

# Pre-Action Protocol for Debt Claims



# PRE-ACTION PROTOCOL FOR DEBT CLAIMS

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INCLUDES ALL MATERIAL TO CREATE A COMPLIANT LBA:

LETTER TEMPLATE  
INFORMATION FORM  
REPLY FORM  
STANDARD FINANCIAL STATEMENT

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## INTRODUCTION

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The Ministry of Justice has released a new Pre-Action Protocol for Debt Claims that will take effect from 1 October 2017. If your company will be claiming payment of a debt(s) from an individual or sole trader after this date, the protocol will apply to your business and you need to be aware of the changes that will be introduced.

The need for a debt pre-action protocol was initially raised in 2010 by Lord Justice Jackson, who believed that debt claims needed their own protocol due to the volume of debt claims that were being handled by the business courts. The core principle of the new protocol is that the two parties involved should attempt to resolve their dispute without the need for court proceedings; by requiring extended communication and the sharing of information between parties before a claim can be made, the protocol hopes to realise this intention.

These changes are described in the following document.

In summary, the protocol requires a creditor to supply certain information, including a Reply Form, and to give at least 30 days' notice before suing. The debtor is given 30 days to fill the form in and return it in response to the notice. Further time, at least 30 days, must be allowed if the debtor responds with a dispute or requests time to pay. A final 14 days' notice will be required where there had been any response from the debtor. So, in practice a debtor can delay proceedings by at least 60 days, often more.

The court may penalise a party that doesn't substantially follow the protocol. The new protocol can be found at: <https://www.justice.gov.uk/courts/procedure-rules/...>

## NOTES

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The new protocol comes into force on 1 October 2017 and **applies to all claims by a business for payment of a debt by an individual**. So any individual owing a non-business to business debt is covered e.g. borrowers, tenants, trustees, committee members etc.

The normal rules i.e. the **Practice Direction Pre-Action Conduct and Protocols** continue to apply to other debts.

The protocol only applies to business to business debts if the debtor is a sole trader. The protocol doesn't apply to debts owed by companies and partnerships but will normally apply to money owed by guarantors.

The protocol doesn't apply where another protocol applies e.g. debts under construction contracts or mortgages.

**The aim of the protocol is to make litigation a last resort and encourage the parties to reach agreement if possible.**



## HOW SHOULD I GET READY FOR THESE CHANGES?

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### 1. ENSURE YOU CAN LOCATE THE INFORMATION REQUIRED

The new protocol requires a great deal more information to be included in the Letter Before Claim, and you need to be able to access this quickly and cost-effectively. Prepare any necessary changes to your system now so you are ready for 1st October 2017.

### 2. INFORM THE RELEVANT STAFF ABOUT THE NEW REQUIREMENTS

If staff are aware of why and how they need to maintain the required records, the transition will be much easier.

### 3. SET UP COMPANY PROCESSES FOR RECORDING THIS INFORMATION

You will need to keep records of information such as who made the agreement, at what time, and if verbal, what was said. Ensure your system has the ability to store this information for each agreement with an individual or sole trader.

### 4. ISOLATE SOLE TRADERS AND INDIVIDUALS ON YOUR LEDGER

By segmenting your ledger in this way you are able to apply the new protocol only to the customers that require this process to be followed.

## 5. SPEAK TO YOUR DEBT RECOVERY PROVIDER

As the process for creating a Letter Before Claim is now more complicated and much more time consuming, Lovetts have introduced new policies to reflect this.

### *Can Lovetts send a Pre-Action Compliant Letter on our behalf?*

Yes, we will be able to send a Pre-Action Compliant Letter on behalf of your company. All you will have to do is submit your instructions through CaseManager and answer some additional questions relating to the debt. We will take care of the rest.

### *We've already sent a Pre-Action Compliant Letter but we have not received payment. What happens next?*

You will be able to instruct Lovetts to do one of the following things:

- Send a standard Letter Before Action warning that Legal Proceedings will be issued. You can request payment to be made by return or alternatively within 3 or 7 days from the date of the letter.
- Issue proceedings immediately by choosing to "Go Direct to Claim" via CaseManager.

## 6. REVIEW YOUR CREDIT POLICY

The changes in the recovery of debt from an individual or sole trader mean legal action may no longer be cost effective. You may reconsider offering credit to individuals and sole traders, or strengthening the requirements that individuals and sole traders have to meet. This will reduce your chances of having a debt to recover in the first place.

## LETTER BEFORE ACTION

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Before issuing proceedings, the creditor should send a letter (Letter Before Claim) by post giving the information below. The letter must be clearly dated at the top and posted within a day of that date.

You can use email in addition, if you have the details, but you can only avoid using the post if the debtor has specifically requested this. A clause in your terms and conditions about the use of email is not a specific request.

### GIVE UP TO DATE FINANCIAL INFORMATION

The letter should give financial information as to:

1. the amount of the debt
2. any interest and charges.

If you send statements, you should enclose an up to date statement or a copy of the last statement and update the details in the letter. If you don't send statements, just give the details of the debt interest and charges in the letter. The letter should say whether or not interest and charges are continuing.

### GIVE DETAILS OF THE AGREEMENT UNDER WHICH THE DEBT IS PAYABLE

If the agreement was oral e.g. an order placed over the telephone, say when, where and with whom the agreement was made. If you can, give the words used. If the agreement was written, give the date and parties and say a copy can be requested.

### GIVE PAYMENT DETAILS

The letter should say how the debt can be paid, so that the debtor has all the information they will need to facilitate the settlement of their account and avoid court action.

### GIVE A REPLY ADDRESS

The letter must say where the Reply Form should be sent.

## **ADDITIONALLY**

If instalments are being offered or paid but you propose going to court, say why you don't accept them  
If the debt has been assigned, give details of the assignment.

## **DOCUMENTS TO BE ENCLOSED WITH THE LETTER BEFORE CLAIM**

You must enclose with the Letter Before Claim:

1. The prescribed information sheet
2. The prescribed Reply Form
3. A financial statement i.e. a form on which the debtor can give their financial details if they need time to pay



## TIMESCALES

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The new protocol obliges the creditor to provide a greater amount of detail about the agreement and the debt in the LBA, along with a number of forms the debtor is able to fill in and return to explain their position. Due to this provision, the creditor is required to give an increased amount of time for the debtor to respond before filing a claim. Below are the potential responses and the timescales you must then abide by to stay in line with the protocol:

### **DEBTOR DOES NOT SEND REPLY FORM - ALLOW 30 DAYS**

The debtor has 30 days in which to respond using the Reply Form. If they don't respond you can issue proceedings. The debtor's guidance notes say they must post the Reply Form in time for you to get the form within the 30 days. However, the protocol also says you need to allow for them posting the Reply Form at the end of the period, so in practice leave an extra couple of days.

### **DEBTOR SENDS COMPLETED REPLY FORM - ALLOW 30 DAYS**

If you get a completed Reply Form, you should not start proceedings for 30 days from receiving the response. As explained below, you will need to try and settle the matter and, if you can't, you must give 14 days' notice before issuing proceedings.

### **DEBTOR REQUESTS DOCUMENTS - ALLOW 30 DAYS**

If the debtor requests copy documents or information, you must allow at least 30 days from the date you provided them before suing. If for some reason you can't provide them you have to say why within 30 days.

## DEBTOR'S RESPONSE

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### DEBTOR INFORMS YOU THEY ARE GETTING ADVICE - ALLOW 30 DAYS

If in their response, the debtor says they are getting advice, you should allow at least 30 days before taking action, longer if that would be reasonable.

### DEBTOR SENDS A PARTIALLY COMPLETED REPLY FORM

If you get a partially completed Reply Form you should try and contact the debtor to find what the situation is: whether there a dispute of some sort or are they looking for time to pay.

If you make reasonable attempts to contact the debtor but are unsuccessful you can go ahead with court action but you need to give at least 14 days' notice to the debtor.

### YOU RECEIVE A RESPONSE NOT USING THE REPLY FORM

The protocol doesn't mention this possibility. Our view is that you should look at the substance of the response. If it is equivalent to a completed Reply Form, partially completed Reply Form, statement that they are getting advice etc, treat it as such.

### RESOLVING ANY ISSUES

If there is a dispute or the debtor needs time to pay, you should try to resolve these issues by exchanging any relevant documents or information before going to court. If necessary consider some form of ADR.

# NOTICE OF LEGAL ACTION

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## **AN AGREEMENT IS NOT REACHED - GIVE FINAL 14 DAYS' NOTICE**

If you've received a partially completed Reply Form or you've had discussion with the debtor and you can't reach agreement, review the case. You will need to give a final 14 days' notice before suing.



## AGREEMENT REACHED

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If agreement is reached, you should not start proceedings while the debtor complies with the agreement. If you do need to go to court, you will need to send an updated Letter Before Claim but don't need to send any documents sent with the original letter, if that was less than 6 months ago.

## NON-COMPLIANCE

The court will take into consideration any non-compliance and may penalise a party that doesn't substantially follow the protocol. For example, a successful creditor might not be awarded part or even all its costs. However, in relation to other protocols, the court has usually looked at whether a failure to follow the protocol made any real difference and doesn't usually like parties playing games with the protocol procedure.



## POINTS TO CONSIDER

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The following points should be considered but any steps taken must be cost effective.

- Make sure you credit check your customers and keep checks up to date.
- Keep an eye on your customers' payment records and watch for the usual signs of difficulties.
- Restrict the credit given to sole traders.
- If you are dealing with a sole trader that trades under a business name, during your credit control procedure, ask for the names and addresses of everyone who was a partner when the debt(s) were incurred. It might be that a sole trader has taken on partners since you began to deal with them.
- Send a Letter Before Claim early in your credit control procedure.
- Have systems to easily capture and retrieve details of each agreement made with your clients.
- If you are confident of getting summary judgment and have taken reasonable steps to resolve matters during credit control, consider taking a robust attitude and taking action more quickly than the protocol might otherwise allow.



## SUMMARY

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The protocol seems to have been drafted on the basis that there will only be one agreement relating to the debt. This would be the case where there was a loan or hire agreement or a large order, perhaps to be called off in stages.

However, this will not always be the case. It is not uncommon for a debt to be made up of a number of outstanding invoices where each order forms a separate contract. For example, If you are chasing 10 invoices, it may well be impractical to go into the details of how each order was placed.

If formal orders were placed, you could list those. However, it may be that that the orders were placed by a mixture of phone calls, emails and letters. Unless the debtor has raised a query about an order (and they should have had plenty of chance to do that during the credit control procedure) it may simply be enough to list the outstanding invoices and say that details of the orders for any of the invoices will be supplied on request.

The protocol also seems to envisage that the Letter Before Claim will be the first contact with the debtor. That won't be true in B2B cases where the debt will be subject to a credit control procedure that is designed to deal with any queries well before court action is considered.



# LETTER BEFORE CLAIM TEMPLATE

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PRE-ACTION PROTOCOL COMPLIANT

# EXAMPLE LETTER

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Mr / Mrs Example  
4 Example Road  
London  
Post Code

DATE

Dear Sir/Madam

## LETTER OF CLAIM

### Outstanding account: £AMOUNT

We write with regard to your outstanding account in the sum of £AMOUNT. We have previously provided you with copies of all of the relevant documents including the outstanding invoices. [However, for your ease of reference we enclose the following copy documents:

1. Outstanding invoice(s);
2. Statement of Account; and
3. Copy Contract.]

Unless we receive a response from you or receive payment in full on or before [DATE + 30 days] Court proceedings may be taken against you without further notice.

This letter of claim is sent pursuant to the Pre-action Protocol for Debt Claims which can be found at:  
<https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf>

We enclose with this letter an information sheet pursuant to the Pre-action Protocol, together with a Reply Form and Financial Statement. You should read the information sheet thoroughly and complete the Reply Form and Financial Statement accordingly and return this to us before deadline stated above.

The Reply Form, Financial Statement and any requests for further copies of documents and cheque payments should all be sent to [NAME] [COMPANY NAME] [ADDRESS]. Contact can also be made by email at [EMAIL ADDRESS] or by telephone on [TELEPHONE NUMBER].

If it becomes necessary to issue proceedings to recover the outstanding sums we will seek to recover our legal costs, together with interest pursuant to [the contractual rate of X%] OR [the statutory rate of X% pursuant to] [s69 of the County Courts Act 1989] OR [Late Payment of Commercial Debts (Interest) Act 1998 and reasonable legal costs and compensation].

If a Judgment is subsequently registered against you it is likely to affect your credit rating.

Yours faithfully

NAME OF COMPANY

# INFORMATION SHEET

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TO BE ENCLOSED WITH THE LETTER

# ANNEX 1 INFORMATION SHEET

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You have received this notice because a business intends to take you to court in relation to a debt. This notice tells you what to do next, including how to avoid court action. Please read it carefully.

## What should I do now to make sure I am not taken to court unnecessarily?

Read the enclosed letter from the business very carefully. Think about whether you owe the debt and whether the amount is correct. The letter should provide information about how much money you owe and any interest and fees added to the debt. If it doesn't, ask the business for more information.

Once you have read the letter, consider the following options.

### Seeking debt advice.

If you are in financial difficulty or need advice to help you work out whether you owe the debt, or how you might pay the debt, contact a debt advisor (particularly if you haven't been in contact with the business for a number of years).

The following organisations offer free, impartial and non-judgemental advice:

Citizens Advice	03444 111 444 (England) 03444 772 020 (Wales)	<a href="http://www.citizensadvice.org.uk">www.citizensadvice.org.uk</a>
Civil Legal Advice	0345 345 4345	<a href="http://www.gov.uk/civil-legal-advice">www.gov.uk/civil-legal-advice</a>
StepChange Debt Charity	0800 138 1111 (Freephone)	<a href="http://www.stepchange.org">www.stepchange.org</a>
National Debtline	0808 808 4000 (Freephone)	<a href="http://www.nationaldebtline.org">www.nationaldebtline.org</a>
AdviceUK	0300 777 0107	<a href="http://www.adviceuk.org.uk">www.adviceuk.org.uk</a>
Christians Against Poverty	0800 328 0006 (Freephone)	<a href="http://www.capuk.org">www.capuk.org</a>

**It is recommended that you get debt advice if you have any doubt about whether you owe the debt or whether you can pay it now.**

If you don't have a copy of the agreement (contract) between you and the business, and you need this to decide what to do next or to help you get debt advice, you can ask the business to provide you with a copy.

### Speaking to the business.

If you agree you owe the debt and want to talk to the business about payment terms, or if you have any questions or concerns, get in touch with the business as soon as possible. Their contact details should be in the letter they sent you.

### Filling in the Reply Form.

If you have not been able to resolve the matter by speaking to the business, you should fill in the Reply Form that was provided with the letter from the business, and then send it back to the business. You should complete the Reply Form with as much information as possible to avoid court action being taken against you.

### How long do I have to fill in the Reply Form?

You only have **30 days** from the date at the top of the letter from the business to send back the Reply Form. If the business does not get your Reply Form within 30 days, it could **take you to court** in relation to the debt. Make sure you allow time for posting.

If a court orders you to pay an amount of money (called “having judgment entered against you”), details of the judgment will usually be entered on the Register of Judgments, Orders and Fines. Most entries stay on the Register for six years unless you pay the amount you owe within one month of the judgment.

Organisations such as banks, building societies and credit companies use the information on the Register when someone applies for credit, such as a loan or overdraft. It helps them decide whether or not that person would be able to pay off a debt.

### What happens if I fill in and return the Reply Form in time?

If you return the Reply Form within 30 days, you and the business will have at least a further 30 days to discuss the debt, or for you to seek debt advice, before the business takes you to court. During that time you should discuss with the business how you can resolve the matter, ideally without going to court.

If you request more information in the Reply Form, the business must wait at least 30 days after it gives you that information before taking you to court.

### Where can I find out more?

This Information Sheet is a summary of your rights and responsibilities under the Pre-Action Protocol for Debt Claims. Where a business and an individual disagree about a debt claim, the Protocol tells them what they should do before they go to court. If you want to know more, the full Protocol is available at:  
<https://www.justice.gov.uk/courts/procedure-rules/civil/protocol>

# REPLY FORM

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TO BE ENCLOSED WITH THE LETTER

# REPLY FORM

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**YOU HAVE 30 DAYS FROM THE DATE AT THE TOP OF THE ENCLOSED LETTER TO FILL IN AND RETURN THIS FORM. IF YOU DON'T, IT COULD RESULT IN COURT PROCEEDINGS.**

If you have any questions or would like to discuss the debt, please call the business that sent you this form as soon as possible.

Full name:  
Address and postcode:  
Contact telephone numbers:  
Email address:  
Reference:

## SECTION 1: Do you owe the debt?

*Fill in one of the boxes in this section. Use more pages if you need to.*

**It is recommended that you get debt advice if you have any doubt about whether you owe the debt and whether you can pay it now, or if you want advice on any rights and protections you may have.**

**Box G below asks about debt advice.**

**BOX A**

**I agree I owe the debt.**

*Tick this box if you agree you owe the debt and agree the amount of the debt is correct.*

**IF YOU WILL PAY THE DEBT, GO TO SECTION 2.**

**IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.**

**BOX B**

**I owe some of the debt, but not all of it.**

*Tick this box if you agree you owe some of the debt, but not all of it, for example if you think too much interest has been added or you haven't been credited for payments you made in the past.*

The amount of debt I owe to you is £..... .

Say how much you think you owe.

I don't owe any more than this because .....

*Explain on a separate piece of paper why you don't owe all of the debt. Give as much detail as possible and provide copies of any supporting documents.*

**IF YOU WILL PAY THE PART OF THE DEBT YOU OWE, GO TO SECTION 2.**

**IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.**

**OTHERWISE, GO TO SECTION 4.**

**BOX C**

**I don't know whether I owe the debt.**

*Tick this box if you're not sure whether you owe the debt and/or you need help from a debt adviser to work out whether you should pay.*

**NOW GO TO SECTION 3.**

 **BOX D**

**I dispute the debt.**

*Tick this box if you don't owe the debt, for example because the debt should be paid by someone else, because you have already paid it, or because there is a legal problem with the credit agreement.*

I dispute the debt because .....

*Explain on a separate piece of paper why you dispute the debt. Give as much detail as possible and provide copies of any supporting documents.*

**NOW GO TO SECTION 4.**

## **SECTION 2: How will you pay?**

**Only complete this section if you ticked Box A or Box B in Section 1 and you want to pay now.**

**The letter from the business will tell you how to pay. Keep a record of the payments you make.**

 **BOX E**

**I will pay what I owe now.**

*Tick this box if you agree that you owe all or part of the debt and you are able to pay what you owe now. You should pay using the payment details in the letter from the business. Keep a copy of any proof of payment you receive.*

**BOX F**

**I will pay, but I need time to pay.**

*Tick this box if you agree that you owe all or part of the debt, but you can't pay right now.*

**If you offer to make repayments, you must be able to afford them. You should consider getting debt advice about how much you can afford to repay.** If you are seeking debt advice, complete Section 3.

My proposals for repayment are .....

*Explain on a separate piece of paper how you intend to pay the debt. Say how much you could pay now and how you will pay the remainder. For example, say how much you could pay each week, fortnight or month and when your first payment would be made.*

I have provided a Financial Statement showing my current financial situation:

Yes  No

*To help the business ensure you can afford your proposed repayments, fill out the Financial Statement that is attached to this form. You should also attach a copy of any budget or financial statement that a debt advice organisation has helped you prepare.*

**SECTION 3: Do you intend to get, or are you already getting, debt advice?**

**Only complete this section if you are getting debt advice about whether you owe the debt or whether you can afford to pay.**

**BOX G**

**I am getting or intend to get debt advice.**

I am getting advice from .....

*Insert the name and contact details of the person or organisation giving you advice.*

I am getting advice about .....

*Explain on a separate piece of paper what you are getting advice about, for example whether you owe the debt or how you could pay.*

I have an appointment with an adviser on .....

*If you have an appointment with a debt adviser, give the appointment date and time.*

I can't obtain advice within 30 days of returning this Reply Form because .....

*If it will take you longer than 30 days to get debt advice, explain on a separate piece of paper the reason for the delay and when you expect advice will be available.*

**NOW COMPLETE SECTION 4.**

**SECTION 4: What documents are you sending with this form? What information do you need?**

**Complete the boxes below if you want to provide or get more information.**

**BOX H**

**I have provided documents.**

*Tick this box if you want to provide documents about the debt, for example you might want to provide a letter showing you have an appointment for debt advice or a receipt showing you paid some of the debt.*

I have enclosed the following documents .....

*Describe on a separate piece of paper the documents you have provided and why they are important.*

**BOX I**

**I need more documents or information.**

*Tick this box if you need more information, such as copies of documents you don't currently have.*

I need a copy of .....  
.....  
.....

*Additional documents or information that you might need could include:*

- ~ A copy of the written contract for the debt*
- ~ A full statement of account, including details of all interest and charges included on the outstanding balance of the debt, explaining how they have been calculated, and any payments already made toward the debt*
- ~ A calculation of the interest claimed*
- ~ The annual or daily rate of interest*
- ~ A description of the nature and amount of any administrative charges included in the debt*
- ~ A copy of the notice of assignment of the debt*

**Signature** .....

**Date**...../...../.....

**Print name** .....

*Sign and date this Reply Form once you've filled it in. Then send it to the address given in the letter from the business.*


**Make sure you keep a copy of this form for reference in the future.  
If your circumstances change, please update the business as soon as possible.**

# **FINANCIAL STATEMENT FORM**

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**TO BE ENCLOSED WITH THE LETTER**

# ANNEX 2 STANDARD FINANCIAL STATEMENT



**Name:** \_\_\_\_\_  
**D.O.B.:** \_\_\_\_\_  
**Application:**  Single  Joint  
**Partner:** (if applicable): \_\_\_\_\_  
**Partner D.O.B.** (if applicable): \_\_\_\_\_  
**Address:** \_\_\_\_\_

**Contact/team name:** \_\_\_\_\_  
**Agency:** \_\_\_\_\_  
**Agency address:** \_\_\_\_\_

**Membership code number:** \_\_\_\_\_  
**Case reference number:** \_\_\_\_\_  
**Date of statement** \_\_\_\_\_  
**Date of review** (if applicable): \_\_\_\_\_

**Dependent children:** Under 16: \_\_\_\_\_ 16-18: \_\_\_\_\_  
**Other dependants:** \_\_\_\_\_  
**Number in household:** \_\_\_\_\_  
**Number of vehicles in household:** \_\_\_\_\_  
**Housing tenure:**  Owner  Mortgage  Tenant – private  
 Tenant – social  Living with parents  Other

**Employment:**  Full-time  Part-time  
 Unemployed  Not working due to illness / disability  
 Self-employed  Retired  Carer  Student  Other

**Partner's employment:**  Full-time  Part-time  
 Unemployed  Not working due to illness / disability  
 Self-employed  Retired  Carer  Student  Other

**Please confirm you have considered (or discussed with an adviser) the use of any assets to make lump sum payments** **Tick to confirm**

Overview	Amount (£)	Additional notes (e.g. reasons for debt, circumstances, temporary situations)
<b>Total income</b>		e.g. Made redundant in June 2014 and was out of work for 6 months e.g. Communications and leisure: Mobile phone – client has multiple family members abroad
<b>Total outgoings</b>		
(Income – outgoings)		
(Savings contribution)		
Debt admin fee (if applicable):		
<b>Total available for priority creditors</b>		
<b>Total available for non-priority creditors</b>		
<b>Monthly Income</b>		
Earnings		
Benefits and tax credits		
Pensions		
Other income		
<b>Total income</b>		
<b>Monthly Outgoings: Fixed Costs</b>		
Home and contents		
Utilities		
Water		
Care and health costs		
Transport and travel		
School costs		
Pensions and insurances		
Professional costs		
Other essential costs		
<b>Total fixed costs</b>		
<b>Monthly Outgoings: Flexible Costs</b>		
Communications and leisure		
Food and housekeeping		
Personal costs		
<b>Total flexible costs</b>		
<b>Total monthly outgoings (fixed and flexible)</b>		
<b>Savings</b>		
<b>Please confirm that a monthly contribution to savings has been considered (or discussed with an adviser)</b> <span style="float: right;"><b>Tick to confirm</b> <input type="checkbox"/></span>		

Version 1.0







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