

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 where the debt is covered by another Pre-Action Protocol such as Construction and Engineering or Mortgage Arrears.

2 AIMS OF THE PROTOCOL

2.1 This Protocol's aims are to –

- (a) enable the parties to resolve the matter without the need to start court proceedings, including considering using an Alternative Dispute Resolution (ADR) procedure or agreeing a reasonable repayment plan;
- (b) encourage early exchange of sufficient information about the matter to help clarify the issues in dispute;
- (c) encourage the parties to act in a reasonable and proportionate manner in all dealings with one another (which includes only incurring costs which 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 is 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 has been assigned, the details of the original debt and creditor, when it was assigned and to whom;
 - (v) if regular instalments are currently being offered by or on behalf of the debtor, or are being paid, an explanation of why a court claim is being considered;
 - (vi) 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;
 - (vii) 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;
 - (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) where the debt arises out of a written agreement, enclose a copy of that agreement, unless providing the agreement is disproportionately burdensome to the creditor;
- (d) enclose a copy of the Information Sheet and the Reply Form at Annex 1 to this Protocol; and
- (e) enclose a Statement of Means form (an example Statement of Means is provided in Annex 2 to this protocol).

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 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, and the creditor must allow reasonable extra time for the debtor to obtain that advice.
- 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 [Common] / [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.

5 DISCLOSURE OF DOCUMENTS

- 5.1 Early disclosure of documents and relevant information can help to clarify or resolve the issues in dispute. On that basis, 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.

6 TAKING STEPS TO SETTLE THE DISPUTE 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.

- 6.5 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.

7 COMPLIANCE WITH THIS PROTOCOL

- 7.1 If a dispute 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 (for example an application for an injunction).
- 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 dispute 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.

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 about your rights and what to do next. Please read it carefully.

Why have I received this notice?

You have received this notice because a business believes you owe it money. The business intends to take you to court to make sure the money is paid. Before the business can take you to court, it must send you a letter along with this notice.

What should the letter from the business say?

The letter from the business should give you the following information:

- The **amount of money** the business thinks you owe.
- Information about **interest** and **fees** added to the debt. This might be shown in an updated account statement.
- Details of **how to pay** the debt and how to discuss payment options.

The letter from the business might give you the following extra information, depending on whether it is relevant to you:

- If you have **offered to make payments**, an explanation of why the business still wants to take you to court.
- If the debt has been **passed from one business to another**, details of your original debt and details of the debt's transfer to the new business.
- If your agreement to pay the debt was not written down, information about your spoken or "**oral**" agreement.

The letter should also enclose a copy of a **Reply Form** for you to fill out.

Finally, the business might have sent you a copy of your written contract that sets out your agreement to pay the debt.

You should check that the letter from the business contains all the relevant information.

What should I do next?

You should take the following steps **immediately** to make sure the business does not take you to court unnecessarily.

STEP 1: Read the letter from the business very carefully. Think about whether you owe the debt and whether the amount is correct.

STEP 2: If you need advice to help you work out whether you owe the debt, or how you might pay the debt, contact a debt advisor. The following organisations offer free advice:

Citizens Advice	03444 111 444 (England) 03444 772 020 (Wales)	www.adviceguide.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 strongly recommended that you get debt advice if you have any doubt about whether you owe the debt or whether you can pay it now.

STEP 3: Fill in the Reply Form that was provided with the letter from the business.

- Section 1 of the Reply Form gives you an opportunity to tell the business whether you owe some, none, or all of the debt. Fill in one of the boxes in Section 1.
- Fill in Section 2 if you owe some or all of the debt and you intend to pay it.
- Fill in Section 3 if you intend to get help from a debt advisor.
- Fill in Section 4 if you want to give the business more information or if you need more information from the business.
- At the back of the Reply Form is a document called a Statement of Means. If you agree to pay the debt, but you can't pay it all at once, you should fill in the Statement of Means with details of how much money you earn and how much you spend. The business can use this to assess how much of the debt you should pay each week or month.

If you intend to get debt advice, your adviser might ask to see a copy of your written contract. If you do not have this, you can ask the business to send you a copy using Section 4 of the Reply Form.

STEP 4: Send the Reply Form back to the business. The letter from the business should tell you where to send it.

When should I do this?

The Reply Form helps the business understand your position and allows you to ask for the information you need. You should fill in the Reply Form accurately and include all relevant information that you know about.

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 is allowed to **take you to court** in relation to the debt. Make sure you allow time for posting.

If you are getting debt advice, and you think this is going to cause delay, you need to tell the business. The business must give you reasonable time to seek advice, so you should tell the business how long you need and why.

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

If you return the Reply Form on time, you and the business will have at least 30 days to discuss the debt, or for you to seek advice, before the business takes you to court. During that time you should discuss with the business how you can avoid 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.

What happens if I don't fill in and return the Reply Form in time?

If the business does not get your Reply Form within 30 days, it is allowed to take you to court in relation to the debt. If it's your fault that the Reply Form is not sent on time, you could end up having to pay the cost incurred by the business from taking you to court.

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.

Where can I find out more?

This notice 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.

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

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 ADVICE ABOUT HOW TO PAY, 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 why you don't owe all of the debt. Give as much detail as possible.

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

IF YOU NEED ADVICE ABOUT HOW TO PAY, GO TO SECTION 3.

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 you need help from a debt adviser to work out whether you should pay.

NOW GO TO SECTION 3.

BOX D

I don't owe the debt.

Tick this box if you don't owe the debt, for example because the debt should be paid by someone else or because you have already paid it.

I don't owe the debt because

Explain why you don't owe the debt. Give as much detail as possible.

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 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.

I have paid this amount: £..... .

Insert the amount you paid.

I have paid by

Say how you have paid, for example you might enclose a cheque with this Reply Form or pay by bank transfer.

BOX F

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 how you intend to pay the debt, for example say how much you could pay each month or when you will be able to pay.

I have provided a Statement of Means showing my current financial situation:

Yes No

If you want to pay by instalments, fill out the Statement of Means that is attached to this form. The Statement of Means shows your current finances and helps to determine whether you can afford to

make repayments. You should also attach a copy of any budget or financial statement that a debt advice organisation has helped you prepare.

SECTION 3: Are you 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 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 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, please explain 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 the documents you have provided and why they are important.

BOX J

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 that you might need include:

- *A copy of the written contract for the debt*

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- *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*
- *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 letter for reference in the future.

Annex 2 STATEMENT OF MEANS

Please tick or complete the boxes as appropriate, please sign and date the form.

Reference on covering letter:

Personal details

Mr Mrs Miss Ms

Married Single Other (please specify)

Surname:

Forename(s):

Date of birth

D	D	M	M	Y	Y	Y	Y
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Contact details

Address:
E-mail:

Phone numbers:
Landline:
Mobile:
Other:

Dependants (people you look after financially)

Dependants (people you look after financially) including children and their ages:

Employment

I am employed as

--

I am self-employed as

--

I am unemployed

I am a pensioner

Your income

Salary or wages	Amount
Your salary or wages (take home)	
Your partner's salary or wages (take home)	
Other salary or wages	
Total salary or wages per month	£

Other types of income you may have	
Maintenance or child support	
Boarders or lodgers	
Non-dependants' contributions	
Student loans and grants	
Other income	
Total other types of income per month	£

Your benefits and tax credits	
Jobseeker's Allowance (income based) Support	
Jobseeker's Allowance (contribution based)	
Income Support	
Working Tax Credit	
Child Tax Credit	
Child Benefit	
Employment and Support Allowance or Statutory Sick Pay	
Disability Living Allowance, Attendance Allowance or Personal Independence Payment	
Carer's Allowance	
Housing Benefit or Local Housing Allowance	
Council Tax Benefit or Council Tax Reduction	
Other (for example, Universal Credit or maternity benefits)	
Other benefits or tax credits	
Total benefits and tax credits per month	£

Your Pensions	
State Pensions	
Private or work pensions	
Pension Credit	
Other pensions	
Total pensions per month	£

Total income per month	£
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Other assets, please give details:

YOUR ESSENTIAL SPENDING

Essential spending	
Rent	
Ground rent and service charges	
Mortgage	
Second mortgage or secured loan	
Mortgage endowment and mortgage PPI	
Building and contents insurance	
Pension and life insurance	
Council tax	
Gas	
Electricity	
Water	
Other utilities (coal, oil, calor gas)	
TV licence	
Hire purchase or conditional sale	
Childcare costs	
Adult care	
costs	
Total essential spending per month	£

Travel	
Public transport (work)	
Other travel costs	
Car insurance	
Road Tax	
Fuel (petrol, diesel, oil)	
Other car maintenance costs: MOT car maintenance etc	
Total travel per month	£

Housekeeping	
Food and milk	
Cleaning and toiletries	
Newspapers and magazines	
Cigarettes, tobacco and sweets	
Alcohol	
Laundry and dry cleaning	
Clothing and footwear	
Nappies and baby items	
Pet food	
Total housekeeping per month	£

Phone	
Home phone	
Mobile phone	
Other phone costs	
Total phone per month	£

Other spending	
Health costs (dentist, glasses, prescriptions, health insurance)	
Cable, satellite and internet	
TV, video and other appliance rental	
School meals and meals at work	
Pocket money and school trips	
Total other spending per month	£

Total outgoings per month £0	£
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Your priority Debts

Rent arrears	
Mortgage arrears	
Second mortgage or secured loan arrears	
Magistrates' fine arrears	
Council tax arrears	
Maintenance or child support arrears	
Gas arrears	
Electricity arrears	
Other utilities arrears (coal, oil, calor gas)	
Hire purchase or conditional sale arrears	
Totals	£

Signed

Date.....