



A Guide to the Pre-Action Protocol for Debt Claims



debt-claims.com
solicitors

Unpaid debt is one of the most common reasons for litigation occurring. Therefore, it is not hard to imagine that if every claim was permitted to be heard without any requirement for parties to try and resolve matters between themselves and act reasonably, the Courts would be clogged with Creditors and Debtors running amok. To avoid such a situation, if a business has an outstanding debt due from a person, they must comply with the Pre-Action Protocol for Debt Claims (PAP).

What are the aims of PAP?

As mentioned above, one aim of PAP is to encourage Debtors and Creditors to communicate and settle a claim before going to Court, either between themselves or through alternative dispute resolution methods such as negotiation or mediation. The settlement reached will include resolving any disputes and most likely set out a payment plan to satisfy the debt.

Another aim of PAP is to encourage parties to act in a reasonable manner towards each other and avoid running up avoidable costs that far outweigh the sum in issue. Although this may seem mere common sense, it is not unknown for one or both parties to spend sums far exceeding the original claim to be proven 'right' in a Court of Law.

When does PAP apply?

Subject to certain exceptions, PAP applies to any business, including sole traders and public bodies claiming payment of a debt from an individual, including a sole trader. It does not apply to business-to-business debts unless the Debtor is a sole trader.

What happens if I don't comply with PAP?

The Court expects all parties to which PAP applies to comply with its provisions. Minor or technical infringements, especially when the matter is urgent, are unlikely to concern the Court. However, significant breaches may result in:

- Further delays in you being able to collect the debt/s owed due to the Court suspending (staying) proceedings until elements of PAP are complied with.
- The Court ruling you are unable to recover interest.
- Cost sanctions. This involves the Court stating that you have to pay part or all of the Debtor's legal costs.

PAP came into force in 2017, making it relatively new in terms of law. There is little case law concerning PAP; however, as the protocol is tested in the Courts, there may be further guidance concerning what is and is not expected to meet compliance.

What are the procedural steps when complying with PAP?

As the creditor, complying with PAP requires you to send a Letter of Claim before commencing proceedings. The letter should contain:

Oral agreement

- The debt amount.
- Details of the agreement, including what words were used.
- Where and when the agreement was made.

Written agreement

- The date of the agreement.
- The parties to the agreement.
- The fact that a copy of the agreement can be requested from the creditor.

Whether the agreement was oral or written, it needs to contain:

- Details of who the debt has been assigned to.
- If applicable, why the offer or current instalments being paid are not acceptable and the reasons why a Court claim is still being considered.
- Details of how the debt can be paid.
- If the Debtor wishes to discuss payment options, whom to contact.
- The address to which the completed Reply Form should be sent.

The Letter of Claim must also include an updated statement detailing the amount of the debt and any interest and/or administrative charges added.

You must date the Letter of Claim and send it either on the date referenced or the day after.

Within 30 days of the date set out on the Letter of Claim the debtor must:

- Complete and send a Reply Form.
- Request any documents they require.
- Send any relevant documents, including details of payments that have been made.

If no reply is forthcoming within 30 days, you can commence Court proceedings.

If the Debtor indicates they are seeking advice, Court proceedings should not be commenced less than 30 days from receipt of the completed Reply Form or 30 days from you sending any requested documents to the Debtor, whichever is the latter.

How we can help

Our years of experience in debt recovery has enabled us to create a fast, effective, user-friendly Debt-Claims portal that will take you through the stages of PAP step-by-step. If you need help, our team of Solicitors are always available

Register here to find out more about our Debt-Claims portal.

