Pre-action Protocol for Debt Claims: Changes to the “Letter – wait – issue” process

After a long period of discussion, the Ministry of Justice has published a new Pre-action Protocol for Debt Claims (“the Protocol”), which came into force on 1 October 2017. Parties must ensure that they comply with the Protocol, before issuing any claim to recover their debts.

Who will the Protocol apply to?

The new Protocol will apply 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, so will not apply where a creditor is seeking to recover liabilities from a company or LLP. However, it will apply where a creditor seeks to recover a debt due under a guarantee from an individual.

Where the debt is covered by another Pre-action Protocol such as the Pre-action Protocol for Construction and Engineering disputes, or where a claim is issued by HMRC and is governed by Practice Direction 7D (Claims For The Recovery Of Taxes And Duties) the Protocol will not apply.

If the Protocol is inconsistent with a specific regulatory obligation, such as a principle, rule or guidance contained in the Financial Conduct Authority’s Handbook, the regulatory obligation will prevail.

What are some of the key provisions of the Protocol?

**Letter of Claim**

Full details of what to include in the Letter of Claim (which complies with the Protocol) can be found at [Paragraph 3.1 of the Protocol](#). The key requirements to note are as follows:
The Letter of Claim should clearly state the date at the top of the page and a corresponding address.

The Letter of Claim should state the amount of debt claimed, and whether interest or other charges are continuing, either by enclosing an up-to-date statement of account or setting out the details therein.

If the debt arises from an oral agreement, the Letter of Claim should set out what was agreed, where the agreement took place and who the agreement took place between.

By contrast, if the amount of debt claimed arises from a written agreement, the Letter of Claim should state the date of the written agreement, the parties to the agreement and the relevant provisions of the agreement. If a copy has not been enclosed, it should also state that the debtor is entitled to request for a copy of the written agreement.

The Letter of Claim should provide details of how the debt can be paid and what the debtor can do if he wishes to discuss payment options.

A creditor is expected to enclose the following documents within the Letter of Claim:
- The Information Sheet and Reply Form set out at Annex 1 of the Protocol;
- A Financial Statement form, an example of which can be found at Annex 2 of the Protocol.

The Letter of Claim will need to be sent by post, unless an alternative method has been explicitly agreed with the debtor.

Debtor’s Response

The debtor should reply to the Letter of Claim using the Reply Form.

The debtor can request for copies of relevant documents, including details of payments not already taken into account. The creditor has 30 days from the date of request to provide the relevant documents, or if the creditor is unable to supply the documents, then an explanation must be given as to why the documents requested are not available. Importantly, a creditor cannot refuse to supply a document on the basis that it is irrelevant.

The debtor may seek debt advice and the creditor must allow at least 30 days from receipt of the completed Reply Form for the debtor to do so before issuing proceedings. If the debtor has requested for documents from the creditor, the 30 days will run from the date the creditor provided the relevant documents.
If the debtor requests for time to pay, the creditor should take into consideration the debtor’s income and expenditure in reaching an agreement with the debtor.

An incomplete Reply Form from the debtor should still be treated as a response and the creditor will be expected to obtain further information from the debtor.

Disclosure of documents

The Protocol provides that parties should exchange and disclose documents as early as possible to help clarify any issues.

What happens if a debtor does not reply to the Letter of Claim?

If the debtor does not reply to the Letter of Claim within 30 days of the date of the letter, a creditor may start court proceedings against the debtor. However, notably, a creditor must provide 14 days notice of his intention to do so.

Commentary

Before the introduction of the new Protocol, there was no Pre-action Protocol specifically for debt claims, although parties were expected to comply with the Practice Direction for Pre-action Conduct. Creditors will no longer be able to send simple letters of demand for unpaid invoices before initiating legal proceedings in the court. Instead, a comprehensive Letter of Claim will need to be sent to the debtor with the contents as provided in the Protocol.

Businesses with debt claims may wish to consider starting their debt collection process sooner, as the new Protocol procedure will inevitably cause delays of up to 90 days to debt recovery.

The new Protocol focusses on encouraging early communication between parties and aims to avoid court proceedings wherever possible.

Where a Letter of Claim has been served pursuant to the Protocol and a creditor and debtor are still in dispute regarding the payment of debts, the Protocol will expect the parties to consider an appropriate form of Alternative Dispute Resolution carefully.

Where a Letter of Claim has been served pursuant to the Protocol, the parties reach an agreement for the payment of debt but the debtor then defaults, the creditor must send a new Letter of Claim to the debtor and restart the process of the Protocol before court proceedings are issued.
The court will expect the parties to have complied with the Protocol if the matter proceeds to litigation. The court will consider any non-compliance with the Protocol where directions are given for management of the case and parties may face sanctions where they fail to comply with the Protocol. Businesses will need to ensure that their internal pre-action debt recovery practices are reviewed.

The introduction of timescales by the Protocol will inevitably put pressure on businesses wanting to collect their debts from an individual. It appears that the onus is on the creditor to provide relevant documents and information, therefore good practices and procedures should be in place to ensure that they are able to locate any written agreements or documents requested within 30 days. A creditor will need to make sure that all relevant information is readily available in the event a request of such kind is made or be able to provide an explanation as to why such information is not available.

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