

DEBT RECOVERY UPDATE

7 September 2017

New Debt Recovery Protocol – 1 October 2017

Please note that an important change in debt recovery action will come into force on 1 October 2017.

From that date, a new Pre-Action Protocol, specifically for debt claims, must be used (the Protocol). This is an important shift as currently there is no specific Pre-Action Protocol for debt claims, although parties are expected to comply with the existing Practice Direction for Pre-Action Conduct.

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

The aims of the Protocol are broadly similar to the existing Practice Direction, and relate to promoting early engagement between the parties and to enable the parties to resolve the matter without the need to start court proceedings. However, the new Protocol is much more prescriptive and will likely delay the recovery of debts if the debtor wants to avoid prompt payment. For example, the Protocol sets out exactly what must be included in the Letter of Claim including the offer of a copy of any written agreement under which the debt is owed (or full details of the basis for the debt). In addition when sending out the Letter of Claim, creditors will be expected to include (a) an Information Sheet and Reply Form and (b) a Financial Statement. Finally, if a debtor asks for a document, the creditor must either provide the document or explain why it is unavailable within 30 days of that request.

Under the Protocol, a creditor should not issue proceedings until 30 days after the date:

- of the Letter of Claim. This is to allow a debtor time to complete and return the Reply Form, and to encourage negotiations;
- of receipt of the Reply Form from the debtor. This includes the return of a partially completed Reply Form; or

- on which the creditor provides documents requested by the debtor (or an explanation as to why they are not available).

A creditor must also allow a reasonable period of time for a debtor to seek legal advice.

If, following discussions, no agreement is reached, the creditor may give the debtor at least 14 days' notice of their intention to start proceedings, unless there are exceptional circumstances (like the expiry of a limitation period) which means the creditor cannot wait.

There are 2 key aspects to these changes we recommend you consider. First, if you do have any existing debts you require assistance with, we suggest you instruct us as soon as possible as this will allow us to proceed more quickly than after the new Protocol comes into force. Second, for any debts being chased after 1 October 2017, it is critical that the new requirements are complied with as there may be costs consequences if the Protocol is not followed. This will undoubtedly cause a delay in issuing proceedings (potentially of up to 90 days if the debtor hides behind the various timescales in the Protocol).

If you have any queries in relation to the new Protocol, or if we can be of any assistance whatsoever, please do not hesitate to contact me on **0191 384 2441**.

Kind Regards

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