

Dispute Resolution
Case Law Update
Rosling King LLP



On 1 October 2017 the Pre-Action Protocol for Debt Claims (the “Protocol”) will come into force. The Protocol will apply to any business, including sole traders and public bodies, (the “Creditor”) looking to bring a claim against a debtor who is either an individual or a sole trader (the “Debtor”).

However, it should be noted that the Protocol will not apply in the following circumstances:

1. business to business debts (unless the debtor is a sole trader);
2. instances where the debt is covered by another Pre-Action Protocol (for instance, Construction and Engineering, or Mortgage Arrears); and
3. instances where the claim is issued by Her Majesty’s Revenue and Customs and is governed by Civil Procedure Rules Practice Direction 7D (Claims for the Recovery of Taxes and Duties).

Aims of the Protocol

The Protocol has four aims:

1. to encourage early communication between the parties;
2. to enable the parties to achieve settlement without the need for Court proceedings;
3. to encourage the parties to act in a reasonable and proportionate manner, having regard to the size of the debt; and
4. where Court proceedings cannot be avoided, to support the efficient management of those proceedings.

Initial Information to be provided by the Creditor

Part 3 of the Protocol stipulates that, prior to commencing proceedings, the Creditor should send the Debtor a Letter of Claim, which should include the following:

1. details of the debt, such as: the amount; when and how the debt arose; the parties to the debt;
2. if regular instalments are being made towards the debt, or the debtor has offered to make such payments, why the offer is not acceptable;

3. details of how the debt can be paid; and
4. an address to which the completed Reply Form can be sent.

The Protocol states that the Letter of Claim should enclose a number of documents including an Information Sheet and Reply Form, together with an up-to-date statement of account.

The Debtor then has 30 days from the date of the Letter of Claim to respond. Should the Debtor fail to respond without good reason, the Creditor may issue proceedings.

Response by the Debtor

Part 4 of the Protocol states that the Debtor should respond to the Letter of Claim using the Reply Form provided by the Creditor. In their reply the Debtor may request copies of any documents from the Creditor, or provide any documents, they believe may be relevant to the dispute.

On receipt of the completed Reply Form the Creditor must wait 30 days (or 30 days from when the Creditor provided any requested documents to the Debtor, whichever is later) before commencing proceedings. If the Debtor has indicated that they are seeking legal or debt advice, or requires additional time to pay, then the Creditor should allow them reasonable time to do so.

Disclosure of Documents

Part 5 of the Protocol encourages disclosure at any early stage in order to resolve any issues in dispute. It stipulates that documents must be provided within 30 days of a request being made.

Taking Steps to Settle the Matter and Alternative Dispute Resolution (“ADR”)

If there are still issues in dispute after disclosure has taken place, the parties should consider ADR. Part 6 of the Protocol suggests mediation for large debt claims or more informal discussions for smaller claims.

Compliance with the Protocol

Any failure to comply with the Protocol will be taken into consideration by the Court when giving directions for case management.

Taking Stock

If the parties have complied with the Protocol but have nevertheless been unable to settle the dispute, Part 8 of the Protocol encourages parties to review their positions again, prior to issuing proceedings.

Conclusion

The Protocol should be a useful tool in providing a framework and guidance for parties involved in debt claims. It is hoped it will assist both creditors and debtors in reaching settlement without the need to commence Court Proceedings and, in turn, should help to keep costs down for the parties involved.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.