

PRE LEGAL ACTIONS ARE CHANGING, ARE YOU READY? PRE ACTION PROTOCOL FOR DEBT CLAIMS.

On 1st October 2017 new rules for the procedure leading up to the start of legal action against consumers will come into force in the UK.

The Pre Action Protocol (PAP) applies to all businesses (including sole traders and public bodies) claiming payment of a debt from an individual or a sole trader. It describes the route that one must take before issuing a claim into Court.

What is required?

The Creditor must send by post a letter of claim to the Debtor which must state and/or include:-

1. The amount of the debt
2. If any interest are added and continuing to accrue and if other charges are added
3. Brief details of the nature of the debt which should refer to the written contract if there is one stating when it was concluded and who the parties are, or stating the contractual words spoken and by whom in an oral agreement and finally, details of any assignment of the debt.
4. An up to date statement of account from the Creditor
5. Three specific forms in the official format:
 - An Information Sheet for the debtor
 - A Reply Form for the debtor's response
 - A Financial Statement for the debtor to complete.
6. If the debtor is already paying by instalments, the reason why this is no longer acceptable.
7. Details of how the debt can be paid and what the debtor needs to do to discuss repayment options, even if we have already done this as part of our amicable collection procedure
8. A return address for the reply form.



What happens next?

The debtor has 30 days from the date of the letter to respond to the letter of claim, then there are a number of options:

1. The debtor does not respond: legal action can be started.
2. The debtor responds with a completed reply form.

The reply form gives the debtor the opportunity to explain his position and to state whether he admits the debt in full or only in part, in which case he can make a repayment proposal or that he disputes the whole debt, in which case he must give reasons for this.

The Debtor also has the opportunity to request further documents. This may include but is not limited to:

- A copy of the written contract
- A full statement of account, including details of all interest and charges with an explanation as to how they have been calculated and any payments made
- A copy of the Notice of Assignment of the debt (if the debt was sold)

If further documents have been requested, they must be provided within 30 days; otherwise an explanation as to why they are not available must be given.

The debtor has 30 days to review the documents and explanations and respond.

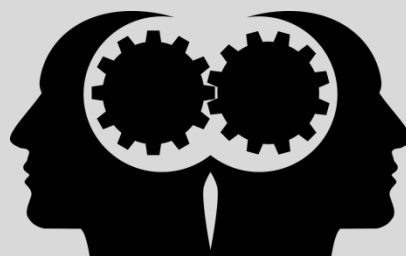
At this stage, the debtor may also state that he is seeking debt advice from a professional organisation. If he states this then we must allow a reasonable period of time (minimum 30 days) to obtain this.

What if the debtor still hasn't paid?

If the parties cannot agree about the existence of the debt, payment for the debt, or any other outcome in respect of the debt then both parties must take steps to resolve the matter prior to starting a Court Action. This could take the form of discussions and negotiations between the parties or, for large debts, a more formal mediation through a professional mediator.

If the matter still cannot be resolved?

If the debtor does not respond or if it is clear that the matter needs to go to Court because all efforts to resolve it have not produced any results, then we must write to the debtor giving him 14 days' notice of legal action.



Items for our clients to consider:-

1. There is a clear requirement for all the paperwork relating to the debt to be provided quickly following a request by the debtor. Clients should ensure that all the case papers, and in particular, the documents listed above are sent to us with their debt collection instructions. If this is not practical, clients should send these as soon as possible and if the paperwork cannot be produced, we need to know the reason why.
2. For those of our Clients who like to start legal action promptly the PAP will delay matters quite considerably. However, to save time, we can always start with the PAP on the day we are instructed, provided we receive the full case papers with the initial instructions.
3. Finally, we would always recommend an amicable approach and we continue to advocate a 30 to 60 day amicable collection procedure using all means of communication available and making the most of the great negotiation skills of our well trained collectors.