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Pre- Action Protocol for Debt Claims

The Pre-Action Protocol for Debt Claims, (the "Protocol"), comes into force on 1st October 2017.

The following article examines the concept of 'debt'; this article focuses on the purpose, procedure and effects of the Protocol.

The objective of a Pre-Action Protocol is to prescribe the conduct the court expects the parties to take prior to commencing legal proceedings. In line with Lord Jackson's 2010 review of litigation costs, the Protocol aims to encourage early communication and exchange of information and documents between the parties so to enable them to resolve the dispute without litigation. This Protocol expounds the new procedure for a business, (the "creditor"), to follow when claiming repayment of a debt from an individual, (the "debtor"). It does not concern debts between businesses, unless the individual is a sole trader.

Prior to this Protocol, typically the creditor would contact the debtor to secure the outstanding payment; if this failed, the creditor would either enlist a debt collection agency or instruct a solicitor and a 'Letter Before Action' would be sent. Under the new Protocol, this Letter is called the 'Letter of Claim' and section 3 stipulates the information it must include. This Letter of Claim, along with the Information Sheet and Reply Form (Annex 1 of the Protocol) and the Financial Statement (Annex 2 of the

Protocol), must be sent by post to the debtor. The debtor then has thirty days to respond.

The next stage depends on what, if any, response is received from the debtor:

- If there is no response within the timeframe, the creditor can commence court proceedings.
- If the debtor indicates that they are seeking advice or that they require time to pay, or sends back to the creditor an only partially completed Reply Form; section 4 of the Protocol sets out the corresponding required action.
- If the parties disagree about the existence of the debt, they should consider Alternative Dispute Resolution per section 6 of the Protocol. If agreement is still not reached, then the creditor should give the debtor notice of at least fourteen days of its intention to commence court proceedings.
- If the creditor receives a completed Reply Form, the debtor should pay the money owed and there will be no need to commence proceedings, provided there is no error on the Form.

There are some specific exemptions and regulatory obligations that take precedence over this Protocol. These mainly concern claims where there is currently another applicable Pre-Action Protocol such as in construction or mortgage areas.

For businesses predominantly providing credit for individuals, this Protocol creates a more formal and time-consuming procedure for collecting debts. Creditors will no longer be able to pressure a debtor with the prospect of imminent court proceedings. However, if the creditor fails to comply with this Protocol, the court could impose sanctions.

There is then the potential for debtors to use the Protocol to delay payment, but even if this does not happen, the new procedure is likely to be slower and dearer than pre-October 2017.

Attached is a copy of the Protocol: <https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf>

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