Often this personal, persistent and professional mediation is more successful than legal action and this method will also allow you to preserve customer relations and not burn any bridges that the legal route often does.

Where can I find more information about the Pre-Action Protocol?

You can read the full Pre-Action Protocol for Debt Claims here: <https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf>

A more personal touch

After failing to collect a debt in-house many companies choose the legal route to recover their outstanding invoices, but this isn't always successful.

Although it seems like a firm way to deal with an evasive customer, a County Court Judgment (CCJ) is often difficult to enforce, which is something our client soon found out.

Training provider Tangram Consulting was owed over £2,500 for training expenses. And when their calls and emails were met with attempts to dodge paying the debt they decided to take legal action.

The company director, Rick Harrison, successfully obtained a CCJ against the customer, which he hoped would be enough to ensure payment, but unfortunately this too failed to get the customer to pay.

Having almost given up hope of ever seeing his money the client decided to get in touch with Hilton-Baird.

With legal action involved in Scotland and England and the client moving to Germany, the case was quite unusual.

But after assessing the situation and identifying the most appropriate strategy, our team quickly got to

work and were able to help the client get his payment in full.

Tangram Consulting's director, Rick Harrison, said: "I had basically written off the money. But after talking to Hilton-Baird I was more confident that I would get my money back and I did.

"I had tried to pursue the debtor through the small claims court but the judgment didn't guarantee I'd get my money back.

"I had tried phone calls, writing and emailing them – all of which were easy to avoid and dodge. And not being local to the debtor I wasn't able to talk face to face. So even though I had a CCJ in place my efforts weren't giving me the results I wanted.

"My case was managed very effectively and efficiently and I have really appreciated the knowledge and guidance Hilton-Baird gave me to help unravel the complexities of the legal processes involved.

"I must also note that on each contact Marc was up to date with my case and worked hard to answer questions I had as they arose, going out of his way to find information to enable me to make informed decisions about what to do next.

About Hilton-Baird

How we can help

Whether you need help with a single invoice or your entire debtor book, Hilton-Baird Collection Services is an award-winning debt recovery agency that's proven to deliver results.

- Access collections expertise proven to maximise recovery
- Regain time and resource to focus on newer debts
- Peace of mind that aged balances are in safe hands
- Escalation to legal recovery if required
- Typically provided on a success-only basis
- Service tailored to your needs
- Ongoing visibility of activity through a secure online portal

To discuss your requirements with one of our experts call us on 0800 9774848 or email collections@hiltonbaird.co.uk.

A fresh approach to debt collection

Hilton-Baird Collection Services is an experienced and FCA-authorized commercial debt collection agency, with a proven track record in delivering excellent results on behalf of our clients.

Established in 2001, we provide tailored debt recovery and credit control solutions to businesses of all sizes, from start-ups to large corporate entities.

This experience has allowed our highly skilled team to adapt its approach to individual instructions and debtors, helping us to maximise recoveries and support our clients in achieving their goals.

We favour mediation over court proceedings, enabling us to use

our knowledge and reputation to bring positive conclusions to often complex cases pre-legally, whilst preserving customer relationships and adding value. However, we also have extensive experience of the legal system and can guide you through it should legal collections be the most appropriate option.

And with the help of our online Client Zone, which provides 24/7 secure access to the status of your invoices, you'll always be updated with our progress.

CONTACT DETAILS

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