

Debt collection guidance compliance review

December 2006

OFT880

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1 EXECUTIVE SUMMARY

1.1 This compliance review looked at how the OFT's 2003 debt collection guidance has raised awareness of unfair debt collection practices and changed behaviour of those collecting consumer credit debts. The purpose of this report is to advise on our review findings and to set out a strategy for further raising levels of awareness and compliance.

The OFT's findings

1.2 The key messages to emerge from our review are that:

- the debt collection guidance is a success in terms of content
- awareness has increased among collectors of consumer credit debts, individual debtors and consumer advisors
- there have been positive changes in industry behaviour, and
- there is more to be done in improving levels of compliance.

1.3 Respondents praised the guidance content. In November 2005 the guidance was described as 'in many ways a masterpiece of consumer protection regulation.....whilst some consumer protection measures struggle to articulate what they mean, the debt collection guidance does this with conciseness and clarity'. ¹

1.4 Awareness of the OFT's debt collection guidance is reported to be high among representatives of industry and money advisors but there is still work to do in raising awareness. We have identified gaps in awareness which we and others need to address. The increase in consumers complaining directly to OFT's debt teams suggests that

¹ Article by Peter Tutton in November/December 2005 edition of Money Adviser magazine.

consumer awareness of the guidance and OFT's role in enforcing it has improved. As expected, complaints increased during the review period as our launch of the compliance review in August 2005 sought to raise awareness as well as check on compliance.

1.5 As well as providing clarification for business of unfair practices in this field, respondents in the advice sector said that both they and their clients had found the guidance to be a useful tool for challenging creditor/collector behaviour. Respondents were not able to quantify the effect of the guidance on behaviour. Trade bodies felt that compliance levels are high. Industry and advisor perceptions of compliance were markedly different which is not unexpected. Where individual advisors alleged that guidance was not being complied with their evidence was anecdotal. Similarly where licensees stated they were complying fully they did not provide evidence in support. Representatives of Local Authority Trading Standards Services (TSS) and many advice sector respondents said that there had been improvements in the behaviour of some licensees.

1.6 The OFT's experience of applying the guidance has been very positive. We have secured changes in industry behaviour such as :

- revision of standard operating procedures
- introduction of compliance audits
- additional staff training on the guidance
- creation of dedicated complaint handling units
- revision of standard letters where they had the potential to mislead or be perceived as threatening
- cessation of use of anonymous tele-messages to contact debtors.

- 1.7 The guidance has enabled us to intervene earlier to stop unfair business practices. Where initial evidence has not been sufficient to warrant formal action but where we have reason to believe that unfair practices are being carried out we have approached traders to warn them of their behaviour and the implications of this continuing. Such informal actions have resulted in our securing immediate compliance with the guidance by 85 per cent of the licensees we approached.
- 1.8 In the three year period prior to the guidance being issued debt collection accounted for approximately three per cent of all informal action taken against consumer credit licensees. It now accounts for 12 per cent. In the same period our formal actions against debt collection businesses have decreased from approximately 10 per cent to four per cent of the total formal licensing actions taken by the OFT.
- 1.9 We believe that this shift towards informal action has had a positive impact on consumer welfare by reducing more rapidly unfair business practices in an area where consumers are already vulnerable because of their debts. In the time it would take to compile the necessary evidence and carry out the statutory processes for formal action many more consumers could have suffered the additional detriment posed by unfair debt collection practices.
- 1.10 Similarly, our focus on informal actions is entirely consistent with the Hampton principles of Better Regulation. Informal actions reduce the costs to business of their interactions with the licensing regime. However, we recognize that we do need to review our policy in relation to publicising our informal actions. Publicity would enhance the deterrent effect of our actions and raise awareness among consumers, advisors, industry and other enforcers.

- 1.11 As noted above (see paragraph 1.5), neither industry nor advisor communities provided robust evidence to support their views on compliance with and/or effectiveness of the guidance. Nor did we demand such evidence. The OFT does not have powers to compel the provision of such evidence for the purposes of a review such as this. To address this evidential point, we have analysed the complaints and cases we have received.
- 1.12 This analysis suggests that non-compliance is not restricted to a 'rogue trader' element, as some industry commentators had suggested. Trade association members have also given rise to complaints investigated by the OFT. Many of the complaints pointed to system failures as opposed to deliberate flouting of the guidance.
- 1.13 Where the guidance has not changed industry behaviour many respondents felt that a major factor was the OFT's current lack of powers to impose a range of sanctions such as financial penalties. The new licensing regime provided by the Consumer Credit Act 2006 (the 2006 Act) was viewed as providing the necessary underpinning for the guidance. Until the licensing provisions are implemented in 2008, it was suggested that those choosing to ignore the guidance would continue to do so. We share the views of those who regard the new licensing regime as a very necessary bolstering of the OFT's powers which will strengthen our ability to realize the full potential of our licensing guidance. In the meantime we recognize that more needs to be done to address shortcomings highlighted by the review.

A more pro-active compliance strategy

1.14 The OFT will work with stakeholders to establish a more pro-active debt collection compliance monitoring regime based on the following key elements:

- **working in partnership with stakeholders to improve the quality of complaint evidence we receive:** we need robust complaint evidence in order to take licensing enforcement action; we have disseminated guidance for consumer advice organisations on the type of evidence we need in order to take action against a non-compliant licensee, as well as how and to whom they should complain to about alleged breaches of the guidance
- **explore the scope for improvement in the ways complaint information is recorded in order to capture more quality data:** the aim will be to work with consumer advice organisations and the TSS to achieve more consistency of approach in complaint data recording
- **work closely with the TSS and consumer advice organisations to share complaint or trend data on a regular basis so that we can target our resource**
- **work closely with trade associations and licensees to encourage and support compliance with the guidance:** where complaints relate to trade association members, we will use anonymised versions of complaint reports of unfair business practices compiled from our own data as a basis for discussion with the relevant trade association. Although many of the trade associations' approach to compliance monitoring is largely reactive they were all keen to receive more feedback on the performance of their members to assist their own monitoring.

- **raise awareness about the guidance amongst consumer advisors as well as industry.** We have given talks at workshops and conferences and have used conferences to distribute guidance material, and hold liaison meetings. Much of that activity has been at key points in production, publication and review of compliance with guidance. We believe that we need to continue that activity but at the same time encourage others to spread the word on our behalf. Our aim would be to ensure that we and others are ready for the new licensing regime and that there is clarity as to our respective expectations.

1.15 We would like to thank all those who have contributed to the review. This report and annexes are available on the OFT's website. The address is: www.offt.gov.uk

2. BACKGROUND AND METHODOLOGY

2.1 The Consumer Credit 1974 (the Act) established a licensing system to protect the interests of consumers. The OFT has a duty under the Act to ensure that licences are only given and retained by those who are fit to hold them. Where we have appropriate evidence we can take formal action to refuse, revoke or suspend the credit licences of those concerned.

2.2 The Act provides that the OFT may take into account any circumstances which appear 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 the Act or other consumer legislation
- practised discrimination in connection with their business, or
- engaged in business practices appearing to be deceitful, oppressive or otherwise unfair or improper (whether unlawful or not).

2.3 It is this fourth leg of the fitness test which is the origin for the OFT's fitness guidance such as the debt collection guidance. The guidance sets out minimum standards that we expect of licence holders in collecting consumer debts. In launching the guidance in 2003, we stated that we expected licensees not only to comply immediately, but to abide by the spirit as well as the letter of the guidance. We monitored compliance on a reactive basis until launch of this formal

- compliance review on 10 August 2005. The compliance review sought to probe in more depth compliance levels across the industry and to assess awareness of the guidance among industry participants, consumers and stakeholders.
- 2.4 In the initial stage of the compliance review we sent out 1731 questionnaires to licence holders involved in debt collection including creditors. Separate questionnaires were sent to money advisors and representatives of the TSS. We sent out a total of 2,454 questionnaires. We received 440 completed questionnaires. These included 367 responses from individual licensees, accounting for 21 per cent of all licensees contacted.
 - 2.5 We wrote to trade associations and consumer bodies inviting their comments on the usefulness of the guidance and compliance with it. A complaint form was also made available on the OFT's website for consumers who wished to complain about debt collection practices.
 - 2.6 We followed up responses from two key consumer representative bodies and five trade associations and held meetings to clarify some of the points made and seek further information.
 - 2.7 In the final stage of the review we assessed compliance based on our own experience of dealing with consumer complaints about alleged breaches of the guidance during the period April 2004 to August 2006.

3 RESPONDENTS' VIEWS

- 3.1 There was unanimous praise for the content of the guidance. Representatives of industry, money advice and the TSS said that the guidance was clear and easy to use. Many respondents said that the guidance enabled all parties to take a consistent approach when dealing with complaints about unfair business practices in the debt collection sector. The consensus view was that the guidance had clarified types of practices the OFT considers unfair. The review revealed no areas where further guidance or amendment to the existing guidance was needed.
- 3.2 A detailed summary of the views expressed by respondents to the questionnaires we sent out is at Annexe A.

Industry views

- 3.3 None of the trade associations or licensees that responded said that they found the guidance onerous to use. The main trade association for debt collectors, the Credit Services Association (CSA), said that the guidance complemented and lent authority to its own Code of Practice. The CSA had incorporated the guidance into its Code. Other associations said the guidance is used as a module for training courses offered to members.
- 3.4 Some licensees and trade associations said they had found the guidance useful either for benchmarking internal processes or for testing and assessing compliance.
- 3.5 Very few licensees claimed to be unaware of the guidance. In these cases the review has also succeeded in raising awareness of the guidance and of the OFT's approach to unfair business practices in this sector. These respondents said they would use and adhere to the guidance in the future. The majority of responses from individual licensees echoed the trade association view that they had deployed industry best practice before and after the publication of the guidance.

- 3.6 Some licensees said that the guidance had made them look afresh at their own debt collection processes. Where gaps or shortcomings had been identified they had made the necessary changes to achieve compliance. One respondent had ceased using some of its customer contact methods in the light of the guidance. Examples used were text messaging, postcards and tele-messaging. Another respondent said that if a finance company asked it to call a debtor late at night or at their place of work it could now refuse and quote the OFT's guidance in support of their refusal. However, its competitors continued to use these methods and it was under commercial pressure to follow suit.
- 3.7 The trade association view was that there had been no need to change behaviours amongst their members because they had deployed 'best practice' as required by their Codes of Practice prior to the publication of the guidance and had continued to do so afterwards.
- 3.8 Whilst the trade associations acknowledged instances of non-compliance (mainly amongst non-members or rogue traders) they said that it was not widely prevalent. They pointed to the evidence of their receipt of low complaint volumes and their processes for monitoring compliance (which are mainly reactive and based on complaints and self or external audit) to support their findings of full compliance.
- 3.9 Where trade associations acknowledged the existence of malpractice in the market they did not believe that bad practice was endemic but due mainly to human error or to 'rogue traders'. The solution in their view lay in improving training for employees of debt collection companies and staff working in call centres belonging to large creditors.

The TSS view

- 3.10 The TSS cited evidence of the guidance having a positive impact on behaviours. For example, one department in Scotland said that through use of the guidance their relationship with local debt collection agencies had improved. Others said they were receiving

more positive responses from debt collection agencies and complaints were being resolved. One department said that licensees now tended to reply to letters which they did not do prior to the guidance being issued. Another confirmed that its home authority companies had modified their written procedures to ensure compliance. Overall, improvements in behaviour were said to stem from the fact that examples of unfair practices are clearly listed in the guidance.

- 3.11 Others said that licensees were doing their level best to comply with the requirements of the guidance. On a few occasions licensees had provided evidence following a complaint that it was actually the consumer who was being abusive to their employees and not the other way round. In one example an investigating officer obtained the relevant evidence from a tape recording made by a debt collection company of its conversation with the consumer.
- 3.12 On the other hand, our review did identify recurring themes in complaints received by the TSS. In Scotland a common issue was the threat of court action in the wrong jurisdiction. Reference to English courts was not appropriate. Another recurrent theme was said to be that of creditors sending inaccurate information to debt collection companies who would then try to collect on these debts.

Advisor views

- 3.13 The key message to emerge from consumer advice umbrella organisations and individual advice agencies was that, whilst some progress had been made in relation to improving conduct in specific cases, the guidance had been less successful at changing behaviours in the longer term. These groups attributed continuing problems to the absence of financial penalties in the current sanctions regime (as opposed to the guidance itself) which was said to act as a disincentive to larger companies to change behaviour.
- 3.14 Some respondents said they had seen positive changes in behaviour. For example, one collection company was praised for setting up a

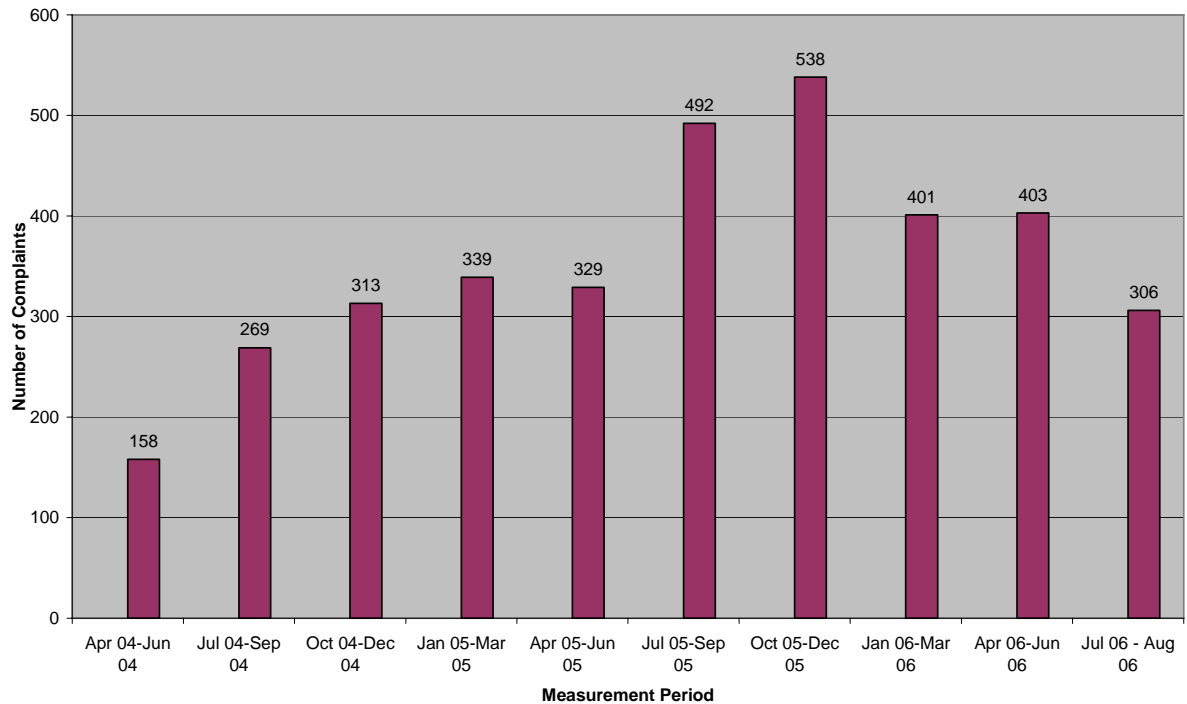
- dedicated unit to deal with complaint referral cases from third party agencies but many advisers complained about being bypassed by companies who are still contacting clients direct despite requests not to do so. Many advisors said they had seen most improvements in the methods used by debt collectors to communicate with debtors. They felt that there had been a reduction in misleading and threatening debt collection demands.
- 3.15 Another recurring theme was the allegation that some creditors were failing to pass on accurate client information to companies collecting the debt. Some respondents linked this to a growing trend, amongst banks and credit card companies in particular, for outsourcing debt collection to debt collection agencies.
- 3.16 Some advisers felt that certain licensees only complied with the guidance after they had been challenged assertively. A number of respondents including Citizens Advice Scotland (CAS) identified well known high street financial institutions as being just as culpable for engaging in aggressive collection practices as newer or smaller established debt collection agencies.
- 3.17 No comparative complaint data for the pre 2003 and post OFT guidance periods up to the launch of the review have been provided by respondents. As a result we are unable to assess precisely the scale of any alleged non-compliance.
- 3.18 General intimidation, harassment, mis-stating powers and refusal to deal with third party advisers were the most complained about bad practice issues.
- 3.19 CAS and some CABx said that the guidance has had most impact on extreme end of the complaint spectrum e.g. threatening debtors with violence. Fewer complaints of this nature have been received since its issue. They said that the biggest complaint issues were around harassment and communication issues.

3.20 There was also a call from Citizens Advice for a more pro-active approach to compliance monitoring and for the OFT to publicise the names of those companies against whom we have taken informal action or who have been the subject of informal approaches in order to improve compliance levels. The fact that consumers continued to complain about unfair practices was said to provide evidence that self-regulation was not working. Trade associations were also criticized for not pro-actively ensuring their members complied with the guidance.

4 OFT'S EXPERIENCE OF COMPLIANCE

- 4.1 From an early stage of this compliance review, it was clear that most respondents were not, and would not be, able to produce definitive evidence to support their views on compliance. In the absence of such evidence from others the information we receive from consumer complaints and our investigations of cases referred to us is a key information source in assessing compliance. Our analysis of this data was extended into 2006 to reduce any distortion from the inevitable increase in complaints following the launch of our compliance review and our related activity to raise awareness of the guidance.
- 4.2 Our compliance review has taken place during a period of increased demand for debt advice and high media coverage relating to consumer debt levels. Widespread media coverage of the launch of our compliance review was followed by an upsurge in complaints. We encouraged consumers to complain to OFT directly by providing a complaint form on our website. This mechanism alone generated 146 complaints in the period August to December 2005. Between the launch of the review in August 2005 until the end of December 2005 we received 433 (88 per cent) more complaints than for the same period the previous year.
- 4.3 The marked increase in complaints in the immediate period following the launch of our review has not continued into 2006. However, while complaint levels have decreased this year they have not returned to the lower levels recorded prior to August 2005. (see table 4.1)
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Table 4.1 : Breakdown of complaints received between April 2004 and August 2006



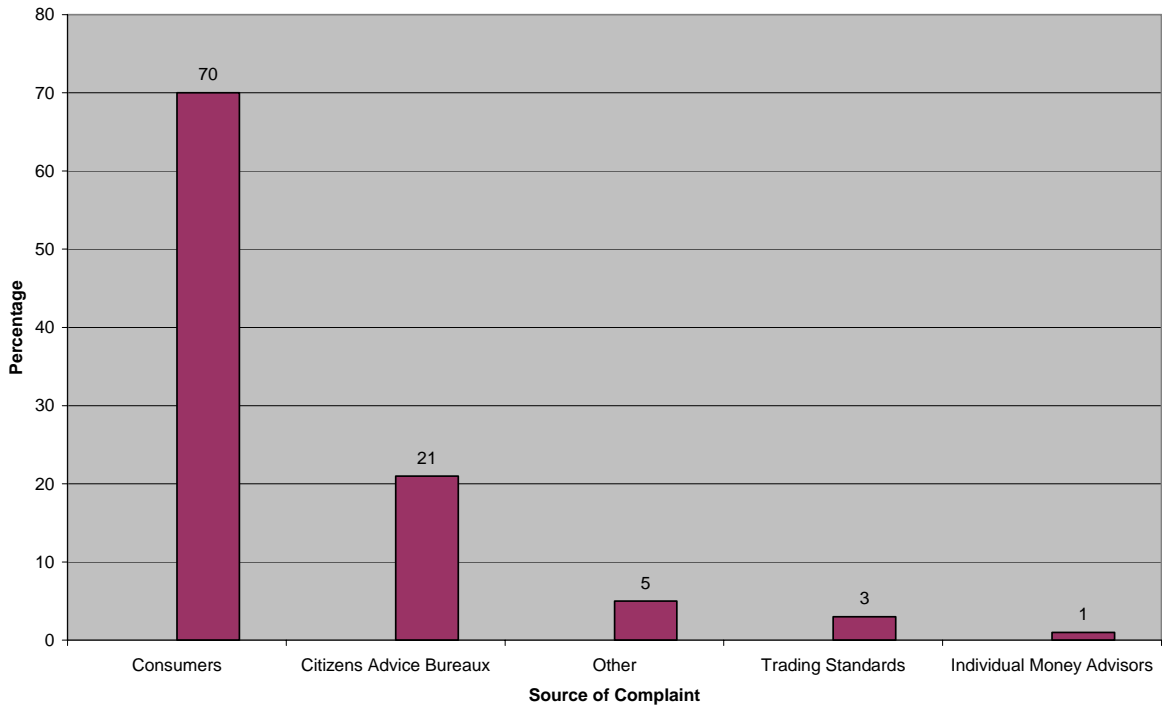
4.4 Following publication of the guidance in 2003 we changed the way we record complaint data which allowed us to capture more information. The new system became fully operational from April 2004 onwards: hence, we have used that date as a starting point for our measurement period in the above table.

Sources of complaints

4.5 Table 4.2 below provides a breakdown in percentage terms of the origins of the complaint referrals made to the OFT since April 2004. This shows that the majority (70 per cent) came directly from consumers and 21 per cent were received from CABx. Clearly, the messages are getting through to these particular groups about both the guidance and to whom consumers should complain. Low referral rates from the TSS and individual money advice advisers may suggest

that we need to do more to raise awareness amongst these groups. The 'other' category includes complaints referred by other government departments, solicitors and local government departments other than the TSS.

Table 4.2 : Percentage of complaints referred to the OFT by source



4.6 Evidence from complaints to the OFT clearly indicates that the guidance has made it easier for consumers and their representatives to complain to the OFT, as well as arming them with the knowledge they need to know what to complain about. Awareness has increased to such an extent that consumers quote relevant sections of the guidance in correspondence with us.

Most complained about practices

- 4.7 We have analysed representative sample complaint data from the period April to August 2006 to identify the most complained about unfair practices.
- 4.8 Respondents have told us that a major positive change is that complaints alleging violence have all but disappeared. However, complaints about those collecting debts making threatening statements, particularly over the telephone, remain high. This is a difficult area of the guidance to enforce in the absence of robust evidence from the consumer such as full details of the content of the call and name of the individual concerned. A common complaint theme is threatening court action and not describing the process correctly.
- 4.9 Failing to investigate disputed debts continues to be a common complaint theme as does sending demands when uncertain who the debtor is. This tends to have its root causes in accurate or incomplete data being passed between different departments within the same company or passed on from a creditor to a debt collection company when a debt is sold on or its collection is sub- contracted. A related complaint concerns failure to provide debtors (or their advisors) with information or documentation (for example, copies of agreements or statements) to support the demands being made.
- 4.10 A further common complaint theme is that of debt collection agencies and creditors bypassing third parties appointed by consumers to deal with their case. This practice had not been highlighted in OFT guidance prior to July 2003. The guidance has therefore introduced new areas for complaints. Consumers and their representatives are now able to complain about more and different types of unfair practices than before. We have made it easier for consumers to complain to us directly through our complaint forms and we have raised awareness among consumers through the compliance review.

Scale of non-compliance

- 4.11 We compared the 343 licensees complained about between April 2004 and August 2006 against the 1,986 licencees whose licence includes the debt collection category. This comparison results in 17 per cent of all those licensed to collect debts having been complained about.
- 4.12 Of the 343, we investigated 262 licencees for alleged breaches of the guidance. This represents 13 per cent of licensees holding debt collection category licences.
- 4.13 The figure of 1,986 includes licensees whose main business activity may not be debt collection such as lenders. The complaints we receive include complaints about how lenders recover their debts using in-house collections teams or third party debt collectors.

Enforcement action taken by the OFT

- 4.14 The action we take is dependent upon the evidence we obtain. Use of our formal powers to refuse or revoke licences represents a significant sanction. The action we take depends upon the nature of the problem and the evidence we have. In some cases refusal or revocation of a licence is the most appropriate action. Other times we judge that it is sufficient to stop a practice. The guidance enables us to target those practices that are unacceptable and to do so more quickly. Where we take informal action our aim is to change behaviour and reduce consumer detriment as soon as we can. For example, in 60 per cent of investigation cases we were able to take licensing enforcement action within six months of starting an investigation. In 30 per cent of cases we took action within three months. Such timings compare favourably with the time needed to pursue formal enforcement action.

4.15 We have increasingly used informal actions such as:

- informal approaches – seeking to change behaviour through discussion with the licensee
- warning letters – we put licensees on notice that they run the risk of formal licensing action if the OFT continues to receive evidence that they are engaging in unfair business practices
- advisory letters – we advise licensees on how to operate within the terms of the guidance.

4.16 In the three year period prior to the guidance being issued debt collection accounted for approximately three per cent of all informal action taken against licensees. It now accounts for 12 per cent. In the three year period prior to guidance issue debt collection accounted for approximately 10 per cent of all formal licensing action whereas it now accounts for four per cent. In part this reflects our focus on securing changes in behaviour earlier through informal means rather than wait until all the necessary evidence for formal action might be available.

4.17 Failure to obtain a consumer's permission to reveal their identity or relevant details of their complaint can prevent us from approaching licensees, unless we have clear documentary evidence of a standard practice being pursued by a licensee. Between 25 May and 31 August 2006 we sent out requests to 421 consumers for permission to use their complaints and received permission from only 176 (or 42 per cent). The process of obtaining evidence and getting necessary permissions can be time consuming. This increases the importance of acting quickly once we have evidence.

4.18 In 161 out of 262 investigation cases we took no action because of poor quality complaint evidence, our inability to obtain permission to

disclose the information from the complainant, the unfair practice ceasing or the licensee ceasing to trade.

4.19 In relation to the remaining 101 licensees we have taken formal licensing enforcement action against nine, and informal licensing enforcement action against 92.

4.20 The action we have taken has resulted in the

- the issue of nine notices to debt collectors that the OFT was minded to revoke their credit licences; of these nine, three licensees ultimately retained their licences, while in the other six cases the licences were surrendered
- a total of 85 warning letters and 18 advisory letters were sent to 90 licensees
- successful negotiations, through informal approaches, with two licensees which resulted in a variety of changes to their processes.

4.21 The main effect of issuing advisory or warning letters to 77 of the 90 licensees mentioned above has been to secure immediate compliance. In 13 cases we had to issue the licensee with a second warning letter. In ten of these cases the licensees were warned again about the same practice. In the main, complaints against these licensees decreased after we sent a second warning letter.

4.22 The changes in behaviour we have seen and/or secured include

- revision of standard operating procedures
- introduction of compliance audits
- additional training where needed

- installation of telephone recording systems for monitoring complaints
- creation of dedicated complaint handling units or hardship teams
- revision of standard letters containing statements which could mislead or be perceived as threatening
- ceasing to use anonymous telemessages to debtors.

4.23 Since the guidance was issued fourteen licensees have agreed following our intervention to revise standard letters. Where such letters had been sent in error companies have said that they will ensure the letters are no longer used. We received commitments from four licensees, including a major high street financial institution and a major UK utilities company, to stop sending anonymous telemessages to debtors.

Conclusion

4.24 The OFT's experience suggests that non-compliance is not widespread. Where we have discovered breaches of the guidance traders have shown willingness to adapt their behaviour to ensure compliance. We have received anecdotal evidence that some traders are flouting the guidance but our experience does not support such allegations. Non-compliance does not appear to stem from deliberate attempts to ignore the guidance: more from system failure.

4.25 Awareness is claimed to be high and in many cases those claims are justified. In others it may be that companies' confidence in their compliance is misplaced and has not been subjected to thorough review. In many cases, failure to comply with the letter and spirit of the guidance could have been avoided by closer scrutiny of company procedures to ensure that they were compatible with the OFT guidance.

- 4.26 The cases we have seen point to a number of system issues such as accuracy of data on debts, use of standard letters, complaint handling and recording procedures. For example, many complaints appear to arise from inaccurate and incomplete client data being passed between different departments within the same company or passed on from a creditor to a debt collection agency when a debt is sold on or its collection is sub-contracted out to another company. This gives rise to complaints from consumers and their representatives who claim that they are being wrongly pursued for a debt. Licensees we wrote to said that problems arose because they received basic client details only and not a copy of the original loan agreement.
- 4.27 Our experience shows that when a licensee has set up a dedicated unit or created a single point of contact for CABx and other consumer representatives to contact them about their clients complaints against the company decrease.

5 CONCLUSIONS

- 5.1 Although hard 'quantative' data are not available to reach a firm conclusion on the extent of compliance with the guidance, the evidence we have suggests that neither of the two alleged extremes of full compliance or blatant disregard of the guidance exist across the piece. Non-compliance is not the sole province of the 'rogue trader'. There are also degrees of non-compliance.
- 5.2 The compliance review has confirmed previous positive comment on the content of the guidance. The compliance review has not shown that non-compliance relates to the content of the guidance. On the contrary, users we consulted have found the guidance clear and have not suggested that the guidance requires amendment or expansion.
- 5.3 For the guidance to be truly effective however we all need to ensure that it is properly enforced. OFT has a key role given our duty to administer the licensing regime. However others can help us in this task and the compliance review has helped identify some areas where we can work with others to raise awareness of, and compliance with, the guidance.
- 5.4 Some respondents have suggested that compliance will not be improved until the following are addressed:
- the need for more robust compliance monitoring systems within industry
 - the inflexibility of the current licensing regime and sanctions available to OFT
 - the restrictions on disclosure of information OFT can provide on complaint outcomes
 - the need to improve consumer awareness about the guidance and their rights, and

- the need for clarity about how and to whom consumers can complain about alleged breaches of the guidance.
- 5.5 We share the view that in the longer term the 2006 Act will greatly improve the ability of OFT and others to enforce the guidance.
- 5.6 An industry source suggested to us that the 2006 Act might provide another catalyst for improved compliance. Its provisions relating to default notices might result in improved data collection systems relating to debts. Given that the base data used for debt collection continues to be a source of many complaints, improved data collection systems should result in enhanced data on debts. This will need to be explored further with industry participants to see if such an outcome is likely.
- 5.7 The new legislation will strengthen our ability to operate the consumer credit licensing regime. We will have greater flexibility through the new sanctions regime. The 2006 Act includes a range of sanctions such as financial penalties. We will also have the ability to impose a Requirement on a licence holder to modify conduct giving rise to fitness concerns. Where we use our formal powers, as opposed to informal actions, we make our decisions public through our Public Register, Annual Reports and press releases. We publicise our formal actions and would do so with the new formal powers. This will mean that a fuller range of OFT licensing actions will be publicised, increasing awareness of the guidance and providing a deterrent to those who believe that they can ignore the guidance.
- 5.8 In addition we will be able to monitor compliance with the law and OFT guidance more effectively through use of our new powers to demand information from licensees. This power is currently only available for use with applications for licences. This information seeking power will also strengthen our ability to carry out compliance reviews such as this. Our requests for input to this review were solely reliant on good will as we did not have the ability to demand information.

- 5.9 In the meantime we recognize that more needs to be done to address shortcomings highlighted by the review. In order to tackle non-compliant licensees at an early stage, the OFT will work with stakeholders to establish a more pro-active debt collection compliance monitoring regime based on the following key elements:
- working in partnership with stakeholders to improve the quality of complaint evidence we receive
 - exploring the scope for improvement in the ways complaint information is recorded in order to capture more quality data
 - working closely with the TSS and complaint handling organizations to share complaint or trend data on a regular basis so that we can target our resource
 - working closely with trade associations and licensees to encourage and support compliance
 - raising awareness of the guidance amongst consumer advisers as well as industry.
- 5.10 We will also explore the scope for the OFT to provide more information on informal actions. In each instance, we will assess the benefits and appropriateness of disclosure so as to ensure the maximum benefits in terms of deterrent and effective monitoring of compliance. We will continue with our strategy of a mix of formal and informal enforcement action – using the best tools available. We believe that the informal route to achieving changes in behaviour is consistent with the Hampton principles of Better Regulation. It also enables us to act more speedily and reduce consumer detriment in situations where consumers are already vulnerable because of their debts.

- 5.11 We want to build upon the increase in consumer awareness and further encourage consumers to tackle unfair debt collection activity and seek others' help where they need it.
- 5.12 Debt collection poses unusual risks for the consumer and challenges for the OFT. Normal market factors and disciplines arising from the exercise of consumer choice do not apply. The consumer does not make the choice of debt collector. Where the consumer is being pursued by a lender they chose originally that choice will not have been informed by that lender's debt collection activity. Where debts are sold on, the consumer will not have exercised any choice as to whom they owe their debts.
- 5.13 The proper functioning of credit markets requires mechanisms for the recovery of debt. It is not the purpose of the OFT to prevent this. Our role is to ensure that the way in which debt collection is carried out is consistent with fitness to hold a licence and does not step beyond the boundaries of fair treatment for customers. We are encouraged by the positive responses of industry to our guidance. But we believe that more can be done to ensure that the right balance is struck in collecting debts efficiently and protecting some of the most vulnerable consumers. Our stakeholders have very different perspectives but are increasingly working more closely together. We welcome that and hope that our future strategy will encourage closer working by providing a focus for improvement.

ANNEXE A

ANALYSIS OF RESPONSES TO QUESTIONNAIRES

This annexe provides a detailed analysis of responses to the questions detailed in our questionnaire. We have assessed separately responses by licence holders, Local Authority Trading Standards Service (TSS), free and independent advice agencies, trade associations and consumer advice organisations. The results are set out below.

A CONSUMER CREDIT LICENCE HOLDERS

We sent out 1731 questionnaires to licence holders and received 366 responses giving us a response rate of 21 per cent. A breakdown of responses to the individual questions is set out below.

1. Do you operate solely as a debt collector?

A large number of consumer credit licences cover all categories of business. We asked this question because we wanted to clarify whether respondents engaged primarily in debt collection activities or whether this only formed a small part of their business. Responses were as follows and full details of these are set out in Table A below.

- 129 (36 per cent) answered 'Yes' they operate solely as a debt collection company.
- 231 (64 per cent) answered 'No' they do not operate solely as a debt collection company.
- the remainder did not give an answer.

Table A

Business involvement in debt collection	Actual number	Per cent of completed returns
Yes	129	36
No	231	64
No answer Given	6	
Where debt collection is not sole activity:		
Primary activity		
Debt collection	91	
Debt adjusting and debt counselling	88	
Consumer credit	42	
Credit reference agency	16	
Credit brokerage	9	
Consumer hire	0	

1a. If not operating solely as a debt collection agency, what is your primary activity?

We wanted those who are not engaged mainly in debt collection to expand on their response so we could build up a fuller picture of those who were responding to our review. Responses were as follows.

- 91 (25 per cent) stated that debt collection was their primary activity.
- 88 (24 per cent) stated that their primary activity was 'debt adjusting and debt counselling'.
- 42 (11 per cent) stated that their primary activity was consumer credit.

2. Does your business collect consumer debt? If yes what proportion?

For the purpose of the review our primary interest is in those companies collecting consumer debt. We wanted to find out how significant consumer debt collection is within their business. Responses were as follows and full details of these are set out in **Table A2 below**.

- 243 (67 per cent) of respondents stated that they collected consumer debt.
- 117 (33 per cent) of respondents stated that they do not collect consumer debt.

Of those that answered 'Yes':

- 114 (47 per cent of those answering yes) said it accounted for 50 per cent or more of their business.

- 109 (45 per cent of those answering yes) said it accounted for less than 24 per cent or less.
- 20 (8 per cent of those answering yes) said it accounted for between 25 per cent an 49 per cent.

Table A2

Response	Actual number	Per cent of completed returns
Yes	243	68
No	117	32
No answer given	6	

3. Does your business collect business debt? If yes, what proportion?

We wanted to clarify what proportion of the business collected debts from businesses. Responses were as follows and full details of these are set out in **Table A3** below.

- 221 (61 per cent) of respondents stated that they collected business debt.
- 139 (39 per cent) of respondents sated that they did not collect business debt.

Of those that answered 'Yes':-

- 105 (48 per cent) said business debt accounted for 24 per cent or less of their business.
- 90 (41 per cent) said it accounted for 50 per cent or more of their business.
- 26 (12 per cent) said it accounted for between 25 per cent and 49 per cent of the business.

Table A3

Response	Actual number	Per cent of completed returns
Yes	221	61
No	139	39
No answer given	6	

4. Do you collect debts on behalf of others?

We wanted to differentiate between the number of respondents who are third party debt collectors and those who use in house debt collectors. Responses were as follows and full details of these are set out in **Table A4** below.

- 235 (65 per cent) of respondents collect debts on behalf of others.
- 128 (35 per cent) of respondents do not collect debts on behalf of others.

Table A4

Response	Actual number	Per cent of completed returns
Yes	235	65
No	128	35
No answer given	3	

5. Are the debts you collect reassigned from other debt collection agencies?

Of those who responded, we wanted an indication of the level of debt that is sold between debt collection licensees. Responses were as follows and full details of these are set out in **Table A5** below.

- 62 (18 per cent) of respondents stated that the debts they collect are reassigned from other debt collection agencies.
- 290 (82 per cent) of respondents stated that the debts they collect are not reassigned from other debt collection agencies.

Table A5

Response	Actual number	Per cent of completed returns
Yes	62	18
No	290	82
No answer given	14	

6. Are you a member of a trade association?

We wanted to determine what proportion of respondents are members of a trade association. Responses were as follows and full details of these are set out in **Table A6** below.

- 120 (33 per cent) are members of a trade association.
- 243 (67 per cent) are not a member of a trade association.

Table A6

Response	Actual number	Per cent of completed returns
Yes	120	33
No	243	67
No answer given	3	

Of those who answered 'Yes':

- 45 (38 per cent) stated that they are a member of the Credit Services Association.
- 11 (9 per cent) stated that they are a member of the Institute of Credit Management.

A detailed breakdown is shown below in **Table A6a** below.

Table A6a

Trade Association	Actual number	Per cent of total who stated membership of a trade association
Credit Services Association	45	38
Institute of Credit Management	11	9
Finance and Leasing Association	12	10
Association for British Insurers	8	7
Association of Civil Enforcement Agencies	7	6
British Bankers Association	5	4
Consumer Credit Association	8	7
Consumer Credit Trade Association	12	10
Enforcement Services Association	9	8

7. Do you employ debt collection businesses?

We wanted to know what proportion of the respondents are creditors, rather than debt collection companies. Responses were as follows and full details of these are set out below in **Table A7**.

- 57 (16 per cent) employ debt collection businesses.
- 305 (84 per cent) do not employ debt collection businesses.

Table A7

Response	Actual number	Per cent of completed returns
Yes	57	16
No	305	84
No answer given	4	

7a If you are a creditor do you use in-house debt collectors?

We wanted to clarify both the level of in house debt collection and the level of debt collection that is outsourced. Responses were as follows and full details of these are set out in **Table A7a** below.

- 58 (21 per cent) of respondents use in house collectors.
- 214 (79 per cent) of respondents do not use in house collectors.

Table A7a

Response	Actual number	Per cent of completed returns
Yes	58	21
No	214	79
No answer given	94	

7b If you employ debt collection business have you seen any changes in their behaviour since the guidance was issued?

We wanted to know if creditors thought the guidance had an impact on the business practices of the debt collectors they employ. Responses were as follows and full details of these are set out in **Table A7b** below.

- 12 (10 per cent) of respondents stated that the guidance did have an impact.
- 110 (90 per cent) of respondents stated that the guidance did not have an impact.

Table A7b

Response	Actual number	Per cent of completed returns
Yes	12	10
No	110	90
No answer given	244	

B TRADING STANDARDS SERVICES

We sent out 220 questionnaires to local authority Trading Standards Services (TSS) by email. We received 27 responses giving a response rate of 12 per cent. The following provides a breakdown of the responses to individual questions.

2. Do you offer debt advice?

We wanted to determine if the respondent's office offered a debt advice service. Responses were as follows and full details of these are set out in **Table B1** below.

- 3 (17 per cent) of TSS respondents offer debt advice.
- 15 (83 per cent) of TSS respondents do not offer debt advice.

Table B1

Response	Actual number	Per cent of completed returns
Yes	3	17
No	15	83
No answer given	9	

3. Which groups have you used the guidance with?

We asked this question in order to clarify what business sector TSS had used the guidance with. Responses were as follows and full details of these are set out in **Table B2** below.

- 12 (46 per cent) of respondents stated that they used the guidance with licensed debt collectors.
- 7 (27 per cent) of respondents stated that they used the guidance with licensed creditors.

Table B2

Response	Actual number	Per cent of completed returns
Licensed debt collectors	12	46
Licensed creditors	7	27
Consumers	9	35

4. Which areas of the guidance have you used most?

We wanted to find out what areas of the guidance have been of most use when dealing with licensees. Responses were as follows and full details of these are set out in **Table B3** below. Respondents were given the option of more than one response.

- 12 (34 per cent) of respondents stated that Communication was the most frequently used part of the guidance.
- 9 (26 per cent) of respondents stated that physical and psychological harassment was the most frequently used part of the guidance.

Table B3

Response	Actual number	Per cent of completed returns
Communication	12	34
False representation	6	17
Physical and psychological harassment	9	26
Deceptive and/or unfair methods	8	23
Charging for debt collection	6	17
Debt collection visits	4	11
Have not used guidance	2	6

5 Have you made more complaints to the OFT since the guidance was issued?

We wanted to find out how useful the Guidance has been when making complaints to the OFT. Responses were as follows and full details of these are set out in **Table B4** below.

- 14 (87 per cent) of respondents stated that they had not made more complaints to the Office.
- 11 respondents did not give an answer.

Table B4

Response	Actual number	Per cent of completed returns
Yes	2	13
No	14	87
No answer given	11	

C FREE AND INDEPENDENT ADVICE AGENCIES (INDIVIDUAL ADVICE AGENCIES)

2. Have you made more complaints to the OFT since the guidance was issued?

We wanted to find out if the Guidance had increased awareness of the practices OFT considers to be unfair and whether it had assisted the advice agencies in forwarding complaints to us. Responses were as follows and full details of these are set out in **Table C1** below.

- 19 (54 per cent) of respondents stated that they had made more complaints.
- 16 (46 per cent) of respondents stated that they had not made more complaints.

Table C1

Response	Actual number	Per cent of completed returns
Yes	19	54
No	16	46
No answer Given	2	

3. Has the guidance been useful in setting out what we would regard as unfair practices?

We wanted to find out whether respondents found the Guidance clear and concise. Responses were as follows and full details of these are set out in **Table C2** below.

- 32 (94 per cent) of respondents stated that the Guidance had been useful.

Table C2

Response	Actual number	Per cent of completed returns
Yes	32	94
No	2	6
No answer given	3	

4. In your opinion what effect has the Guidance had on your agency and the way it deals with clients in debt?

We wanted to gauge what impact the Guidance had on how agencies operated. Responses were as follows and full details of these are set out in **Table C3** below.

- 21 (66 per cent) of respondents stated that the Guidance had a good effect.

Table C3

Response	Actual number	Per cent of completed returns
Good effect	21	66
Minimal effect	9	28
No effect	2	6

5. Where you have used the guidance have you taken it up with the trader involved?

We wanted to gauge how frequently the guidance was used in respondents' dealings with traders. Responses were as follows and full details of these are set out in **Table C4** below.

- 31 (91 per cent) of respondents stated that they had taken up the issue with the trader.

Table C4

Response	Actual number	Per cent of completed returns
Yes	31	91
No	3	9
No answer given	3	

5a What was their response?

We wanted to find out how the traders reacted. Responses were as follows and full details of these are set out in **Table C4a** below.

- 7 (30 per cent) of respondents stated that they had received a positive response.

Table C4a

Response	Actual number	Per cent of completed returns
No response	10	43
Positive response	7	30
Negative response	3	13
Don't know	3	13

