

Bringing a Debt Claim

The Pre-Action Protocol for Debt Claims (“the Protocol”) is essentially a set of rules which are adhered to prior to Court proceedings being issued for debt claims. In this article we provide a brief overview of the Protocol.

Who does it apply to?

The Protocol applies to business creditors seeking to recover debt from an individual or sole trader.

Why was the Protocol introduced?

The purposes of the Protocol is to encourage parties to communicate and exchange information at an early stage in order that matters can be resolved without the need for Court proceedings.

Letter of Claim

The Protocol provides that a Letter of Claim be sent to the debtor before any legal proceedings are commenced. The rules dictate what should be included in said letter, including the following:

1. The amount of the debt;
2. Whether interest and any charges continuing;
3. Full details of the written or oral agreement entered in to between the parties;

4. If regular instalments are currently being offered by the debtor (or are being paid) an explanation of why the offer is not acceptable and why a court claim is still being considered;
5. Details of how the debt can be paid and details of how to proceed if the debtor wishes to discuss payment options;
6. An Information Sheet, Reply Form and Financial Statement Form.

Responding to the Letter of Claim

Under the Protocol, the Debtor has 30 days in which to respond.

This response should be set out in accordance with the Reply Form received with the Letter of Claim.

If no Response is received

If no response is received then Court proceedings can be issued once 30 days have passed from the date of the Letter of Claim being sent.

If a Response is received

The Protocol states that a creditor must not commence legal proceedings within 30 days following receipt of the Reply Form.

Where the debtor admits the debt but requires time to pay, the parties should attempt to reach an agreement in this regard. If the creditor refuses a debtor's proposals then they must provide a reason for this.

Where parties have been unable to reach an agreement, 14 days' notice should be given to the creditor of an intention to issue court proceedings.

What if the Protocol is not complied with?

If Court proceedings are issued and there has been a failure to comply with the Protocol the Court can take this into account when considering what directions to make, including pausing the Court proceedings to allow for parties to enter into communications.

The Court may also impose cost sanctions against non-complying parties.

What if I am owed money or have received a Letter of Claim

Given the importance of adhering to the Protocol you should seek legal advice as a matter of urgency to discuss the claim. This will ensure that there are no breaches of the Protocol and avoid any potentially costly sanctions being made against you by the Court.

The content of this article was accurate as at December 2021. The law may change over time following changes in legislation or new court cases. We do not actively update our articles once they are published.

As such, the content of this article is not intended as specific legal advice but as general guidance only.

For tailored legal advice, specific to your personal situation, please contact our Team.