

Debt Recovery Procedure following Introduction of Debt Recovery Protocol

Came into effect 1 October 2017

1. Introduction

- 1.1. This note sets out the requirements on Mid Devon District Council (“Council”) and the debtor (“the Debtor”) imposed by the new Debt Recovery Protocol (“the Protocol”). It also suggests, under the paragraphs with the heading “Who does what”, which officers should be taking particular steps to comply with the Protocol.
- 1.2. The Protocol applies to (any business including) public bodies claiming payment of a debt from an individual (including a sole trader). The Protocol does not apply to business debts.
- 1.3. It sets out the conduct expected of the parties before the start of proceedings in court.
- 1.4. The aims of the Protocol are to encourage early communication between the parties and avoid court proceedings, by clarifying whether there are any issues in dispute, and enabling the parties to agree a repayment plan or consider using a form of Alternative Dispute Resolution (“ADR”).
- 1.5. Parties are also encouraged to act reasonably and proportionately to the size of the debt, and to support each other in the efficient management of proceedings that cannot be avoided.

2. Initial Information to be provided by the Council

- 2.1. The Council should send a Letter of Claim to the Debtor (example at Annex A) before proceedings are started, which has required contents set out below and enclose the Information sheet and Reply Form (Annex 1) and Financial Statement (example Annex 2).
- 2.2. The letter should contain the following information:
 - The amount of the debt.
 - Whether interest or other charges are continuing.
 - If 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.
 - If the debt arises from a written agreement, the date of that agreement, the parties to it and the fact that a written copy can be requested from the creditor.

- Where the debt has been assigned, details of the original debt and creditor, when it was assigned and to whom.
 - If the debt is currently being offered or paid on behalf of or by the Debtor, an explanation of why these payments are not acceptable and why proceedings are being considered.
 - Details of how the debt can be paid, and what the Debtor can do if it wishes to discuss payment options.
 - The address to which the completed Reply Form should be sent.
 - Enclose an up to date statement of account for the debt, including the amount of interest and any other charges imposed since the debt was incurred.
 - Enclose the Information Sheet and Reply Form at Annex 1 of the Protocol.
 - Enclose a Financial Statement for the Debtor to complete, an example of which can be found at Annex 2 of the Protocol.
- 2.3. The Letter of Claim should have the date of the letter at the top of the first page. It should be posted on the day it is dated, or if that is not reasonably possible, the following day.
- 2.4. The Letter of Claim should be sent by post but in addition may also be sent via the additional contact details such as an email address. Also, at the explicit request of the Debtor not to send any correspondence via post, the Council can send the Letter of Claim via the alternative contact details e.g. by email.
- 2.5. The Debtor has 30 days to reply from the date of the Letter of Claim.
- 2.6. If the Debtor does not reply to the Letter of Claim within 30 days of the date at the top of the letter, the Council may start court proceedings.
- 2.7. Who does what?
- 2.7.1. Those Services wishing to instruct Legal Services to write the Letter of Claim must provide all the information and supporting documentation that the Protocol requires to be put in the Letter of Claim.
- 2.7.2. Additionally those Services wishing to instruct Legal Services:
- must nominate an instructing officer who will have the conduct of instructing Legal Services throughout the matter and who will be able to attend any ADR meetings (for details see below). This person must have full knowledge of the case and have the authority to make decisions in relation to the case; and

- must provide Legal Services with two hard copies and scanned copies of supporting documentation i.e. written agreements, invoices, photographs etcetera, and further copies may be requested if court proceedings are issued.
- 2.7.3. Legal Services recommends that consideration is given to enclosing the supporting documentation with the Letter of Claim as this will potentially reduce the amount of time allowed under the Protocol before issue of proceedings, as some debtors may use the request of supporting documents not attached to the Letter of Claim to delay the matter.
- 2.7.4. Lists of supporting documentation required to be supplied to Legal Services for particular types of cases are attached as Annex 3.

3. Response by the Debtor

- 3.1. The Debtor should use the Reply Form in Annex 1 for their response (within 30 days of the date of the Letter of Claim). The Debtor may ask for copy documents and/or enclose copies of documents they think relevant but have not been taken into account.
- 3.2. The Council should not start court proceedings less than 30 days from receipt of the completed Reply Form or 30 days from the Council providing any documents requested by the Debtor, whichever is the later.
- 3.3. 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 Council as specified in the Reply Form. The Council should allow a further reasonable additional period after the 30 days to enable the Debtor to take debt advice. It is considered a further 14 days would normally be reasonable.
- 3.4. Where a Debtor indicates in the Reply Form that they require time to pay, both the Council and the Debtor should try to reach agreement for the debt to be paid by instalments, based on the Debtor's income and expenditure. If the Council does not agree to a Debtor's proposal for repayment, the Council should give the Debtor reasons in writing.
- 3.5. Where a Debtor returns a partially completed Reply Form, this should be taken by the Council as an attempt to engage with the matter. The Council should attempt to contact the Debtor to discuss the Reply Form and obtain any other relevant information.

3.6. Who does what?

- 3.6.1. Legal Services will within 2 working days of receipt of the completed Reply Form seek instructions from the instructing officer. If however the Reply Form is incomplete Legal Services will attempt to obtain the additional relevant information from the Debtor before referring to the instructing officer.
- 3.6.2. The instructing officer will, within 7 working days of receipt of a Legal Services request for instruction, take the following steps:-
- provide any further documentation the Debtor requests which has not already been provided to Legal Services;
 - if the Debtor requests time to pay, indicate if the Debtor's request is acceptable and if not provide reasons and alternative proposals; and
 - if the debt is disputed by the Debtor, inform Legal Services what the Council's position is with regard to the dispute with reasons.
- 3.6.3. Legal Services will set out the instructing officer's position to the Debtor and attempt to reach an agreement.

4. Disclosure of documents

- 4.1. Early disclosure of documents can help to resolve any issues in dispute and information should be exchanged about any disputes.
- 4.2. If the Debtor requests a document or information, the Council must provide this, or explain why the document or information is not available within 30 days of receipt of the request.

5. Taking Steps to Settle the Matter and Alternative Dispute Resolution (ADR)

- 5.1. 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).
- 5.2. 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.

- 5.3. 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.
- 5.4. Where the parties reach agreement concerning the repayment of the debt, the Council should not start court proceedings while the Debtor complies with the agreement.
- 5.5. If this fails the whole process starts again with an updated Letter of Claim. If documentation was sent with the initial Letter of Claim in the preceding 6 months, that documentation need not be sent again unless it requires updating.
- 5.6. Who does what?
- 5.6.1. In the majority of cases that involve relatively small sums and where an agreement cannot be reached, Legal Services suggests that a without prejudice meeting be arranged to discuss the debt with the Debtor as the appropriate form of ADR.
- 5.6.2. The instructing officer, once notified by Legal Services that an agreement cannot be reached, will write to the Debtor with an appointment to discuss the matter on a “without prejudice” basis. This means that any discussions during the meeting will not be put before the court as evidence in any future proceedings. This prevents statements made in a genuine attempt to settle an existing dispute from being put before the court as evidence of admissions against the interest of the party which made them.
- 5.6.3. The instructing officer will attend the without prejudice meeting with the Debtor and then notify Legal Services of the outcome of any such discussion.

6. Taking Stock

- 6.1. Where the procedure set out in this Protocol has not resolved the matter between the Debtor and the Council, the parties 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.

6.2. Where the Debtor has responded to the Letter of Claim but agreement has not been reached, the Council 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 (for example, because the limitation period is about to expire).

6.3. Who does what?

6.3.1. The instructing officer will conduct the review and provide Legal Services with a file note setting out the review he or she has undertaken and also provide reasons for their position.

6.3.2. Legal Services will write the 14 day letter to the Debtor.

7. Compliance with this Protocol

7.1. If a matter does end in court proceedings the court will expect this protocol to have been followed.

7.2. Non-compliance will be taken into account by the court when giving directions for the management of proceedings. The court is not likely to be concerned with minor or technical infringements.

8. Notes

8.1. A copy of the Pre-Action Protocol for Debt Claims can be viewed here:

- <https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf>