



## Pre-Action Protocol (PAP)

### *Recovering a debt through the courts*

#### **On 1st October 2017 the PAP will come into force**

The goal of credit management is to recover a debt amicably. This avoids the expense of legal action and the detrimental impact it might have on customer relationships and brand image. However, there will always be a minority of debts which require litigation.

From 1 October 2017 creditors will be expected to have followed the Pre-Action Protocol (PAP) for debt claims before proceeding with litigation.

Courts will expect all parties to comply with this protocol. If it is not followed this could result in a claim being "stayed" (put on hold) to allow a period for compliance or, alternatively, sanctions being imposed.

A consequence of the protocol is that creditors, especially large-scale lenders and consumer debt management businesses, will need to ensure that their internal processes accommodate the requirements of the debt PAP.

The scope of the protocol and what it means for a creditor wanting to recover a debt through litigation is explored and advice offered on how to remain compliant with the protocol and achieving a successful recovery of a debt.



Author Robert Sorrentino is Business Development, Collections & Information Security Officer at ACS.



### **When does PAP apply?**

The debt PAP applies when any business is claiming payment of a debt through the courts from an individual - including an individual in business as a sole trader. It does not apply to business-to-business debt (unless the debtor is a sole trader).

### **PAP in Overview**

The protocol sets the standards and timetable for the conduct of debt cases before legal proceedings are started. It is a set of steps that both parties are required to take before going to court. It is started by the creditor sending the late payer a Letter-of-Claim. The debtor is required to respond to the Letter-of-Claim before the claim deadline.

### **The Letter-of-Claim**

A creditor intending to pursue legal action to recover a debt is required to send a clearly dated Letter-of-Claim to the debtor before proceedings are started. This letter must contain the following information:

- The debt amount
- If interest or other charges are continuing
- Details of how the debt arose: verbal or written agreement
- If the debt has been assigned details of the assignment
- If payments are being made an explanation why the offer is not acceptable
- Detail on how the debt can be paid
- An up-to-date statement
- A reply and financial statement form

### **How can the Letter-of-Claim be sent?**

The Letter-of-Claim should be sent using Royal Mail post unless the debtor has made an explicit request otherwise and provided alternative contact information.

### **When can court proceedings begin?**

The debtor has 30 days in which to respond to the Letter-of-Claim.

The creditor may start court proceedings after the 30 days has elapsed and no response to the Letter-of-Claim has been received. However, the creditor must consider the possibility that a reply was posted towards end of the 30 days period.

### **What the creditor must do when the debtor responds**

The PAP prescribes what the creditor must do when the debtor responds. The creditor must,

- If the debtor is seeking debt advice - allow the debtor reasonable time to do so
- If the debtor requires time to pay - reach agreement for the debt to be paid by instalments
- If a partially completed response is received - continue to engage with the debtor
- If the claim is disputed - provide any requested documentation or information promptly - this must be provided within 30 days of receiving the request.



### **If the parties cannot agree?**

The parties are required to consider using an appropriate form of Alternative Dispute Resolution (ADR). This should involve a compliant process through the Financial Ombudsman Service (FOS) or Civil Mediation.

### **Seek advice from a third party**

ACS offers a professional, regulated, and timely debt recovery service. If you would like to learn more about PAP or about the implementation of processes which are compliant and practical for your business, please contact us on 01707 252900.

### **How to stay compliant with PAP**

Showing compliance with the requirements of the PAP is likely to be a cornerstone of a successful litigation for the full debt.

A business which anticipates that it may need to recover a debt through the courts should review its processes and records for compliance with the protocol and in particular,

- Ensure records and documentation are correct and available
- Collect and hold the information required for the Letter-of-Claim
- Avoid delay in pursuing an overdue debt - PAP assumes that there is an early exchange of information between the creditor and debtor, in particular to clarify any areas of dispute.

### **Advanced Collection Systems**

Established in 2000, ACS provides credit management and debt collection services. Further information and resources including copies of this guide are available on its website.

Address: Steele House, 126 Great North Road, Hatfield, Herts, AL9 5JN  
Telephone: 01707 252900  
Fax: 01707 252901  
Email: [info@advancedcollection.co.uk](mailto:info@advancedcollection.co.uk)  
Website: [www.advancedcollectiion.co.uk](http://www.advancedcollectiion.co.uk)