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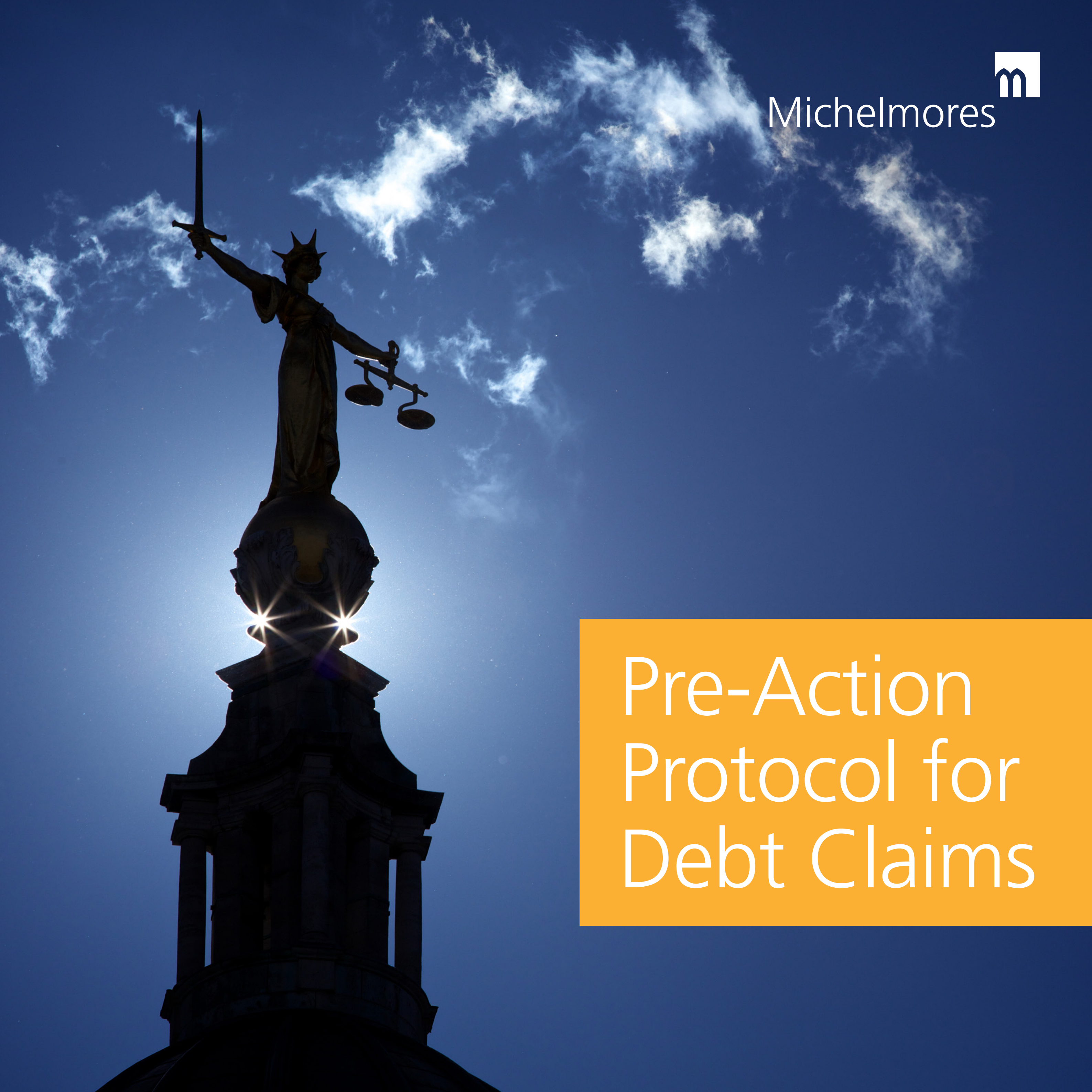

Pre-Action Protocol for Debt Claims

The new Pre-Action Protocol for Debt Claims

What it means for your business

The new Pre-Action Protocol for Debt Claims (PAPDC) could change the way you do business and manage your credit control.

The new protocol affects not only business-to-individual debt, but also business-to-sole-trader debt, so has a wide-ranging scope and effect. The protocol is very much more individual focused, and seeks to redress a perceived imbalance in rising levels of personal debt in the UK.

We have prepared this guide to ensure that you are prepared for the changes you may have to make in order to be compliant.

What this guide covers

The new PAPDC was published by the Master of the Rolls, Sir Terence Etherton, Head of Civil Justice, and comes into force from 1 October 2017. Its scope encompasses Debt Claims of all sizes and irrespective of value.

These changes could significantly impact the way you carry out your credit control, and so we have taken the time to develop our guide to provide you with a series of practical steps, which will help your credit control teams work towards the change-over, and avoid potential pitfalls.

Our guide covers the following:

1. an introduction to the changes
2. the old system vs the new approach
3. the effect of non-compliance with the Protocol
4. your PAPDC checklist: what to do in five easy steps
5. our services: how we can help.

An introduction to the changes

Key points

- The PAPDC applies to all businesses (and public bodies) dealing with a debt owed by an individual. There is no distinction between an individual who is a consumer or an individual who is a sole trader.
- It does not apply to business-to-business contracts where the business is a limited company. It may be not applicable to claims against partnerships as the wording of the PAPDC as drafted expressly states that it does not apply to business-to-business debts, unless the Debtor is a sole trader.
- The wording used refers to Creditors and Debtors, rather than Claimant and Defendant.
- It should also not affect debts which arise due to mortgage arrears, HMRC debt, or to claims in the construction industry provided that those debts apply the Pre Action Protocol for Construction and Engineering claims.

The aims of the PAPDC

Pros	Cons
• The parties may be on a clearer footing when proceedings are commenced • The issues between the parties are more likely to have been narrowed before proceedings are issued • More likely that claims will be settled before the need to issue a claim	• The Protocol takes more time to comply with than currently • Creditors cannot start court proceedings any quicker than 30 days • Debtors can take advantage of the Creditors obligation to consider any offers the Debtor may make • There is no exemption for dealing with business to business debt in a more streamlined way, where the Debtor is a sole trader

Key date:

The PAPDC comes into force on **1 October 2017.**

The old system vs the new approach

Steps	Old Protocol	PAPDC
The Letter before Claim	Before commencing proceedings, the court will expect the parties to have exchanged sufficient information to: (a) understand each other's position (b) make decisions about how to proceed (c) try to settle the issues without proceedings (d) consider a form of Alternative Dispute Resolution (ADR) to assist with settlement (e) support the efficient management of those proceedings (f) reduce the costs of resolving the dispute. The letter should include the basis on which the claim is made, a summary of the facts, what the claimant wants from the defendant, and if money, how the amount is calculated.	The Letter should include: • amount owed • whether interest applies • how the debt arose (details of any oral or express agreement) • if an express agreement, the date of that agreement and the Debtor's right to a copy of it • details of any assignment of debt • if instalments are being paid, an explanation of why these are not accepted • details of how the debt may be paid or how to proceed if the Debtor wishes to discuss any payment options • the address to which a reply form should be sent. Enclosures include: • up-to-date statement of account (including interest and late payment charges) • the most recent statement of account, and details given of interest and charges incurred since it was sent • a copy of an Information Sheet, proscribed by the CPR • a Financial Statement form, proscribed by the CPR.

Steps	Old Protocol	PAPDC
Sending the LBA	Creditor's choice, or as defined in any terms of business.	• If Debtor has requested a Creditor should use specific contact details, these must be used. • A Creditor cannot rely on express terms in the terms of business.
Time for Response	14 days in a straightforward case and no more than three months in a very complex one.	• 30 days minimum. In reality this could be much longer as the PAP states that Creditors should take account of the fact that the Debtor could have sent a response towards the end of the 30 day period. In reality, at least a further two days should be given. • If the Debtor returns a Reply Form, then this time limit is increased to 30 days.
Further Notice (Taking Stock)	No obligation.	• The parties should review the positions and see if proceedings can be avoided to narrow the issues. • If Debtor has responded to the Letter before Claim but no agreement has been reached Creditor should give Debtor a further one day's notice of intention to commence court proceedings.

Steps	Old Protocol	PAPDC
Response	If no response was received, or there was a substantive dispute, the Creditor could issue a claim using the County Court Money Claims Centre, the County Court Bulk Centre or Money Claims Online.	• If the Debtor indicates on the Reply Form that they want time to pay, then the Creditors should try and agree this and the Creditor must review the Standard Financial Statement guidance. • The Creditor may not agree the proposals for repayment but must supply the Debtor with their reasons, in writing. • If the Debtor hasn't completed the reply form properly, the Creditor is obliged to contact the Debtor to obtain the information needed.
Early Disclosure	No requirement but can be used as a tactic where the case is very strong. In some cases, this will be limited to an invoice and credit control letters.	• The parties should exchange information. • The Creditor is under an obligation to provide requested documents or information within 30 days of the receipt of any request, or to explain why it is not available.
ADR	No obligations for ADR. As part of a relevant pre-action protocol or this Practice Direction, the parties should consider whether negotiation or some other form of ADR might enable them to settle their dispute without commencing proceedings.	• If parties cannot agree position about any aspect of the debt, they should consider ADR, either by discussion or negotiation (or referral to relevant Ombudsman). • In larger debts, mediation should be considered in proportion to the size of the debt.

Steps	Old Protocol	PAPDC
Failure for compliance	The court may decide that there has been a failure of compliance when a party has: (a) not provided sufficient information to enable the objectives in paragraph three to be met (b) not acted within a time limit set out in a relevant protocol, or within a reasonable period or (c) unreasonably refused to use a form of ADR, or failed to respond at all to an invitation to do so. This can result in costs sanctions or reduction in interest on any judgment or award.	The court will take into account non-compliance with the Protocol when making case management directions. Otherwise, substantially the same.
Default of a pre-action agreement	Immediate enforcement may take place.	The Creditor must re-start the pre-action protocol from step one and should send a new Letter before Claim and documents (unless those documents have been sent in the last six months).

What to do next in six easy steps:

1 Check your standard terms and conditions comply with the new PAPDC.

2 Review existing contracts and highlight any changes which are needed.

3 Review whether you need to change your Credit Control Procedures, and standard letters.

4 Consider what type of pre-action "ADR" may suit your business?

5 Decide how pre-action agreements are managed.

6 Ensure this matter is on your Management Team's agenda.

How we can help you

Our dedicated team offers a range of support services to assist your business in having appropriate credit control systems to ensure that you are compliant with the PAPDC. Our key services include:

1 Vetting Service

One of our specialist lawyers will review your organisation's current credit control policy, current clauses and contracts and advise on any changes required in order to be compliant.

2 Off-the-Shelf Credit Control

We can provide your business with a standard suite of compliant documents and guidance on when and how to use them.

3 Just Ask Service

An annual subscription service which gives you access to a dedicated team member to give practical advice, for up to half an hour per query, helping you deal with any recovery problems or procedural questions.

4 Debt Recovery Services

A full debt recovery service from initial letter to enforcement of a judgment, including flexible payment options such as 'no win, no recovery' arrangements or fixed fee options.

5 In House Training

Our specialist lawyers can provide training on the latest solutions for dealing with issues in credit control and debt recovery, which can be tailored for your own business.

6 ADR Solutions

We have highly trained mediators at partner level within the firm, and can also advise you on what might be most appropriate and cost-effective for your business.

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