

New rules for disputed debts

The rules relating to the way in which disputed debts should be handled in England and Wales changed on 6th April. The updated rules are officially known as 'The Civil Procedure (Amendment No.3) Rules 2008' and introduce an amended 'Pre-Action Protocol'. Emma Bridges of construction credit research specialist Top Service provides an overview and a few tips.

The Ministry of Justice is concerned that the courts are being clogged up with debt disputes and consequently wants to encourage parties in a dispute to try and resolve the problem without resorting to legal action. Sanctions have been introduced which penalise non-compliance with the new Pre-Action Protocol, for example, costs can be awarded against the claimant, a claim for interest can be struck-out and general delays occur.

In the case of a disputed debt, the rules state that a 'letter before claim' should now be sent to the debtor and that a 'reasonable' amount of time should be allowed for the debtor to respond. The Ministry of Justice acknowledges that the word 'reasonable' depends very much upon the individual's circumstances, however, a suggestion of 14 days is made for a straightforward claim. The 'letter before claim' should include:

- The claimant's full name and address.
- The basis on which the claim is made ie why the defendant is liable.
- A clear summary of the facts on which the claim is based.



- What the claimant wants from the defendant.
- A list of the essential documents on which the claimant intends to rely.
- The date by which the claimant considers it reasonable for a full response to be provided by the defendant.
- A request for copies of any relevant documents not in the claimant's possession and which the claimant wishes to see.
- The form of alternative dispute resolution that the claimant considers the most suitable (if any) and to invite the defendant to agree to this.
- A statement along the lines of "we would refer you to the Practice Direction supplementing Part 7 of the Civil Procedure Rules regarding Pre-Action protocol, and draw your attention to paragraph 4 of the directions concerning the court's powers to impose sanctions for the failure to comply with the Practice Direction".



Those businesses pursuing an 'individual' should, in their 'letter of claim', let the debtor know where they can obtain impartial free debt advice, for example from:

The National Debtline -
0808 808 400
www.nationaldebtline.co.uk

Citizens Advice Bureau -
consult local office
www.citizensadvice.org.uk

If a debtor informs a claimant that they are seeking debt advice then the claimant should allow the debtor 14 days grace in which to do this. The exceptions to this rule are if the debtor has already sought debt advice or has previously been granted time to seek debt advice.

Claimants should provide details to individuals of how the money can be paid, for example, the method of

payment and the address to which it can be sent. Claimants should also tell the defendant that they are open to possible repayment options, and provide the relevant contact details. It is unclear, at the moment, whether sole traders and partners in partnerships are classed as 'individuals'.

If the dispute is complex or if it involves third parties the debtor may request extra time to respond to the 'letter before claim', however, the debtor must explain why more time is required. At this stage the debtor may request further information from the claimant in order to investigate the dispute. The claimant is then required to furnish the defendant with the requested documentation at the earliest opportunity or tell the defendant why they are unable to provide the requested documentation.

Important - Action Plan

Review your letters to ensure that you are sending out the correct wording to customers who are disputing invoices. Top Service Ltd will provide a free sample of the new 'letter before claim' to all Cranes & Access readers, telephone them on 01527 503991

Keep the spirit of the protocol in mind when dealing with disputed accounts. Judges want assurances that you tried your best to resolve the dispute before resorting to legal action. They expect you to exchange information with debtors in a timely manner and to keep the lines of communication open.

Document the action that you have taken to try and resolve the dispute, including dates that you do things and the names of people you speak to as you may be required to demonstrate that you have complied with the protocol. Also document the instances when the debtor did not comply with the protocol.

If you are unsure about the new rules telephone Emma Bridges or Matt Ricketts at Top Service on **01527 503991**. They will provide free advice to all Cranes & Access readers.

