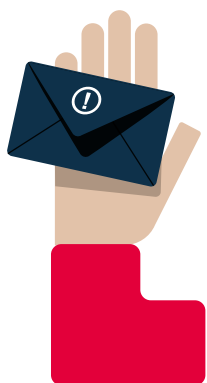


Important UK Legal Update: Is Your Company “PAP” Ready?

This October 2017, UK Courts will introduce new pre legal protocol guidelines when collecting debts from sole traders, starting with a more comprehensive Letter Before Action to be known as Pre Action Protocol LBA (“PAP” LBA).

The new Pre Action Protocol (PAP) for Letter Before Action (LBA) appears heavily geared towards debtors. In his report, Lord Justice Jackson suggested that, “debtors are not being fully informed about what they are asked to pay, and as a result they are not able to get timely legal advice and are therefore reluctant to make payment“. However, the new measures can also be of benefit to creditors: offering them clarity as to what to expect PRIOR to issuing proceedings, and helping to narrow down issues between the parties. The main aim of this protocol being to help the parties resolve disputes in a reasonable and proportionate way and without the need and expense of court action.



The Effects of PAP LBA Implementation

As the proposed changes will affect any businesses collecting debts from an individual, namely sole traders or partners of a partnership (if individuals) within the UK, it is now more important than ever that our clients know who they are doing business with, or when signing a contract or agreement. Getting things right at the start will save time and unforeseen costs further down the line.

It is also advisable that clients closely monitor the status of sole traders as they could incorporate their non-limited businesses or cease to trade as a limited company without providing any notice.

“PAP” Letter Before Action (LBA) will not apply to debts owed by limited companies, unless the debt is backed by a personal guarantee issued by one of the company directors.

What are the PAP LBA Requirements?

The proposals are all pre-legal, starting with a Letter Before Action. However, under PAP guidelines there is now a prescribed list of information, which is compulsory to each LBA PAP and this needs to be provided to the debtor, including:

- The amount of the debt.
- Whether interest and other charges are continuing.
- Whether the debt arises from a written agreement (date of the agreement, affected parties and the fact that a copy of the written agreement can be provided if requested).
- Whether the debt arises from a verbal agreement (who agreed it, what was agreed, and where and when it was agreed).
- Details of any assignment of the debt (when it was assigned and to whom).
- If regular part payments are being made, an explanation as to why the offer is not acceptable, request a raised offer, etc.) is required.
- A Reply Form and a Financial Statement Form (for the sole trader to complete).
- The address to which the above forms should be returned to.

Additional (optional) information:

- Up to date statement of account, to include interest and details of any other charges added to the debt.
- Where no statement of account is provided, the LBA must state the amount of interest accrued, and any administrative or other charges imposed since the debt was incurred.



New Timescales Under PAP LBA

A significant change under the new pre action protocol, is that the debtor will be allowed 30 days to reply before the clients can take Court Action. However, if the debtor returns the Reply Form, a further 30 days should be allowed and potentially a further 30 days if the debtor asks for further information. Timescales can overlap, but we can foresee that some individuals may play the system in order to drag the process out as long as they can. If, after the time allowed, no agreement has been reached, and the client wishes to issue legal action, then they must give the debtor a further 14 day notice of their intention to proceed.

On the other hand, if the debtor does not reply to the "PAP LBA" within the 30 days, then the client can issue Court proceedings and request judgment.

If an agreement is reached as a result, but then the debtor defaults and if more than 6 months have elapsed, then the whole process must be started again.

If no agreement is reached, then the parties will be encouraged to consider ADR (Alternative Dispute Resolution).

If after PAP compliance and ADR no agreement is reached, the debtor should be given a 14 day notice before proceedings are issued.

Pros and Cons of the New PAP LBA

The Pros

- Less contractual disputes (in theory).
- Reduced back and forth correspondence with the debtor, as ideally all supporting information will be provided at LBA stage.
- A clearer procedure.

The Cons

- Much longer timescales.
- Increased solicitor and administration costs.
- Some individuals may abuse the new deadlines.
- The Court may impose sanctions for non-compliance, such as cost sanctions, possibly a reduction in interest, or perhaps staying the claim.

Although, clients are prevented from issuing proceedings during the protocol period, this does not mean that we cannot contact the debtor via telephone calls or emails at 7, 14 and 21 day intervals to check whether they received the LBA, or whether or not they require anything else. This will keep some pressure on the debtor without falling foul of the PAP. This would, after all, be in the spirit of communication and cooperation with the debtor.

Document Disclosure under PAP LBA

If the debtor requests a document or information, the clients must provide these (if available) or provide an explanation as to why the document or information is not available, within 30 days of the request. In cases where the clients are already aware that the debt will be disputed, waiting times can be significantly reduced if they consider in advance what documents or information they may be asked to provide and have them on hand for such eventuality.