

Debt collection guidance

Final guidance on unfair business practices

July 2003 (updated December 2006)

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THE DEBT COLLECTION GUIDANCE

1 INTRODUCTION

- 1.1 The Office of Fair Trading (OFT) has a duty under the Consumer Credit Act 1974 to ensure that licences are only given to and retained by those who are fit to hold them. The Act provides that the OFT take into account any circumstances which appear to be relevant and in particular any evidence that an applicant, licensee, or their employees, agents or business associates, past or present, have:
- committed offences involving fraud, or other dishonesty or violence
 - failed to comply with the requirements of credit or other consumer legislation
 - practised discrimination in connection with their business
 - engaged in business practices appearing to us to be deceitful, oppressive or otherwise unfair or improper (whether unlawful or not).
- 1.2 Where the OFT has evidence we can take action to refuse or revoke the credit licences of those concerned. This includes evidence that a creditor or debt collector, or any tracing agency engaged on their behalf, has contravened section 55 of the Data Protection Act 1998 by knowingly or recklessly obtaining, disclosing or procuring the unlawful disclosure of personal data without the informed consent of the organisation holding the data.
- 1.3 The OFT issued general consumer credit licence guidance to holders and applicants in February 2001. This included guidance on debt collection practices. At the time we indicated our aim to issue further guidance for specific market sectors where problems have been identified or where a more detailed consideration of particular market circumstances would be helpful.
- 1.4 This guidance expands, clarifies and incorporates past OFT guidance and reflects as appropriate responses to our November 2002 consultation paper entitled *Debt collection guidance for consumer credit licence holders and applicants*. This version of the guidance updates the guidance issued by the OFT in July 2003.

What is the purpose of the guidance?

- 1.5 This guidance is intended to set out the type of behaviour the OFT considers to fall within the category of unfair business practices which will call into question fitness to retain or be given a licence. It is expected that applicants and licence holders will abide by the spirit as well as the letter of this guidance. Publication of this guidance will also enable the OFT to take speedier action against behaviour that clearly falls into the type of categories of unfair practices shown.
- 1.6 This guidance is not designed to be a comprehensive checklist of behaviour. Nor are we advising on best practice or a code of practice. The guidance outlines unfair practices with illustrative examples. The examples given are based on OFT complaint information and issues brought to our attention by organisations representing consumers, business and other regulators.

Who does this guidance apply to?

- 1.7 This guidance applies to all consumer credit licence holders and applicants.
- 1.8 Our guidance does not relate to the routine collection of repayments. It applies to the collection of debt once an account is in default. This guidance does not therefore affect the ability of traders who deal in home collection of repayments to visit their customers as those payments fall due.

Creditor responsibility for third parties

- 1.9 If consumer credit licence holders choose to do business or continue to do business with third parties engaged in questionable fitness behaviour, then their own fitness will be called into question. Our aim is to ensure that creditors do not ignore the unfair practices of debt collectors, whether in-house or external, acting on their behalf. It is not for the OFT to specify in this guidance how choices about third party selection are made nor to advise on desired conduct between third parties. However, during any investigation in this respect, we would expect to see that care had been taken in the selection process, complaints had been investigated and that firm action had been taken as appropriate. It would be unlikely that we would take action against a creditor who could demonstrate such action had been taken.

2 UNFAIR BUSINESS PRACTICES

Communication

- 2.1 It is unfair to communicate, in whatever form, with consumers in an unclear, inaccurate or misleading manner.
- 2.2 Examples of unfair practices are as follows:
- a. use of official looking documents intended or likely to mislead debtors as to their status, for example, documents made to resemble court claims.
 - b. leaving out or presenting information in such a way that it creates a false or misleading impression or exploits debtors' lack of knowledge
 - c. those contacting debtors not making clear who they are, who they work for, what their role is, what the purpose of the contact is
 - d. unnecessary and unhelpful use of legal and technical language, for example, use of Latin phrases
 - e. failing to provide debtors or creditors with information on status of debts, for example, not providing requested balance statements when reasonably requested
 - f. contacting debtors at unreasonable times
 - g. ignoring or disregarding debtors' legitimate wishes in respect of when and where to contact them, for example, shift workers who ask not to be telephoned during certain times of the day
 - h. asking or instructing debtors to make contact on premium rate telephone numbers

False representation of authority and/or legal position

2.3 Those contacting debtors must not be deceitful by misrepresenting their authority and/or the correct legal position.

2.4 Examples of unfair practices are as follows:

- a. falsely implying or claiming authority, for example, claiming to work on instructions from the courts, claiming to be bailiffs or, in Scotland, sheriff officers or messenger-at-arms
- b. falsely implying or stating that action can or will be taken when it legally cannot, for example, referring to bankruptcy or sequestration proceedings when the balance is too low to qualify for such proceedings or claiming a right of entry when no court order to this effect has been granted
- c. misrepresenting status or backing, such as
 - using a logo which falsely implies government backing
 - using a business name which implies public body status, or
 - falsely claiming trade body membership
- d. falsely implying or stating that action has been taken when it has not, for example, that civil action has been taken or that a court judgment has already been obtained
- e. falsely implying or stating that failure to pay a debt is a criminal offence or that criminal proceedings will be brought
- f. pursuing third parties for payment when they are not liable
- g. taking or threatening to take court action in the wrong jurisdiction, for example, taking action against a Scottish debtor in an English court unless legally justified.

Physical/psychological harassment

2.5 Putting pressure on debtors or third parties is considered to be oppressive.

2.6 Examples of unfair practices are as follows:

- a. contacting debtors at unreasonable times and at unreasonable intervals
- b. pressurising debtors to sell property, to raise funds by further borrowing or to extend their borrowing
- c. using more than one debt collection business at the same time resulting in repetitive and/or frequent contact by different parties
- d. not ensuring that an adequate history of the debt is passed on as appropriate resulting in repetitive and/or frequent contact by different parties
- e. not informing the debtor when their case has been passed on to a different debt collector
- f. pressurising debtors to pay in full, in unreasonably large instalments, or to increase payments when they are unable to do so
- g. making threatening statements or gestures or taking actions which suggest harm to debtors
- h. ignoring and/or disregarding claims that debts have been settled or are disputed and continuing to make unjustified demands for payment
- i. disclosing or threatening to disclose debt details to third parties unless legally entitled to do so
- j. acting in a way likely to be publicly embarrassing to the debtor either deliberately or through lack of care, for example, by not putting correspondence in a sealed envelope and putting it through a letterbox, thereby running the risk that it could be read by third parties.

Deceptive and/or unfair methods

2.7 Dealings with debtors are not to be deceitful and/or unfair.

2.8 Examples of unfair practices are as follows:

- a. sending demands for payment to an individual when it is uncertain that they are the debtor in question, for example, threatening debt recovery action to 'the occupier' or sending a payment demand to all people sharing the same name/date of birth as a debtor in the hope that contact with the correct debtor will be made.
- b. disclosing debt details to an individual when it is uncertain that they are the debtor in question, for example, disclosing details to 'the occupier' of an address.
- c. refusing to deal with appointed or authorised third parties, such as Citizens Advice Bureaux, independent advice centres or money advisers
- d. contacting debtors directly and bypassing their appointed representatives
- e. operating a policy, without reason, of refusing to negotiate with debt management companies
- f. passing on debtor details to debt management companies without the debtors' informed prior consent
- g. failing to refer on to the creditor reasonable offers to pay by instalments
- h. not passing on payments received within a reasonable time resulting in delays that adversely affect a debtor's financial position.
- i. failing to investigate and/or provide details as appropriate, when a debt is queried or disputed, possibly resulting in debtors being wrongly pursued
- j. requiring an individual to supply information to prove they are not the debtor in question, for example, driving licences, passports, full name, date of birth, signatures
- k. not ceasing collection activity whilst investigating a reasonably queried or disputed debt.

Charging for debt collection

2.9 Charges should not be levied unfairly.

2.10 Examples of unfair practices are as follows:

- a. claiming collection costs from a debtor in the absence of express contractual or other legal provision
- b. misleading debtors into believing they are legally liable to pay collection charges when this is not the case, for example, when there is no contractual provision
- c. not giving an indication in credit agreements of the amount of any charges payable on default
- d. applying unreasonable charges, for example, charges not based on actual and necessary costs
- e. applying charges which are disproportionate to the main debt.

Debt collection visits

2.11 Those visiting debtors must not act in an unclear or threatening manner.

2.12 Examples of unfair practices are:

- a. not making the purpose of any proposed visit clear, for example, merely stating that collectors or field agents will call is not sufficient
- b. visiting a debtor when it is known they are vulnerable, for example, when a doctor's certificate has been provided stating that the debtor is ill
- c. continuing with a visit when it becomes apparent that the debtor is distressed or otherwise vulnerable, for example, it becomes apparent that the debtor has mental health problems
- d. entering a property uninvited
- e. not leaving a property when asked to
- f. visiting or threatening to visit debtors without prior agreement when the debt is deadlocked or disputed¹
- g. not giving adequate notice of the time and date of a visit²
- h. visiting debtors, unless requested, at inappropriate locations such as work or hospital.

¹ See, on page 10, the OFT's clarification of the context for paragraph 2.12f above.

² See, on page 10 - 11, the OFT's clarification of the context for paragraph 2.12g above.

Statute barred debt

2.13 This guidance applies to the pursuit of debt regardless of its age. We will be carrying out further work on this aspect of debt recovery including analysis of relevant legislation and practice throughout the UK.

2.14 In the past we have dealt with a number of statute barred debt cases governed by the Limitation Act 1980, which applies to England and Wales. Based on that experience our position with regard to England and Wales remains:

- a. we accept legally the debt exists
- b. it is the methods by which the debt is collected that can be unfair as follows:
 - it is unfair to pursue the debt if the debtor has heard nothing from the creditor during the relevant limitation period
 - if a creditor has been in regular contact with a debtor before the debt is statute barred, then we do not consider it unfair to continue to attempt to recover the debt
 - it is unfair to mislead debtors as to their rights and obligations, for example, falsely stating or implying that the debt is still legally recoverable and relying on consumers not knowing the relevant legal provisions, and
 - continuing to press for payment after a debtor has stated that they will not be paying a debt because it is statute barred could amount to harassment contrary to section 40 (1) of the Administration of Justice Act 1970.

3 CLARIFICATION NOTE

Debt Collection visits

Paragraphs 2.12f and 2.12 g of the Debt collection guidance

Both these paragraphs relate to debt collection visits.

We have clarified the context for these provisions and defined the terms we use as follows:

Our aim is to ensure that visits are not used in a threatening way. We have seen examples of letters and other communications where debt collectors refer to visits in vague and/or threatening ways and cases where visits are not appropriate.

2.12f: Visiting or threatening to visit debtors without prior agreement when the debt is deadlocked or disputed.

By 'deadlocked' we mean where a debtor (or debtor's adviser) agrees there is a debt and has offered a repayment programme which has not been agreed by the creditor or debt collector. We are not saying that any offer must be accepted but we have seen cases where offers are disregarded and a debtor is told that 'we are sending field agents'. Many debtors are unlikely to understand this term and are likely to view the visit as a threat designed to make them offer more money when they can pay no more. Some letters appear to be designed to give this impression.

By 'disputed' we mean genuinely disputed. We are not seeking to protect 'won't pays' but those who are being pursued for a debt they do not owe or genuinely believe they do not owe. Debt collectors who can show that the debt is due and that any dispute has been looked into and the debt confirmed will not be in breach of this provision.

2.12g: Not giving adequate notice of the time and date of a visit

When a door-to-door debt collector makes an initial home visit to a debtor it may not always be possible for them to give adequate notice of the time and date of that visit. This is not necessarily unfair.

The key word is adequate. This was inserted to ensure that what the debtor regarded as adequate was key.

What is adequate will vary from debtor to debtor. When initial contact is made a debtor may be happy to speak to the debt collector there and then. If that is the case the visit would not be unfair. Where a debtor prefers to use that first visit to agree to a future visit at a more convenient time a debt collector should respect their wishes. A debtor may prefer to do so at a later date so they can seek advice about their situation or arrange for a third party to be there. What is important is that a debtor is given enough time to prepare. They should never be coerced into immediate discussions.