



Ministry of JUSTICE

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2 November 2015

Dear Consultees

Civil Procedure Rule Committee: Pre-Action Protocol for Debt Claims Further consultation

Background

In September 2014, the Civil Procedure Rule Committee (CPRC) consulted on a draft Pre-Action Protocol for Debt Claims (Debt Protocol), following a recommendation of Lord Justice Jackson in his final report reviewing civil litigation costs.¹

At the time of the consultation, the Debt Protocol was being considered as part of a wider review of the Pre-Action Protocols by a sub-committee of the CPRC. As many of the other Pre-Action Protocols have now been finalised and amendments introduced, a new sub-committee was constituted earlier this year to specifically consider the Debt Protocol. The sub-committee comprises of one member of the CPRC as Chair, a former member of the CPRC who was a member of the original sub-committee responsible for the Pre-Action Protocols, and three co-opted members. One of the co-opted members has experience of the debt advice sector, another has experience of the creditor and debt-purchaser sectors, and the third is a representative of the Civil Court Users Association (a creditor representative body).

That sub-committee has carefully considered the responses to the September 2014 consultation and taken them into account in preparing a second draft of the Debt Protocol, which is the subject of the present consultation.

Key amendments following the first consultation

A core principle of the Debt Protocol remains that debtors, or alleged debtors, should be provided with sufficient information to enable them to obtain advice on their position prior to the

¹ Chapter 35, Review of Civil Litigation Costs: Final Report 2010 (<http://www.judiciary.gov.uk/publications/review-of-civil-litigation-costs-reports/>).

issue of a claim. However, a number of consultees raised concerns in relation to the volume of paperwork and information that creditors would be required to provide under the Debt Protocol as previously drafted.

In response to those concerns, the Debt Protocol has been restructured to reduce the amount of documentation that creditors are required to provide to debtors in all cases at the pre-action stage. A two-stage approach has now been adopted, whereby some information will be provided to debtors as of right with / in a Letter of Claim, with other information and documents being available on request, and debtors being prompted to consider what information they might wish to ask for.

Debtors will also be provided with an Information Sheet, designed to set out in plain English their rights and obligations under the Debt PAP. This is intended to address concerns raised during the consultation that (i) providing debtors with a copy of the full Debt PAP would be overly burdensome / costly for creditors and (ii) the Debt PAP was drafted in language that debtors were unlikely to engage with or understand.

Otherwise, the Debt Protocol has been generally simplified and clarified in response to comments received during the consultation, and following detailed discussion as to the desirability and proportionality of all provisions by the sub-committee.

This consultation

Given the degree of interest in the previous consultation, the CPRC has decided to carry out a further consultation on the redrafted Debt Protocol over an eight week period. The intention to consult has also been brought to the attention of external stakeholders, such as the Financial Conduct Authority.

How to participate

The sub-committee invites written responses to the following questions in relation to the Debt Protocol.

Does the two-stage approach to information provision strike the right balance between fairness and proportionality? Should any other information be provided to debtors as of right, in / with the Letter of Claim?

Are any of the provisions of the Debt Protocol irreconcilably inconsistent with creditors' obligations under other regulatory regimes? If so, please indicate precisely which regulatory obligation and/or statutory provision is referred to and explain the nature of the inconsistency.

Is the Information Sheet sufficiently clear and comprehensible to debtors, while still providing an accurate description of their rights and obligations? Should any additional information be included?

Is the Reply Form sufficiently clear? Do the reply boxes follow a logical order? Is the information included in the indicative list in Box J comprehensive? If the answer to any of these questions is "no", please indicate how the boxes might be amended to improve the Reply Form, included suggested drafting where appropriate.

Responses should be sent to Jane Wright, Post Point 3.32, Ministry of Justice, 102 Petty France London SW1H 9AJ, or to mailto:paps_consultations@justice.gsi.gov.uk. Please note "Debt Protocol Consultation" in the subject line of your email.

Responses to be received no later than 5pm on Monday 11 January 2016.

Yours sincerely

Mrs Jane Wright
Secretary to the Civil Procedure Rule Committee

**Civil Procedure Rule Committee
Pre-Action Protocol for Debt Claims
2 November 2015 – 11 January 2016**

Please note

Consultation: Copies of this letter and the Debt Protocol are being sent to various stakeholders, including all those that responded to the first consultation in September 2014. Responses are welcome from anyone with an interest in or views on the subject.

Representative groups: Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality: Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you would like the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the CPRC.

The CPRC will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

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Stakeholder List

Advice Services Alliance
Advice UK
Aegon UK
Age Advice UK
Akinika Debt Recovery Ltd
AP Credit Services
Arrow Global
Ascent Legal
Association of HM District Judges
Bar Council
Barclays Bank
BBA
BBC
Beresdens UK Ltd
Blake Lapthorne
BMPA
Brachers
British and Irish Ombudsman Association
Browne Jacobson
Bryan Carter LLP
BW Legal
Cabot Credit Management
Capita Debt and Legal Services
Capquest
CCUA
CCUA Legal and Technical Committee
Centre for Effective Dispute Resolution
Christians Against Poverty
Citizen Advice Bureaux
Civil Court Users Association
Civil Justice Council
CJC
Consumer Council for Water
Consure Credit Association
Council of HM Circuit Judges
Credit Services Association
Datapath Ltd
Department for Business, Innovation and Skills
Drydens Fairfax
DWF LLP
EMW Law LLP
Eversheds
Financial Credit Authority
Finance and Leasing Association
Financial Conduct Authority
Financing and Leasing Association

Forbes Solicitors
Gaby Hardwicke
Her Majesty's Courts and Tribunals Service
Hill Dickinson
Hoist Finance
Howdens
ILEX
Institute of Credit Management
Institute of Money Advisors
Ist Credit
Judiciary
Lambeth Law Centre
Law Centres Federation
Law Society
Lester Allridge
Lowell Group
Manchester and Salford City Council
Marstons Group
Mason Bullock
Mersey Money Advice Group
Ministry of Justice
Money Advice Service
Money Advice Trust
Mortimer Clark Solicitors
National Debtline
Ofcom
Ofgem
Open University
Optimal
Paul Willis
Restons
Robinson Way
Royal Bank of Scotland
SGH Martineau
Shoosmiths
Sigma Finance
Southern Water Services
StepChange Debt Charity
The Debt Counsellors Charitable Trust
The Keith Jones Partnership
The Law Centre
The Trades Union Congress
UK Cards
Walker Morris
Which?
Wilkin Chapman
Woodcocks Haworth and Nuttall