

Recovering monies from an individual? Don't forget about the Pre-Action Protocol for Debt Claims

The PAPDC does not apply to business to business debt only if the debtor is a sole trader. Much more information is required under the PAPDC within a letter of claim and debtors should be given more time to respond along with an opportunity to make payment proposals throughout the pre-action process.

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The Pre-Action Protocol for Debt Claims (the 'PAPDC') came into force on 1 October 2017.

The PAPDC applies to public bodies (including businesses) seeking to recover payment of a debt from an individual (including sole traders).

The PAPDC does not apply to business to business debt only if the debtor is a sole trader. Much more information is required under the PAPDC within a letter of claim and debtors should be given more time to respond along with an opportunity to make payment proposals throughout the pre-action process.

Public bodies, including local authorities, need to ensure that they remember to comply with the requirements of the PAPDC or potentially face financial consequences. This article provides an overview of the PAPDC and explains how it applies to the public sector.

Requirements under the PAPDC

The PAPDC describes the conduct the court will normally expect of parties involved in debt claims against individuals prior to the start of proceedings.

The letter of claim

The PAPDC provides a prescribed list of initial information which must be provided by the local authority within the letter before claim. This information includes:

- The amount of debt claimed (including details of any interest/charges claimed);
- Details of any oral or written agreement where the debt arises from;
- Details of any assignment of the debt;
- If regular instalments are being offered or paid by or on behalf of the debtor, an explanation of why that offer is not acceptable and why a claim is being considered;
- Details of how the debt can be paid (such as the method of and address for payment) and how to proceed if the debtor wishes to discuss payment options; and
- An address to which the completed Reply Form should be sent to.

For the letter before claim to be complaint, it must be:

- Dated at the top of the first page of the letter;

- Posted on the day it is dated, or if that is not reasonably possible, the following day;
- Sent by post unless the debtor has made an explicit request that correspondence should not be sent by post (a condition in any standard terms does not constitute an explicit request – this must come from the debtor); and
- Sent to any additional contact details for the debtor such as an email address.

Enclosures to the letter of claim

A series of documents must be attached to the letter before claim including:

- An up to date statement of account for the debt which includes details of interest and charges added, or if no statements have been provided, state in the letter before claim the amount of interest incurred and charges imposed since the debt was incurred;
- A copy of the Information Sheet and Reply Form (a standard form has been produced); and
- A Financial Statement Form (a standard form has been produced).

The debtor's obligations

The debtor must respond to the letter before claim within 30 days of the date detailed at the top of the letter. The reply must be made using the Reply Form and the debtor must state whether they agree with the debt or not.

You will be entitled to start proceedings (provided that you give 14 days' notice to the debtor of your intention to do so) if the debtor does not reply.

Alternatively, you could look towards other means of debt recovery, such as serving a statutory demand. However statutory demands can only be enforced through bankruptcy proceedings if the individual's debt is for £5,000 or more.

If the debtor advises you that they are seeking debt advice, a reasonable amount of time should be allowed for the advice to be obtained.

Other points which should be considered

There are a number of points which must be taken into account including:

- You should not start court proceedings less than 30 days from receipt of the completed Reply Form or 30 days from you providing any documents requested by the debtor, whichever is later.
- The possibility that the reply was posted towards the end of the 30 day period should be taken into account.
- Where the debtor indicates in the reply form that they require time to pay, you and the debtor should try and reach agreement for the debt to be paid by instalments.
- A partially completed Reply Form should be considered as an attempt by the debtor to engage with the matter. You should attempt to contact the debtor in this instance to discuss the Reply Form or obtain any further information.

What will happen if the PAPDC is not complied with?

Failure to comply with the PAPDC may result in:

- Further delay in collecting debts from individuals if legal proceedings are stayed to allow for remedy of any failure to comply with the PAPDC. This is likely to increase the costs of dealing with such matters.
- Potentially being penalised in respect of costs for failing to comply with the protocol.
- The court has the power under section 7 of the PAPDC to order a sanction against a party who has not complied and this could include reducing their right to interest or not allowing interest on cost orders.

None of the points mentioned above are good news for public bodies and to avoid such consequences you must comply with the requirements of the PAPDC. You must ensure that any current debt recovery process which is in place against individuals is up to date and in line with the PAPDC.

Another important consideration – Debt Respite Scheme

Breathing space, officially called the Debt Respite Scheme ("the Scheme"), is a government scheme which attempts to help relieve some of the pressure and stress to debtors caused by being in debt. This is an important scheme for public bodies to be aware of.

The Scheme was launched by the Government on 4 May 2021. The aim of the Scheme is for individual debtors to have breathing space to focus on getting debt advice and setting up a debt solution without worrying about being chased for payment or incurring extra charges.

Debtors will need to pass eligibility checks so that creditors won't be able to add interest or fees to debts or take enforcement action for 60 days. Debtors do need to keep making regular payments if they can afford to do so.

For more details about the Scheme, please see our [article](#).

Summary

For public bodies and local authorities dealing with individuals or sole traders, the PAPDC requires a greater degree of patience when collecting outstanding debts. Public bodies and local authorities need to be aware that they have more onerous obligations under the PAPDC due to the requirement to provide much more detailed information to debtors.

Prompt action should be taken when debt arises and this should be reflected in any credit control process you have. More consideration will be required to evaluate whether it is worthwhile engaging in the process of collecting outstanding debts based on the amount of the debt in comparison with the time and cost dealing with such matters and the resources available.

If debt arises, every effort should be made to resolve matters without the need for proceedings. There is a very clear message under the PAPDC that litigation should be a last resort. If proceedings are necessary the PAPDC should be complied with prior to issuing court proceedings as the court will expect this of both parties.

If a debtor notifies you that they are in breathing space under the Scheme, you should pause the recovery action immediately.

The PAPDC can be found [here](#)

The Scheme can be found here:

[The Debt Respite Scheme \(Breathing Space Moratorium and Mental Health Crisis Moratorium\) \(England and Wales\) Regulations 2020](#)
(legislation.gov.uk)

If you have any questions on the PAPDC or your debt recovery process or the Scheme, please get in touch.

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