



THE ESCALATE GUIDE TO:

New guidance on pre-action conduct



New requirements have been introduced setting out the conduct the Courts will normally expect of parties prior to the issue of proceedings. In general, they reinforce a trend towards encouraging dialogue and exchange of information, but there are some specific new measures which we highlight in the guide.

What is generally expected of claimants before proceedings are issued?

Claimants should provide sufficient information and, if necessary, documents to enable the defendant to understand and evaluate the claim.

Claimants should also be prepared to attempt to resolve disputes by Alternative Dispute Resolution procedures, such as negotiation or mediation, if appropriate.

What is new?

Claimants' correspondence prior to the issue of court proceedings should refer defendants who are not legally represented to the requirements that the new guidance imposes on defendants (see below).

Where a business is claiming from an individual defendant (as opposed to a limited company or partnership), there are additional obligations:

- Information should be provided as to how the money can be paid;
- The defendant should be given the opportunity of contacting the claimant to discuss repayment options;
- The defendant should be informed of the availability of free independent advice and assistance from organisations such as National Debtline, CCCS, Citizens Advice and Community Legal Advice; and
- If the defendant indicates that they are seeking debt advice, the claimant should allow up to 14 days for them to do so.

In addition, Claim Forms should confirm compliance with the new guidance.

Note that the rules do not apply to cases of real urgency (such as Freezing Orders) or insolvency procedures (such as Statutory Demands and Winding-Up Petitions), which can bypass recovery litigation in appropriate cases.

What is generally expected of defendants?

Defendants should respond normally within 14 days of the claimants' initial letter, setting out reasons for disputing a claim and requesting any further documents or information required from the claimant.

Defendants should also comment on their view on the suitability of Alternative Dispute Resolution procedures in resolving the issue.

What about undisputed debt claims?

There is some confusion as to the approach to undisputed debt claims. The requirements to provide detailed information about the claim and the need to consider Alternative Dispute Resolution do not seem to apply; but there appears to be an expectation that the defendant will be given 14 days to respond and, in the case of businesses claiming against individuals, defendants must be provided with information as to how to pay and debt relief assistance etc.

What are the sanctions for non-compliance?

The Courts may decide to investigate non-compliance but will not be concerned with minor or technical shortcomings. Sanctions will only be considered where non-compliance has caused prejudice to the other party. So, if a claimant can show that a defendant would not have behaved differently if the new requirements had been followed, there should be no question of sanctions.

Available sanctions include:

- Staying proceedings until a requirement has been complied with;
- An order for costs;
- An order depriving a claimant of interest;
- An order increasing interest payable by a defendant by up to 10% above base rate.

What does this mean for me?

It is still too early to say what impact the new requirements will have - much will depend on the approach of individual district judges.

Our preliminary view is that most businesses we advise already substantially comply with the new rules, and we will ensure that the new specific requirements are met before we issue proceedings.

It is possible, though, that the obligation upon defendants to give reasons for disputing claims may result in some early settlements.



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