

PRE-ACTION PROTOCOL FOR DEBT CLAIMS

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1 INTRODUCTION

- 1.1 This Protocol applies to any business (including sole traders and public bodies) claiming payment of a debt from an individual (including a sole trader). The business will be referred to as the “creditor” and the individual will be referred to as the “debtor”. This Protocol does not apply to business-to-business debts unless the debtor is a sole trader.
- 1.2 The Protocol describes the conduct the court will normally expect of those parties prior to the start of proceedings. It includes a template Information Sheet and Reply Form to be provided to debtors in all cases.
- 1.3 The Protocol is intended to complement any regulatory regime to which the creditor is subject. To the extent that compliance with this Protocol is inconsistent with a specific regulatory obligation (such as a principle, rule or guidance contained in the Financial Conduct Authority’s Handbook) that

regulatory obligation will take precedence. The Protocol should also be read in conjunction with industry and government guidance relating to good practice in the recovery of debt.

- 1.4 The Protocol does not apply:
- (a) where the debt is covered by another Pre-Action Protocol such as Construction and Engineering or Mortgage Arrears; or
 - (b) to claims issued by Her Majesty's Revenue and Customs that are governed by Practice Direction 7D (Claims For The Recovery Of Taxes And Duties).

2 AIMS OF THE PROTOCOL

- 2.1 This Protocol's aims are to –
- (a) encourage early engagement and communication between the parties, including early exchange of sufficient information about the matter to help clarify whether there are any issues in dispute;
 - (b) enable the parties to resolve the matter without the need to start court proceedings, including agreeing a reasonable repayment plan or considering using an Alternative Dispute Resolution (ADR) procedure;
 - (c) encourage the parties to act in a reasonable and proportionate manner in all dealings with one another (for example, avoiding running up costs which do not bear a reasonable relationship to the sums in issue);
 - (d) support the efficient management of proceedings that cannot be avoided.

3 INITIAL INFORMATION TO BE PROVIDED BY THE CREDITOR

- 3.1 The creditor should send a Letter of Claim to the debtor before proceedings are started. The Letter of Claim should –
- (a) contain the following information –
 - (i) the amount of the debt;
 - (ii) whether interest or other charges are continuing;

- (iii) where the debt arises from an oral agreement, who made the agreement, what was agreed (including, as far as possible, what words were used) and when and where it was agreed;
 - (iv) where the debt arises from a written agreement, the date of the agreement, the parties to it and the fact that a copy of the written agreement can be requested from the creditor;
 - (v) where the debt has been assigned, the details of the original debt and creditor, when it was assigned and to whom;
 - (vi) if regular instalments are currently being offered by or on behalf of the debtor, or are being paid, an explanation of why the offer is not acceptable and why a court claim is still being considered;
 - (vii) details of how the debt can be paid (for example, the method of and address for payment) and details of how to proceed if the debtor wishes to discuss payment options;
 - (viii) the address to which the completed Reply Form should be sent;
- (b) do one of the following –
- (i) enclose an up-to-date statement of account for the debt, which should include details of any interest and administrative or other charges added;
 - (ii) enclose the most recent statement of account for the debt and state in the Letter of Claim the amount of interest incurred and any administrative or other charges imposed since that statement of account was issued, sufficient to bring it up to date; or
 - (iii) where no statements have been provided for the debt, state in the Letter of Claim the amount of interest incurred and any administrative or other charges imposed since the debt was incurred;
- (c) enclose a copy of the Information Sheet and the Reply Form at Annex 1 to this Protocol; and

- (d) enclose a Financial Statement form (an example Financial Statement is provided in Annex 2 to this protocol - the Statement is part of the Standard Financial Statement and can be downloaded from sfs.moneyadviceservice.org.uk).
- 3.2 The Letter of Claim should be clearly dated toward the top of the first page. It should be posted either on the day it is dated or, if that is not reasonably possible, the following day.
- 3.3 The Letter of Claim should be sent by post. If the creditor has additional contact details for the debtor, such as an email address, the creditor may also send the Letter of Claim using those details. If the debtor has made an explicit request that correspondence should not be sent by post, and has provided alternative contact details, the creditor should use those details when sending the Letter of Claim. (Note that a condition in a creditor's standard terms does not constitute an explicit request.)
- 3.4 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). Account should be taken of the possibility that a reply was posted towards the end of the 30-day period.

4 RESPONSE BY THE DEBTOR

- 4.1 The debtor should use the Reply Form in Annex 1 for their response. The debtor should request copies of any documents they wish to see and enclose copies of any documents they consider relevant, such as details of payments made but not taken into account in the creditor's Letter of Claim.
- 4.2 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. 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 later.
- 4.3 If the debtor indicates in the Reply Form that they are seeking debt advice that cannot be obtained within 30 days of their reply, the debtor must provide details to the creditor as specified in the Reply Form. The creditor should

allow reasonable extra time for the debtor to obtain that advice where it would be reasonable to do so in the circumstances.

- 4.4 Where a debtor indicates in the Reply Form 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. In trying to agree affordable sums for repayment, the creditor should have regard where appropriate to the provisions of the Standard Financial Statement or equivalent guidance. If the creditor does not agree to a debtor's proposal for repayment of the debt, they should give the debtor reasons in writing.
- 4.5 A partially completed Reply Form should be taken by the creditor as an attempt by the debtor to engage with the matter. The creditor should attempt to contact the debtor to discuss the Reply Form and obtain any further information needed to understand the debtor's position.

5 DISCLOSURE OF DOCUMENTS

- 5.1 Early disclosure of documents and relevant information can help to clarify or resolve any issues in dispute. Where any aspect of the debt is disputed (including the amount, interest, charges, time for payment, or the creditor's compliance with relevant statutes and regulations), the parties should exchange information and disclose documents sufficient to enable them to understand each other's position.
- 5.2 If the debtor requests a document or information, the creditor must –
- (a) provide the document or information; or
 - (b) explain why the document or information is unavailable,
- within 30 days of receipt of the request.

6 TAKING STEPS TO SETTLE THE MATTER AND ALTERNATIVE DISPUTE RESOLUTION

- 6.1 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).

- 6.2 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.
- 6.3 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.
- 6.4 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.

7 COMPLIANCE WITH THIS PROTOCOL

- 7.1 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. The court will consider whether all parties have complied in substance with the terms of the Protocol and is not likely to be concerned with minor or technical infringements, especially when the matter is urgent.
- 7.2 For further information about the court's approach to compliance, see Practice Direction – Pre-Action Conduct and Protocols (paragraphs 13 to 16).

8 TAKING STOCK

- 8.1 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 least, to narrow the issues between them.
- 8.2 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).

ANNEX 1

INFORMATION SHEET

You have received this notice because a business intends to take you to court in relation to a debt. This notice tells you what to do next, including how to avoid court action. Please read it carefully.

What should I do now to make sure I am not taken to court unnecessarily?

Read the enclosed letter from the business very carefully. Think about whether you owe the debt and whether the amount is correct. The letter should provide information about how much money you owe and any interest and fees added to the debt. If it doesn't, ask the business for more information.

Once you have read the letter, consider the following options.

- **Seeking debt advice.**

If you are in financial difficulty or need advice to help you work out whether you owe the debt, or how you might pay the debt, contact a debt advisor (particularly if you haven't been in contact with the business for a number of years).

The following organisations offer free, impartial and non-judgemental advice:

Citizens Advice	03444 111 444 (England) 03444 772 020 (Wales)	www.citizensadvice.org.uk
Civil Legal Advice	0345 345 4345	www.gov.uk/civil-legal-advice
StepChange Debt Charity	0800 138 1111 (Freephone)	www.stepchange.org
National Debtline	0808 808 4000 (Freephone)	www.nationaldebtline.org
AdviceUK	0300 777 0107	www.adviceuk.org.uk
Christians Against Poverty	0800 328 0006 (Freephone)	www.capuk.org

It is recommended that you get debt advice if you have any doubt about whether you owe the debt or whether you can pay it now.

If you don't have a copy of the agreement (contract) between you and the business, and you need this to decide what to do next or to help you get debt advice, you can ask the business to provide you with a copy.

- **Speaking to the business.**

If you agree you owe the debt and want to talk to the business about payment terms, or if you have any questions or concerns, get in touch with the business as soon as possible. Their contact details should be in the letter they sent you.

- **Filling in the Reply Form.**

If you have not been able to resolve the matter by speaking to the business, you should fill in the Reply Form that was provided with the letter from the business, and then send it back to the business. You should complete the Reply Form with as much information as possible to avoid court action being taken against you.

How long do I have to fill in the Reply Form?

You only have **30 days** from the date at the top of the letter from the business to send back the Reply Form. If the business does not get your Reply Form within 30 days, it could **take you to court** in relation to the debt. Make sure you allow time for posting.

If a court orders you to pay an amount of money (called “having judgment entered against you”), details of the judgment will usually be entered on the Register of Judgments, Orders and Fines. Most entries stay on the Register for six years unless you pay the amount you owe within one month of the judgment.

Organisations such as banks, building societies and credit companies use the information on the Register when someone applies for credit, such as a loan or overdraft. It helps them decide whether or not that person would be able to pay off a debt.

What happens if I fill in and return the Reply Form in time?

If you return the Reply Form within 30 days, you and the business will have at least a further 30 days to discuss the debt, or for you to seek debt advice, before the business takes you to court. During that time you should discuss with the business how you can resolve the matter, ideally without going to court.

If you request more information in the Reply Form, the business must wait at least 30 days after it gives you that information before taking you to court.

Where can I find out more?

This Information Sheet is a summary of your rights and responsibilities under the Pre-Action Protocol for Debt Claims. Where a business and an individual disagree about a debt claim, the Protocol tells them what they should do before they go to court. If you want to know more, the full Protocol is available at:
<https://www.justice.gov.uk/courts/procedure-rules/civil/protocol>.

REPLY FORM

YOU HAVE 30 DAYS FROM THE DATE AT THE TOP OF THE ENCLOSED LETTER TO FILL IN AND RETURN THIS FORM.

IF YOU DON'T, IT COULD RESULT IN COURT PROCEEDINGS.

If you have any questions or would like to discuss the debt, please call the business that sent you this form as soon as possible.

Full name:

Address and postcode:

Contact telephone numbers:

Email address:

Reference:

SECTION 1: Do you owe the debt?

Fill in one of the boxes in this section. Use more pages if you need to.

It is recommended that you get debt advice if you have any doubt about whether you owe the debt and whether you can pay it now, or if you want advice on any rights and protections you may have.

Box G below asks about debt advice.

BOX A

I agree I owe the debt.

Tick this box if you agree you owe the debt and agree the amount of the debt is correct.

IF YOU WILL PAY THE DEBT, GO TO SECTION 2.

IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.

BOX B

I owe some of the debt, but not all of it.

Tick this box if you agree you owe some of the debt, but not all of it, for example if you think too much interest has been added or you haven't been credited for payments you made in the past.

The amount of debt I owe to you is £.....

Say how much you think you owe.

I don't owe any more than this because

Explain on a separate piece of paper why you don't owe all of the debt. Give as much detail as possible and provide copies of any supporting documents.

IF YOU WILL PAY THE PART OF THE DEBT YOU OWE, GO TO SECTION 2.

IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.

OTHERWISE, GO TO SECTION 4.

BOX C

I don't know whether I owe the debt.

Tick this box if you're not sure whether you owe the debt and/or you need help from a debt adviser to work out whether you should pay.

NOW GO TO SECTION 3.

BOX D

I dispute the debt.

Tick this box if you don't owe the debt, for example because the debt should be paid by someone else, because you have already paid it, or because there is a legal problem with the credit agreement.

I dispute the debt because

Explain on a separate piece of paper why you dispute the debt. Give as much detail as possible and provide copies of any supporting documents.

NOW GO TO SECTION 4.

SECTION 2: How will you pay?

Only complete this section if you ticked Box A or Box B in Section 1 and you want to pay now.

The letter from the business will tell you how to pay. Keep a record of the payments you make.

BOX E

I will pay what I owe now.

Tick this box if you agree that you owe all or part of the debt and you are able to pay what you owe now. You should pay using the payment details in the letter from the business. Keep a copy of any proof of payment you receive.

BOX F

I will pay, but I need time to pay.

Tick this box if you agree that you owe all or part of the debt, but you can't pay right now.

If you offer to make repayments, you must be able to afford them. You should consider getting debt advice about how much you can afford to repay. If you are seeking debt advice, complete Section 3.

My proposals for repayment are

Explain on a separate piece of paper how you intend to pay the debt. Say how much you could pay now and how you will pay the remainder. For example, say how much you could pay each week, fortnight or month and when your first payment would be made.

I have provided a Financial Statement showing my current financial situation:

Yes No

To help the business ensure you can afford your proposed repayments, fill out the Financial Statement that is attached to this form. You should also attach a copy of any budget or financial statement that a debt advice organisation has helped you prepare.

SECTION 3: Do you intend to get, or are you already getting, debt advice?

Only complete this section if you are getting debt advice about whether you owe the debt or whether you can afford to pay.

BOX G

I am getting or intend to get debt advice.

I am getting advice from

Insert the name and contact details of the person or organisation giving you advice.

I am getting advice about

Explain on a separate piece of paper what you are getting advice about, for example whether you owe the debt or how you could pay.

I have an appointment with an adviser on

If you have an appointment with a debt adviser, give the appointment date and time.

I can't obtain advice within 30 days of returning this Reply Form because

If it will take you longer than 30 days to get debt advice, explain on a separate piece of paper the reason for the delay and when you expect advice will be available.

NOW COMPLETE SECTION 4.

SECTION 4: What documents are you sending with this form? What information do you need?

Complete the boxes below if you want to provide or get more information.

BOX H

I have provided documents.

Tick this box if you want to provide documents about the debt, for example you might want to provide a letter showing you have an appointment for debt advice or a receipt showing you paid some of the debt.

I have enclosed the following documents

Describe on a separate piece of paper the documents you have provided and why they are important.

BOX I

I need more documents or information.

Tick this box if you need more information, such as copies of documents you don't currently have.

I need a copy of

Additional documents or information that you might need could include:

- *A copy of the written contract for the debt*
- *A full statement of account, including details of all interest and charges included on the outstanding balance of the debt, explaining how they have been calculated, and any payments already made toward the debt*
- *A calculation of the interest claimed*

- *The annual or daily rate of interest*
- *A description of the nature and amount of any administrative charges included in the debt*
- *A copy of the notice of assignment of the debt*

Signature **Date...../...../.....**

Print name

Sign and date this Reply Form once you've filled it in. Then send it to the address given in the letter from the business.

Make sure you keep a copy of this form for reference in the future.

If your circumstances change, please update the business as soon as possible.

ANNEX 2

STANDARD FINANCIAL STATEMENT