



Guidance Document

Use, format and content of standard Debt Collection Letters

**Produced in association with
The Office of Fair Trading**

1. Executive Summary

i. Introduction:

This Guidance has been produced by the Credit Services Association and the Debt Buyers and Sellers Group (“the Association”) in association with the Office of Fair Trading (“OFT”). It is expected that Consumer Credit Licence holders will abide by the spirit as well as the letter of the OFT Debt Collection Guidance (“the DCG”). The OFT was concerned that it had seen letters which, in its opinion, did not fully comply with the DCG. The purpose of the document is to provide guidance to Members about the use, content and format of debt collection letters and to assist in compliance with the DCG. It does not set out standard text or templates and is not intended to prevent Members from designing letters in their own company style providing they remain compliant with the DCG and other relevant regulatory guidance and legislation. It provides guidance by highlighting a number of areas which Members need to consider when reviewing their collection letters.

The OFT has advised that its consideration of standard letters is always on a case by case basis, taking into account a number of factors including: the stage at which the letter is sent out, consumer complaints received about the letter, any previous enforcement action taken by the OFT on similar issues.

ii. Service Provider or Purchaser?

Although the debt collection and purchase industry understands the difference between acting on a contingent basis for clients and purchasing debt, it is apparent that outside of the industry this distinction is far from clear. It is therefore important that collection letters identify the creditor and the capacity in which the Member is acting, i.e. either on behalf of the creditor or as purchaser and owner of the debt.

iii. Consumer –v-Commercial debt

The OFT’s role under the Consumer Credit Act 1974 is primarily concerned about consumer protection and therefore the collection of commercial debt will largely fall outside of the DCG and other consumer regulation. However, commercial debt often includes small traders, partnerships and directors who may have given personal guarantees. In these cases, many of these individuals need to be treated in the same way as “regular” consumers and this Guidance will need to be considered.

2. Guidance on specific issues

The following sections set out details of particular issues which were raised by the OFT and which have been discussed in detail with the Association and aim to provide Members with guidance on how to address these issues. At the end of each section are references to the relevant parts of the DCG, the CSA Code of Practice and other Guidances, where applicable.

The overall aim of a communication with a debtor should be to provide them with enough information, in the right format, to understand what is happening to them, why it is happening, and what they can do about it. Communications should not mislead or confuse, whether intentionally or not, either by act or by omission.

Transparency

The OFT raised a concern that some standard collection letters do not make clear who the letter is from. The DCG states that a failure of those contacting debtors to make clear who they are and why they are making contact would be regarded as a misleading or unfair business practice (DCG paragraph 2.2c). The following are examples of areas where lack of transparency can arise.

i. Use of Trading Styles

The use of different trading styles by an organisation could potentially be misleading if the organisation is not identified. Some debt collection agencies (“DCAs”) use different trading styles to escalate debts through the collection cycle and some also use different trading styles or departments to differentiate between the types of recovery activity which may take place. For example, if a debtor has previously informed the DCA of severe financial hardship, the debt may be referred to a specialist ‘Financial Hardship’ unit.

However, whenever a trading style is used, the OFT has made it clear that they see no legitimate purpose in failing to be transparent and therefore if the debt is being escalated or transferred to a different department within the same company and/or to a different company within the same group of companies (an associated company under s.184 CCA74), the collection letter should make this and the reason for that escalation or transfer, clear.

The Association has produced a Best Practice Guidance Note which refers specifically to the use of Trading Styles. This Guidance Note can be obtained

from the Members Only section of the CSA and DBSG Websites www.csa-uk.com www.dbsg-uk.com.

OFT Debt Collection Guidance and specific CSA Code of Practice references:

- CSA Code Clauses 1b, 1h, 1i, 4e, 4k
- CSA Guidance note “Use of Trading Styles, Postcards, Validation Letters”
- Paragraphs 2.2b and 2.2c of the DCG

ii. Misleading terms

A lack of transparency can also arise if information is presented in a way which could create a false/misleading impression, including using terms which overstate the nature of the business. For example, using terms in trading names such as '*enforcement*', '*legal*', '*solicitors*' and so on, when there are no appropriately qualified staff. Members are reminded that it is a criminal offence for a company to act in a manner that implies it is '*qualified or recognised by law to act as a solicitor*' when this is not the case.

OFT Debt Collection Guidance and specific CSA Code of Practice references:

- CSA Code Clause 1b, 4j
- Paragraphs 2.2b and 2.2c of the DCG

iii. Letter Font

In accordance with the spirit of the DCG, Members should take care when choosing font styles and sizes to ensure they are reasonable as the OFT believes they could lead to transparency issues. For example, font size less than 10 point could be difficult to read. Gothic text may also be difficult to read and has connotations associated with legal documents and should therefore be avoided.

DCG and CSA Code references:

- CSA Code Clauses 1b, 1j, 1l
- Paragraph 2.2b of the DCG.

iv. Tracing and the use of ‘soft letters’

The OFT has made it clear that it has general concerns with data and data accuracy across the credit industry and dealing with this issue is an area of high priority for the OFT.

In particular, the OFT sees the use of poor data during the trace and collect process and the poor quality of data provided by some creditors leading to the wrong individuals being contacted for payment of a debt. This acts as a catalyst for a number of complaints.

A DCA should not send letters referring to 'debt' or disclosing debt or financial details to an individual unless it is *reasonably certain* that they are the debtor in question. Therefore, unless a DCA is *reasonably certain* it is sending the letter to the actual debtor, a 'soft' letter which does not refer to the debt, should be used.

The Association and the OFT agree that a distinction can be made between debts referred to a DCA for 'trace and collect' activity and those referred purely for collection activity. With the latter, the CSA would regard it as unreasonable to carry out trace activity and verification on all standard collection instructions received from clients on the basis that the information *may* be inaccurate. The CSA therefore regards it as reasonable for a DCA to rely on the information provided by clients in these circumstances as being the correct details for the debtor. The OFT has told the CSA that it would expect further checks to be carried out in circumstances where there have been problems with a specific client in the past, particularly if the collection letters mention legal action.

With regard to 'trace and collect' instructions, it is essential that the DCA carries out reasonable tracing and verification checks prior to any collection letters being issued. Members should refer to the Association's Best Practice Guidance Document on Tracing Activity for further information on verification tools.

The OFT has confirmed it is happy with the format and content of the 'Soft Letter Template' produced by the Association, and it is suggested this or similar wording is used in circumstances where a soft letter is required to verify the address of the debtor. A copy of this template letter can be found on the CSA and DBSG Websites, within the Association's Best Practice Trace Activity Guidance, and within the body of the Consumer Factsheet on Trace Activity (which was produced in association with the ICO).

OFT Debt Collection Guidance and specific CSA Code of Practice references:

- CSA Code Clause 5 of the CSA Code of Practice
- The CSA Best Practice Trace Activity Guidance

- CSA Template Soft Letter
- CSA Consumer Factsheet on Trace Activity
- Paragraphs 2.8a and 2.8b of the DGC

v. Legal action

v-i. Describing the legal process

The OFT has seen a number of standard letters issued by DCAs which contain inaccuracies and omissions in their description of the debt recovery procedure and the legal process and which fail to mention that steps are required before enforcement action can be taken. For example:

- letters which set out the potential enforcement actions following non payment of a County Court Judgment (e.g. bailiffs seizing goods, employers deducting money from wages) without indicating that a further application to the court is required before enforcement action can be taken (i.e. to obtain a warrant of execution, attachment of earnings, charging order etc); or
- letters referring to bankruptcy and charging orders where it is not clear that a staged process is involved.

Sending such letters, would in the OFT's view, potentially be an unfair or oppressive business practice in breach of paragraphs 2.2b, 2.4b and/or 2.6g of the DCG

Although the OFT does not expect to see every stage of the process set out in letters of this type, a correct indication of the stages before enforcement action can be taken should be provided to prevent letters from being misleading, potentially exploiting debtors' lack of knowledge and being perceived by recipients as threatening.

Members are reminded that the granting of judgments and other orders are court decisions and letters should not pre-empt a particular outcome e.g. that a judgment WILL be made.

If a DCA wants to refer to the process that may be followed after a debt is unpaid it is the responsibility of the DCA to understand and correctly state the process.

OFT Debt Collection Guidance and specific CSA Code of Practice

References:

- CSA Code Clauses 4a, 4b, 4j

- Paragraphs 2.2b, 2.4b and 2.6g of the DCG

v-ii Appropriate legal action

Standard letters should not threaten legal action which cannot be taken (DCG paragraphs 2.2b, 2.4b and 2.6g). For example:

- the threat of charging orders where there is no property;
- threatening to sue in a county court where the debtor is resident in Scotland;
- threatening bankruptcy proceedings below the £750 threshold

In addition, any letters which indicate that legal action “may” or “will” be taken should comply with the relevant guidance on pre-action procedure, particularly with regard to timescales.

OFT Debt Collection Guidance and specific CSA Code of Practice references:

- CSA Clause 4j
- Paragraphs 2.2b, 2.4b and 2.6g of the DCG

v-iii Timing of issue of letters referring to legal action

The OFT regards it as an unfair and oppressive business practice if letters threatening legal action are issued to individuals if the DCA is not reasonably certain that the address they have is the debtor’s address.

As set out in paragraph 2v, DCAs act in good faith on the information provided to them by their client at the time of instruction, and a distinction can be made between ‘trace and collect’ and non trace and collect instructions.

However, letters which refer to legal action would, in the OFT's view, have the potential to be perceived as a threat of legal action and therefore could be an unfair and oppressive business practice:

- against someone who has a legitimate dispute with the original creditor
- when information on the account may be incorrect and the account could not be pursued through the courts, for example if the debt is statute barred

Therefore, even on non trace and collect instructions where the DCA is relying on the information provided by the creditor as being accurate, the DCA should consider if reference to legal proceedings in a first letter is appropriate.

With regard to disputes, the Association has made it clear to the OFT that, at the time of instruction, Members will be unaware if the debt is disputed, as they have to rely on clients not referring disputed debts or because the debtor may not have raised this with the client prior to the DCA's involvement.

The Association also stressed to the OFT that the debtor will have received numerous correspondence and attempts at contact from the client (or in the case of secondary and tertiary debt, a previous agent), prior to a debt being referred to the DCA. These letters would have informed the debtor about potential action which could be taken, including referral to a third party DCA or legal action.

**Office of Fair Trading Debt Collection Guidance and CSA Code of Practice
References:**

- CSA Code Clause 4q
- Paragraph 2.6g of the DCG

vi. Bankruptcy

As set out above, it is essential that debt collection letters are factual and highlight the potential action which could be taken should there be a failure to pay.

Members are reminded that bankruptcy proceedings can only be initiated on debts over £750. Therefore any threat of bankruptcy proceedings (including statutory demands) in letters where the debt amount is less than £750 would be in breach of the CSA Code of Practice and potentially be an unfair and oppressive business practice under the DCG.

The Association therefore suggests, that when issuing standard debt collection letters on debts below £750, any reference to bankruptcy as a possible course of action, be removed.

**Office of Fair Trading Guidance and specific CSA Code of Practice
References:**

- Clause 4j of the CSA Code of Practice
- Paragraph 2.4 b of the DCG

vii. Settlement offers in letters

The OFT regards it as a potentially oppressive business practice if letters making settlement offers are issued to individuals when it is not reasonably certain that

they are the debtor in question or have previously notified the DCA that they are not the debtor in question, as this could be construed as pressurising the individual to pay.

Similarly, if letters making reduced settlement offers are used when an account is in dispute, the OFT views this as failing to suspend collections activity and a potential breach of the DCG.

However, the OFT does not object to the use of settlement offers where it is *reasonably certain* that the person contacted is in fact the debtor and the debt is not in dispute or the settlement offer refers only to that part of the debt that is not in dispute. For example, if a complaint relates to an issue relating to collection activity (i.e. collector error or attitude) or if the actual debt is not in dispute but bank charges associated with the debt are disputed, then Members are not prevented from sending settlement letters.

OFT Debt Collection Guidance and specific CSA Code of Practice

References:

- CSA Code Clause 4a, 4b, 4q
- Paragraphs 2.5, 2.6h and 2.8k of the DCG

viii Statements and Phrases

The use of certain statements in standard letters gives the OFT cause for concern and they gave the following as an example:

"THIS PROBLEM WILL NOT GO AWAY AND WE INTEND TO RECOVER THE FULL AMOUNT YOU OWE WITHOUT FURTHER DELAY"

In the OFT's view, such statements could in some circumstances breach paragraph 2.6g of the DCG.

The Association is keen to work with the OFT on this matter, however, it feels that the use of such statements can also in other circumstances give a clear message to the debtor and highlights the importance of making contact in order to avoid potential legal action.

However, Members are reminded that the wording of letters must not be misleading and should be used appropriately. In the above example, if the Member has the option to discuss a repayment arrangement with the debtor, this should be made clear in the body of the letter so the debtor is fully aware.

OFT Debt Collection Guidance and specific CSA Code of Practice references:

- CSA Code Clause 1b, 4a, 4b
- Paragraph 2.6g of the DCG

ix 'Look-a-like' Letters and use of boxes

The OFT referred to the use of standard demand letters set out in a boxed format that closely resemble the layout and appearance of such documents as a County Court Judgment. In the OFT's view, and despite the use of disclaimers such as 'this is not a court or legal document', the format of such letters has the potential to be misleading and breach paragraph 2.2a of the DCG.

The Association has a Best Practice Guidance Note on the use of 'look-a-like' letters which can be found on the Members Only section of both CSA and DBSG websites www.csa-uk.com www.dbsg-uk.com.

The use of a boxed format in letters will not always be misleading and can assist the debtor by highlighting the important areas they should take note of, for example, a box containing the Client Name, Account Number and Debt Amount clearly explains to the debtor what the letter refers to. Boxes containing contact telephone numbers, payment details or reference numbers can also be useful. However, a boxed format should be used with care to ensure the letter does not mislead eg by resembling a court document. If a disclaimer is required to inform the recipient that this is NOT a particular document, it is likely to be misleading and breach the DCG.

DCG and CSA Code references

- CSA Guidance Note on Look-a-like letters
- Paragraphs 2.2a and 2.2b of the DCG

x Logos

From time to time, the OFT has been aware of standard letters that display logos which it views as misleading. These include 'scales of justice' or other similar logos which imply a connection with a court, when this is not the case. The use of logos that falsely imply a connection with the court, government body or any other false claim will be regarded by the OFT as a breach of paragraph 2.4c, and the spirit of, the DCG.

OFT Debt Collection Guidance and specific CSA Code of Practice references:

- Paragraph 2.4c of the DCG

xi Sensitive Cases

The issues highlighted within this Guidance are of particular relevance where it transpires that the case is sensitive e.g. the individual has mental health problems, long term or terminal illness or other disabilities which impact on the debtor's ability to pay. Where a DCA becomes aware of such cases the OFT and the Association would expect measures to be in place to ensure that such cases receive appropriate handling.

The CSA Code of Practice provides details of how Members should deal with sensitive cases. The Association has also produced Guidance on Mental Health and Members may also find the MALG Guidance on the Debt and Mental Health Evidence Form useful.

DCG and CSA Code References:

- CSA Code Clauses 4l, 4m, 4n, 4o, 4p
- OFT's Irresponsible Lending Guidance, paragraph 7.13
- MALG Mental Health Guidance