

# New Pre-Action Protocol for Debt Claims

October 2017

**On 1 October 2017, the Pre-action Protocol for Debt Claims came into force, which may have a potentially large impact on businesses owed monies by individuals.**

The aim of the Protocol is to encourage early engagement and communication between the parties, and to try and enable the parties to resolve matters without the need of issuing court proceedings.

The [Protocol](#) applies to any business, whether a limited company, partnership or sole trader, claiming payment of a debt from an individual or sole trader. It does not apply to business to business debts, nor if there is another protocol applicable to the matter in dispute.

As part of the process, the Protocol sets out that a creditor must include with its letter before claim a template information sheet and reply form.

The impact of the new regime is that a creditor cannot commence any court proceedings until 30 days have expired since the date of the letter of claim, if the debtor does not reply.

If the debtor asks for more time to obtain debt advice (which they cannot obtain within the 30 days) then a creditor is obliged to allow extra time for the debtor to obtain that advice (where it would be reasonable in the circumstances) before proceedings are issued.

The onus is very much on the creditor to seek to reach an agreement, as it is discouraged from issuing proceedings for at least 30 days from either the date of the letter of claim (if no reply has been received), receipt of a reply to the letter of claim or 30 days from the creditor providing any documents requested by the debtor, whichever is the later.

Ordinarily it would be prudent to use this time to explore options and to see whether payment by instalments can be agreed. If settlement is still not possible it is recommended that the creditor should give a minimum of 14 days' notice of its intention to commence court proceedings.

For many businesses, particularly small or medium sized businesses (who rely more heavily on cash flow), the process of recovering debts will become more onerous and time-critical.

The Protocol is designed to favour debtors and places a variety of obligations upon the creditor before proceedings can be issued.

The Protocol allows debtors to take perceived tactical advantages by prolonging the process (by up to 90 days in some cases), which will clearly increase the risks of recovery being diminished in some cases. For example, placing an obligation on a creditor to contact a debtor to put right a defect in the completion of reply forms encourages a lax approach, allowing debtors to do as they wish. The burden then shifts onto the creditor to put right their wrong.

Whilst this latest Protocol, like others, encourages the parties to come to a resolution and obliges the creditor to consider any request for time to pay, there is a twist! A debtor who has prolonged the initial process and then, eventually, agrees to pay by instalments can further hamper the process. This is because, unlike other protocols, the latest Protocol prohibits the immediate issue of proceedings in the event of a debtor not meeting agreed instalments. The creditor is now required to update and resend their letter of claim (essentially restarting the pre-action process again). This is yet another issue a creditor must consider if the debtor's sole

intention is to take advantage of the prevarication the new Protocol may allow.

Whilst in “some” respects the Protocol is merely a reestablishment of existing good practice in dealing with debts, creditors need to take care to ensure compliance, whilst taking heed of any perceived tactical advantages a debtor may seek to take to avoid any nasty costs bills.

We recommend businesses review their internal debt and costs control functions, as well as keeping a close check on payment terms, to try and avoid falling foul of the new Protocol and being left in a situation where debts mount and a “clever debtor” can avoid them. The Protocol is designed to favour debtors and expose the creditor to costs for any non-compliance if proceedings are issued prematurely.

Our dispute resolution team is happy to discuss your specific business practices in respect of debt claims and assist you in setting up processes to guide you and ensure compliance with the new Protocol.

**Laura St-Gallay**  
020 7299 6911  
[laura.stgallay@riaabg.com](mailto:laura.stgallay@riaabg.com)  
[www.riaabarkergillette.com](http://www.riaabarkergillette.com)



Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

