



Ministry of JUSTICE

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Dear Consultees

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

Background

A debt protocol has been under discussion since Lord Woolf's enquiry. In his final report reviewing civil litigation costs¹, Lord Justice Jackson recommended that a new specific pre-action Protocol should be introduced. In November 2012 the Civil Justice Council (CJC) sent draft protocols to the Civil Procedure Rule Committee (CPRC) and invited CPRC to take responsibility for all pre-action protocols. CPRC noted that the redrafted protocols had not taken account of the Jackson recommendations, and in spring 2013 appointed a sub-committee to review all the protocols, chaired by District Judge Burn. That work is well under way and CPRC hope to implement most of the updated protocols, the new Pre-Action Protocol for Debt Claims ("the Debt Protocol"), and a revised Pre-action PD in April 2015.

CPRC were not made aware that there had been no consultation on the proposed Debt Protocol, until June 2014. CPRC do organise consultations on rule and PD changes, but on a selective basis with key stakeholders, and on details of the drafting. Having seen letters from a number of organisations representing creditors, CPRC decided at their July meeting to consult on the Debt Protocol, but only on the content not the principle, and with organisations that represent both creditors and debtors.

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

Many debt cases settle without proceedings. But a significant number do not, particularly where there are disputes about the identity of the parties, whether the claim is within the relevant limitation period, the terms of the contract, interest or charges imposed, and where the debt has been assigned by the creditor, often a number of times.

Many debt claims are issued electronically through the County Court Business Centre or Money Claim Online with minimal details given. The requirement in CPR Practice Direction 16, paragraph 7.3 for documents to be attached in written contract claims does not apply to claims started electronically unless the particulars of claim are being served separately in accordance with the rules. Some claims are then disputed by the defendant. A considerable amount of court time, including judicial time, is spent in processing these claims, often including ordering

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

disclosure of the contract, statements of account and correspondence, as a result of which some settle, some progress to a hearing and succeed, but some are dismissed through lack of evidence or for other reasons.

The creditors' letters sent recently to the CPRC commenting on the current draft protocol particularly objected to the following:

1. That it would be too expensive to comply with paragraph 3.1 of the Debt Protocol to supply details of the contract and statements of account in every letter of claim in every case when many are not defended and creditors often rely on "portfolio letters". However CPR Part 16 requires this information when a claim is issued, except in the case of claims issued electronically where the particulars of claim are also issued electronically, and supplying it early is likely to aid settlement. If a creditor intends to issue a claim, each letter of claim should be individually prepared.
2. That the defendant should be allowed 28 days to seek debt advice (paragraph 4.3 of the Debt Protocol). The reductions in public funding mean waiting times for appointments for advice can be significant, and advice should help to settle the case or to narrow the issues.
3. The requirement to consider ADR (Section 6 of the Debt Protocol). This is standard in all the protocols, and complaining to an Ombudsman or attempting mediation may settle any dispute more quickly and cheaply than issuing proceedings.

How to participate

The sub-committee invites written responses on the detail of the Debt Protocol. We particularly look forward to receiving comments from organisations that assist debtors or who act for both sides.

Responses should be sent to Jane Wright, Post Point 4.32, Ministry of Justice, 102 Petty France London SW1H 9AJ, or to mailto:paps_consultations@justice.gsi.gov.uk Please note "**PAP Debt Claims Consultation**" in the subject line of your email.

Responses to be received no later than 5pm on Tuesday 30 September 2014.

Please take note of the document attached to this letter in respect of the consultation.

Yours sincerely

Mrs Jane Wright
Secretary to the Civil Procedure Rule Committee

Civil Procedure Rule Committee: Pre-Action Protocol for Debt Claims 1-30 September 2014

Please note:

Consultation: Copies of this letter and the Debt Protocol are being sent to various stakeholders and list is included at the foot of this document. This list is not exhaustive or exclusive and responses are welcomed 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 want 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.

List of consultees

Advice Services Alliance	Institute of Money Advisors
Advice UK	Judiciary
Age UK	Law Centres Federation
Association of HM District Judges	Law Society
Bar Council	Ministry of Justice
Brachers	Mortimer Clark
British and Irish Ombudsman Association	Money Advice Service
Bryan Carter	National Debtline
Centre for Effective Dispute Resolution	Ofcom
Citizens Advice	Ofgem
Civil Court Users Association	Restons
Civil Justice Council	Shoosmiths
Consumer Council for Water	StepChange Debt Charity
Council of HM Circuit Judges	The Trades Union Congress
CPR Committee Stakeholder Group	UK Cards
Credit Services Association	Which?
Department for Business Innovation and Skills	
Finance and Leasing Association	
Financial Conduct Authority	
Her Majesty's Courts and Tribunals Service	
Institute of Credit Management	