

Pay Up or I'll... Wait for It

Bob the Builder owes you a debt – say £1,500. They haven't paid so you go to your solicitor and ask them to recover it. The solicitor tells you that they will write them a letter demanding payment and if that doesn't work they will issue court proceedings. So far so good. You ask them how long this will take, expecting 7 to 14 days. They tell you that from **1st October 2017** it will take at least 30 days, and possibly 104 days before they can issue in the court. You are horrified – as well you might be - because the new **Pre-Action Protocol for Debt Claims** comes into force on that date.

It covers any business (including sole traders and public bodies) claiming payment of a debt from an individual (including a sole trader). So if Bob is a sole trader he is covered. If he is in partnership with Postman Pat, or trades as Bob the Builder (2017) Ltd he isn't. And it makes a big difference because the old rules would apply and the creditor would just write a simple 14-day letter and then rush off to court.

The New Procedure

The new rules are far too complicated to set out here, but briefly the creditor has to

1. Send a letter of claim (in the prescribed form with lots of extra information) to the debtor by post (email or hand delivery won't do).
2. Give the debtor at least 30 days to respond – more if they need it to take debt advice.
3. If they do respond give them another 30 days to negotiate a settlement, and answer any questions or supply any documents that they request.
4. Give at least 14 days' notice before issuing proceedings.
5. And if the debtor agreed to pay by instalments but then fails to pay after a time then the process has to start all over again.

And if you don't do this the court can delay the claim until you do, or penalise you in costs or by disallowing interest. And it applies if you are collecting the debt yourself, as well as if you are using a lawyer.

So What's the Answer?

This cannot be ignored. It will have a radical affect on the recovery of debts from individuals, and unless businesses adapt appropriately they may suffer a disastrous hit to their cashflow. You have to work round the problem. Here are some suggestions.

1. Don't allow credit - get paid up front before the goods or services are supplied.
2. If you deal with businesses consider avoiding sole traders.
3. And make sure you know who you are contracting with (always a good idea anyway).
4. Credit-check your customers before you do business with them, not just before you sue.
5. Start the process very early - the moment that the payment becomes overdue.
6. Send non-protocol letters chasing debts as present, knowing that at the end of the day you probably won't sue for claims below a certain value.
7. Insure, or factor, or sell your debts, or consider doing so.
8. Get some training or pass the debt collection to a collector who knows the ropes.

9. And get your paperwork in order. The new system will expose errors.
10. It is not clear at present how the courts will enforce the new rules, so you might be able to ignore things and take your chances, but this is risky and best avoided.

And the Verdict?

It may work out in the end, but things will be difficult until businesses get organised.

Diana Crone at **David Lee Solicitors** has a wealth of experience in credit management and debt collection. Get in touch with her for advice and assistance.
