



29 September 2014

Dear Jane,

**CJC response to the CPRC consultation on a Pre-Action Protocol for Debt Claims**

Thank you for your letter of 1 September 2014. The Civil Justice Council (the CJC) welcomes the opportunity to respond to your consultation. While understanding that the consultation relates to the content and not the principle of the proposed pre-action protocol (PAP), the CJC would like to briefly endorse the use of PAPs generally as improving access to justice – in this case for both the consumer, or borrower and the creditor – by clarifying processes and allowing for the early resolution of disputes. The civil justice system as a whole also benefits.

The CJC understands as well that the intention behind the PAP is to separate out those parts of the existing Practice Direction on pre-action conduct (which will need to be amended as a result) that relate to personal debt with the aim of making the guidance more easily accessible by defendants in these cases. Protocols should work and people should comply with them – and this will help meet that end. The CJC also agrees that the ‘Defendant’s reply form’ reproduced in Annex 1 will help pinpoint the nature of the problem and flush out the issues to be resolved at an early stage. Box 4 in particular will help identify those debtors who admit the existence of the debt but would like time to pay. It is these same debtors who are likely to require financial (rather than legal) advice – which will often be to suggest that they raise the issue with the creditor as soon as possible. It is helpful and sensible that the form helps identify these debtors at an early stage and starts a conversation about weekly repayments at the earliest opportunity.

Further, the CJC has had the benefit of sight of the response to this consultation by Which? and considers its description of the problems faced by consumers to be detailed and helpful particularly in relation to the importance to a consumer of having sight of the underlying documents to which a debt claim may apply and the reasons why the general exception to the need to attach underlying documents to a claim form when a claim is issued electronically should not apply to cases of personal debt. The CJC agrees that the small additional administrative burden put upon creditors in this way is outweighed by the advantages to both parties, as outlined above, and the court system as well as, more broadly, the facilitation of access to civil justice. Having said that, the CJC does feel that the provision of that documentation should be kept to a necessary minimum, in other words to those evidencing the existence and quantum of the debt.

There are two additional points that the CJC would like to make.

One is in relation to paragraph 3.1(d) and the possible risk of seeming to encourage a debtor to share any 'without prejudice' correspondence with the court – in circumstances where a part re-payment has been offered without admitted the existence of a debt.

Finally, the CJC would suggest that the Protocol should extend the definition of 'letter' to include electronic communications, and suggests that the provisions used in Part 6 of the CPR and further outlined in Practice Direction 6A, para. 4.1 relating to the service of documents that allow for 'fax or other means of electronic communication' where the debtor has indicated that they are happy to receive documents in that format might usefully be adopted here as well.

Yours sincerely,

Andrea Dowsett  
**Assistant Secretary to the Civil Justice Council**