



12th January 2016

CJC response to the further Civil Procedure Rule Committee consultation on a Pre-Action Protocol for Debt Claims

The CJC responded to the Rule Committee's last consultation in September 2014 (<https://www.judiciary.gov.uk/publications/cjc-response-to-the-cprc-consultation-on-a-pre%E2%80%90action-protocol-for-debt-claims/>), but revisions have been made to the protocol and the changes are significant enough to warrant a redraft and re-issuing of the consultation paper.

The CJC welcomes this approach, in part as the Committee has responded to and addressed legitimate concerns raised in the first round. In addition, although the Council said that the provision of pre-action documentation should be kept to a minimum, having heard some of the concerns expressed by creditors we may have underestimated the burden placed on creditors across the full range of cases.

The Rule Committee's revised proposals appear to us to offer a reasonable and proportionate process bearing in mind the interests of all parties.

Turning to the specific questions in the consultation, the Council's responses are set out below.

Question 1 - Does the two-stage approach to information provision strike the right balance between fairness and proportionality? Should any other information be provided to debtors as of right, in / with the Letter of Claim?

Yes, we consider the approach a sensible one – creditors should be expected to explain and offer evidence of a debt, and the essential elements rather than a large amount of documentation. In responding the protocol provides for debtors to ask for access to (or supply) other documents. How this affects litigants in person remains a concern, but the Committee has addressed this in the annexes to be sent to the debtor with the explanatory information sheet and detailed forms (which provide a form of checklist).

Question 2 - Are any of the provisions of the Debt Protocol irreconcilably inconsistent with creditors' obligations under other regulatory regimes? If so, please indicate precisely which regulatory obligation and/or statutory provision is referred to and explain the nature of the inconsistency.

We are not qualified to answer this.

Question 3 - Is the Information Sheet sufficiently clear and comprehensible to debtors, while still providing an accurate description of their rights and obligations? Should any additional information be included?

We consider that it is both clear and will be very helpful to debtors. Our only suggestion is adding to the existing STEP 2 by adding "and may also be able to help you complete your statement of means" as this is something that various agencies routinely do.

Question 4 - Is the Reply Form sufficiently clear? Do the reply boxes follow a logical order? Is the information included in the indicative list in Box J comprehensive? If the answer to any of these questions is "no", please indicate how the boxes might be amended to improve the Reply Form, included suggested drafting where appropriate.

In general we agree the form is clear and in a logical order. However, we would add the following comments:

- Box A – we would suggest adding a third option for those who will pay but need time to do so (as provided for in Box F).
- Box C – may want to add a signpost for people to Box J (additional documents that may be required).

We would also like to take the opportunity of offering some additional comments on the redrafted protocol, although we appreciate this is the Rule Committee's area of specialty.

Para 3.1 (b) – there may be merit in dividing this section up, into two new sections:

- (i) *where statements have been provided:* (followed by existing sub-sections (a) & (b), and with 'provided to the debtor' added after "statement of account in (b)); and
- (ii) *Where no statements have been provided:* (followed by existing sub-sections (c)-(e)).

Para 3.1 (c) – the Committee may want to consider adding "or where the written agreement does not provide any additional information to that already provided by the creditor". This would be to reflect a situation where a written agreement was

concluded a while ago, but the debtor has only recently stopped repayments; or where online terms and conditions have superseded the written agreement.

Para 3.4 – possible discrepancy with the information sheet sent to the debtor which says that the reply to the creditor has to receive a reply within 30 days or they will face court proceedings, whereas this paragraph is more open ended.

Para 4.4 – a footnote may be helpful on what a standard/common Financial Statement is.