

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

REGISTRAR'S CIRCULAR NO. 3 of 2018

PRE-PROSECUTION PROTOCOL FOR TOWN COUNCIL CASES

1. Regulatory offences under the Town Councils Act (Cap. 329A) ("TCA") which are prosecuted at the State Courts include:
 - (a) non-payment of conservancy and service charges, an offence under s 39(7) of the TCA; and
 - (b) breach of any of the by-laws of a Town Council (such as unlawful parking and obstruction of common property), an offence under s 24(9) of the TCA.

2. As prosecution should only be used as a last resort after non-criminal alternatives have been fully considered and utilised, the State Courts will be implementing the following pre-prosecution protocols:
 - (a) pre-prosecution protocol for cases involving the failure to pay conservancy and service charges, which can be found in Appendix A; and
 - (b) pre-prosecution protocol for cases involving a breach of the Town Council by-laws, which can be found in Appendix B.

3. The pre-prosecution protocol at Appendix A applies to claims by Town Councils which accrue on or after 1st April 2018.

4. The pre-prosecution protocol at Appendix B applies to offences under section 24(9) of the TCA committed on or after 1st April 2018.

Dated this 28th day of March 2018.



JENNIFER MARIE
REGISTRAR
STATE COURTS

APPENDIX A
PRE-PROSECUTION PROTOCOL
FOR CASES INVOLVING THE FAILURE
TO PAY CONSERVANCY AND SERVICE CHARGES

1. Application

- 1.1 The object of this Protocol is to prescribe reasonable steps to be taken before a Town Council initiates prosecution under section 39(7) of the Town Councils Act (Cap. 329A) (“TCA”) for the non-payment of conservancy and service charges.
- 1.2 The Protocol provides a framework for the Town Council to negotiate and engage with the defendant before initiating prosecution as a last resort. A mutually agreeable solution, such as an instalment plan, may help to promote early settlement of the Town Council’s claims at lower cost.
- 1.3 The Protocol applies to claims by Town Councils which accrue on or after 1st April 2018.
- 1.4 In this Protocol —

“Town Council” means a Town Council established under section 4 of the TCA;

“defendant” means a person who is liable to be prosecuted under section 39(7) of the TCA for failing to pay any conservancy or service charges.

“Statutory Demand” refers to the written demand under section 39(6) of the TCA.

2. Prior to issuing the Statutory Demand

- 2.1 A Town Council shall not issue a Statutory Demand unless it has sent the defendant two letters (the “First Letter” and the “Second Letter”, respectively).
- 2.2 The First Letter shall set out the following:
- (a) the amount of outstanding conservancy and service charges (and interest, if any) as at the date of the First Letter;
 - (b) a reasonable deadline for such outstanding amount(s) to be paid (which may be extended by the Town Council at its discretion);
 - (c) the address of the Town Council and the person(s)-in-charge with whom the defendant may communicate;

- (d) an invitation to the defendant to attend at the Town Council's office to arrange for alternative means of payment with copies of supporting document(s), if any; and
- (e) the consequences of non-compliance.

2.3 The Town Council shall send the Second Letter to the defendant if –

- (a) the outstanding conservancy and service charges (and interest, if any) are not paid in full by the deadline set out in the First Letter (or as extended by the Town Council); or
- (b) the defendant had entered into an instalment plan with the Town Council pursuant to the First Letter, and has defaulted in payment.

2.4 The Second Letter shall set out the following:

- (a) the amount of outstanding conservancy and service charges (and interest, if any) as at the date of the Second Letter;
- (b) a deadline for such outstanding charges to be paid;
- (c) any instalment plan that the Town Council is prepared to offer for the payment of the outstanding conservancy and service charges, and the time by which the defendant is to attend at the office of the Town Council to sign the instalment plan (which shall be no less than 14 days after the date of the Second Letter (the "Acceptance Deadline"));
- (d) the address of the Town Council and the person(s)-in-charge with whom the defendant may communicate; and
- (e) the consequences of non-compliance.

2.5 The Town Council may, at its discretion, modify the terms of the instalment payment or the Acceptance Deadline, or make or decline to make a new offer in respect of instalment payments after the Acceptance Deadline has lapsed.

2.6 The Second Letter shall be delivered on the defendant personally, unless it is not reasonably practicable to do so.

Where the defendant cannot, by the exercise of due diligence, be found, the Second Letter may be served —

- (a) by leaving a copy of the letter with an adult member of the defendant's family or with an employee that is residing with the defendant; or

- (b) if service cannot be effected in accordance with subparagraph (a) above, by affixing a copy of the letter at some conspicuous part of the place in which the defendant ordinarily resides.

2.7 A sample Second Letter is set out at Form 1 of this Protocol.

3. Statutory Demand

3.1 The Town Council shall not issue the Statutory Demand unless at least 2 months have elapsed from the date of the Second Letter and —

- (a) there has been no payment of the outstanding conservancy and service charges stated in the Second Letter;
- (b) there is no agreed instalment plan signed by the defendant; or
- (c) where there was an instalment plan (as agreed or subsequently varied), the defendant has defaulted in payment.

3.2 The Town Council should only consider filing a Magistrate's Complaint to initiate prosecution pursuant to section 39(7) of the TCA if the Statutory Demand is for an outstanding sum of more than \$500.

3.3 The Town Council should not file a Magistrate's Complaint to initiate criminal prosecution pursuant to section 39(7) of the TCA unless it has sought legal advice and made a considered decision as to whether civil proceedings at the Small Claims Tribunal may be more appropriate in the circumstances.

3.4 The Town Council shall furnish the duly completed Checklist (set out at Form 2 in this Protocol) when filing the Magistrate's Complaint or ensure that the contents of the Checklist form part of the Magistrate's Complaint.

Form 1
Sample Second Letter

[Date]

[Name of defendant]
[Address]

Dear Sir/Madam,

RE: [Account number]

We refer to the above matter.

As at [date], conservancy and service charges (and interest) * in the sum of \$[insert amount here] are due and outstanding.

You are required to pay such outstanding amount(s) by [date].

If you are unable to pay the entire sum by [date], we are prepared to offer you an instalment plan. The terms of our proposal are as follows:

[insert terms here]

If you wish to accept this instalment plan offer, please attend at the offices of the Town Council to sign the instalment plan by [insert Acceptance Deadline].

Our office address and the person(s)-in-charge of your case are set out below.
[Insert info here]

[insert consequences of non-compliance]

Thank you.

Yours faithfully

* delete if inapplicable

Form 2
Checklist for Town Councils

1. I act on behalf of [insert name of Town Council] and I refer to the Pre-Prosecution Protocol for Cases Involving the Failure to Pay Conservancy and Service Charges (the “Protocol”).
2. The First Letter has been sent to the defendant in accordance with [2.2] of the Protocol.
3. The Second Letter has been sent to the defendant in accordance with [2.3] to [2.7] of the Protocol.
4. I confirm that the Statutory Demand pursuant to section 39(6) of the Town Councils Act (Cap. 329A) was issued to the defendant and further confirm that all the conditions of the Protocol have been satisfied.
5. I confirm that we have sought legal advice and made a considered decision not to initiate civil proceedings in the Small Claims Tribunals due to the following reason(s): [to provide reasons].

Signed:

[Name of Representative/Solicitors for Town Council]

APPENDIX B
PRE-PROSECUTION PROTOCOL
FOR CASES INVOLVING A BREACH
OF THE TOWN COUNCIL BY-LAWS

1. Application

- 1.1 The object of this Protocol is to prescribe reasonable steps to be taken before a Town Council initiates prosecution under section 24(9) of the Town Councils Act (Cap. 329A) (“TCA”) for the breach of any of the by-laws of a Town Council.
- 1.2 The Protocol provides a framework for the Town Council to negotiate and engage with the defendant, before initiating prosecution as a last resort. A mutually agreeable solution, such as an instalment plan of the composition amount, may help to prevent the Town Council from initiating prosecution thereby saving costs and court resources.
- 1.3 The Protocol applies to offences under section 24(9) of the TCA committed on or after 1st April 2018.
- 1.4 In this Protocol —

“Town Council” means a Town Council established under section 4 of the TCA;

“defendant” means a person who is liable to be prosecuted under section 24(9) of the TCA for breaching any by-law.

2. Notices to be issued by the Town Council

- 2.1 If the Town Council is prepared to offer composition to the defendant, the Town Council shall issue two notices to the defendant (referred to hereafter as the “First Notice” and the “Second Notice”, respectively).
- 2.2 The First Notice shall set out the following:
 - (a) a brief description of the breach of the specific by-law of a Town Council together with a copy of the relevant by-law(s) and section 24(9) of the TCA;
 - (b) an offer of composition stipulating a reasonable deadline for such composition amount to be paid (which deadline may be extended by the Town Council at its discretion);
 - (c) the address of the Town Council and the person(s)-in-charge with whom the defendant may communicate;

- (d) an invitation to the defendant to attend at the Town Council's office to arrange for alternative means of payment with copies of supporting document(s), if any; and
- (e) the consequences of non-compliance.

2.3 The Town Council shall send the Second Notice to the defendant if —

- (a) the composition amount is not paid in full by the deadline set out in the First Notice (or as extended by the Town Council); or
- (b) the defendant had entered into an instalment plan with the Town Council pursuant to the First Notice, and the defendant has defaulted in payment.

2.4 The Second Notice shall set out the following:

- (a) a copy of the relevant by-law(s) and section 24(9) of the TCA and a brief description of the alleged breach;
- (b) the composition amount as at the date of the Second Notice;
- (c) a deadline for such composition amount to be paid;
- (d) any instalment plan that the Town Council is prepared to offer for the payment of the composition amount, and the time by which the defendant is to attend at the office of the Town Council to sign the instalment plan (which shall be no less than 14 days after the date of the Second Letter (the "Acceptance Deadline"));
- (e) the address of the Town Council and the person(s)-in-charge with whom the defendant may communicate; and
- (f) the consequences of non-compliance.

2.5 The Town Council may, at its discretion, modify the terms of the instalment payment or the Acceptance Deadline, or make or decline to make a new offer in respect of instalment payments after the Acceptance Deadline has lapsed.

2.6 The Second Notice shall be delivered on the defendant personally, unless it is not reasonably practicable to do so.

2.7 Where the defendant cannot, by the exercise of due diligence, be found, the Second Notice may be served —

- (a) by leaving a copy of the Second Notice with an adult member of the defendant's family or with an employee that is residing with the defendant; or

- (b) if service cannot be effected in accordance with subparagraph (a) above, by affixing a copy of the notice at some conspicuous part of the place in which the defendant ordinarily resides.

3. Initiating criminal prosecution

3.1 The Town Council shall not file a Magistrate's Complaint to initiate criminal prosecution unless at least 2 months have elapsed from the date of the Second Notice and —

- (a) there has been no payment of the composition amount in the Second Notice;
- (b) there is no agreed instalment plan signed by the defendant; or
- (c) where there was an instalment plan (as agreed or subsequently varied), the defendant has defaulted in payment.

3.2 The Town Council shall furnish the duly completed Checklist (set out at Form 1 in this protocol) when filing the Magistrate's Complaint or ensure that the contents of the Checklist form part of the Magistrate's Complaint.

Form 1
Checklist for Town Councils

1. I act on behalf of [insert name of Town Council] and I refer to the Pre-Prosecution Protocol for Cases Involving the Breach of Town Council By-laws (the “Protocol”).
2. The First Notice has been sent to the defendant in accordance with [2.2] of the Protocol.
3. The Second Notice has been sent to the defendant in accordance with [2.3] to [2.7] of the Protocol.
4. I confirm that all the conditions of the Protocol have been satisfied.

Signed:

[Name of Representative/Solicitors for Town Council]