

Debt collection guidance for consumer credit licence holders and applicants

A consultation paper

November 2002

OFT611

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OFFICE OF FAIR TRADING

Date 28 November 2002

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We issued general consumer credit licence guidance to holders and applicants in February 2001. At the same time we announced our intention to supplement this with further sector specific guidance to address concerns brought to our attention.

The general guidance included guidance on debt collection. This is a copy of a consultation document that seeks your views on OFT's draft revised guidance for the debt collection sector.

We would like to hear from as many stakeholders as possible. Please feel free to draw this consultation document to the attention of others who may have an interest in the subject but have not been included in our list of consultees.

This consultation exercise will last for 12 weeks. We therefore ask that your comments on the proposed guidance are submitted to us no later than 21 February 2003. Responses may be made public unless confidentiality is specifically requested. It may not be possible to take into account any suggested changes or comments after the deadline for receipt. Comments should be sent to:

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Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Direct line: 020 7211 8742
Fax: 202 7211 8429
email: debtcollectionguidance@oft.gsi.gov.uk

Details about how to obtain additional copies of this consultation document can be found at the beginning of the consultation document. The text can also be found on the OFT's web site, www.oft.gov.uk, where you can order additional copies. The introduction to the consultation draft is also available in Welsh - on the OFT's web site.

If you have any questions about the guidance please contact Ms Pauline McAree on 020 7211 8742 or email debtcollectionguidance@oft.gsi.gov.uk

I hope that you will be able to assist in this consultation, to which we attach great importance.

Tracy Moore
Head of Debt Collection Team



INVESTOR IN PEOPLE

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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 and retained by those who are fit to hold them. In considering fitness the OFT must take into account any circumstances which appear to be relevant. In particular we will consider any evidence that an applicant, licensee, or their employees, agents or associates 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 lawful or not).

Where the OFT has evidence we can take action to refuse or revoke the credit licences of those concerned.

1.2 The OFT issued general consumer credit licence guidance to holders and applicants in February 2001. 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.

1.3 This guidance is specific to debt collection activity. It expands on and clarifies guidance already published on this subject, our January 2000 *Debt Collection Practices Note* (see Annexe A) and page 8 of our February 2001 general *Guidance for holders and applicants* (see Annexe B) refer.

Who does this guidance apply to?

1.4 This guidance applies to all consumer credit licence holders and applicants who have an involvement either directly or indirectly in debt collection activity. This means that this guidance will not only cover commercial debt-collection organisations but also, for example, those who collect their own debts.

- 1.5 In the past some creditors have sought to disassociate themselves from the activities of third parties or appeared to show no interest in how debt collection activity was being carried out. If creditors or debt collectors 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.
- 1.6 This guidance does not apply to court officers e.g. county court bailiffs enforcing judgment debts.

What is the purpose of the guidance?

- 1.7 One of the fitness criteria the OFT must consider is 'business practices appearing to us to be deceitful, oppressive or otherwise unfair or improper (whether lawful or not).' This guidance is intended to spell out the type of behaviour the OFT considers to fall within this category.
- 1.8 This guidance is not designed to be a comprehensive checklist of behaviour. We are not advising on best practice or a code of practice. We are simply providing further advice to business about what not to do in order to have their fitness brought into question. It outlines unfair practices with examples to help illustrate the point. The examples shown are based on OFT complaint information and issues brought to our attention by organisations representing consumers, business and other regulators.
- 1.9 By providing this guidance, credit licence holders will have a clearer idea of the type of activity that will call their fitness into question. It will also enable OFT to take speedier action against behaviour that clearly falls into the type of categories of unfair practices shown.

2 DEBT COLLECTION - 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 e.g. documents made to resemble court summonses
 - 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 and what their role is
 - d. unnecessary and unhelpful use of legal and technical language
 - e. failing to provide debtors or creditors with information on status of debts e.g. not providing requested balance statements.

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 claiming or implying they are bailiffs or, in Scotland, sheriffs officers or messengers- in- arms
 - b. falsely stating that bailiffs or, in Scotland, sheriffs officers or messengers- in- arms are going to be sent
 - c. falsely claiming a right of entry
 - d. misrepresenting status by naming businesses, premises or web-sites or using a logo to falsely imply government or other public body status or backing.

- e. misleading debtors into believing they are legally liable to pay collection charges when this is not the case e.g. when there is no contractual provision for charging in the credit agreement
- f. falsely implying or stating that civil proceedings will be taken, that civil action has been started or that a court judgment has already been obtained
- g. falsely implying or stating that debtor's goods will be seized
- h. falsely implying or stating that failure to pay a debt is a criminal offence or that criminal proceedings will be brought
- i. referring to bankruptcy proceedings where there is little chance that such action will be pursued or where balances are too low to qualify for such proceedings
- j. pursuing third parties, e.g. relatives of deceased debtors when they are not liable.

Physical/psychological harassment

- 2.5 Putting undue pressure on debtors or third parties, e.g. relatives, is considered to be oppressive

Examples of unfair practices are as follows:

- a. contacting debtors at unreasonable times and at unreasonable intervals.
Comments are invited on whether OFT should specify what we consider to be reasonable. If so please give us your views on what constitutes reasonable times and intervals
- b. pressurising debtors to sell property or to raise funds by further borrowing
- c. pressurising debtors by using more than one debt collection business, either one after another or at the same time, resulting in repetitive and/or frequent contact by different parties
- d. pressurising debtors to pay in full, in unreasonably large instalments, or to increase payments when they are unable to do so

- e. making threatening statements or gestures which suggest harm to debtors
- f. disregarding claims that debts have been settled or are disputed and continuing to make unjustified demands for payment
- g. disclosing debt details to third parties, (especially neighbours relatives or employers), unless legally entitled to do so
- h. acting in a way likely to be publicly embarrassing to the debtor either deliberately or through lack of care e.g. sending open correspondence to a shared post box.

Deceptive and/or unfair methods

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

2.1 Examples of unfair practices are as follows:

- a. contacting people speculatively by e.g. addressing correspondence 'to the occupier' when there is doubt as to whether they are the debtor in question
- b. obtaining details under false pretences e.g. leaving a note at a suspected debtor's home telling them to phone to arrange a suitable time and date for delivery of a package. When they call, they are asked to confirm their personal details and are then sent payment demands for a debt
- c. refusing to deal with appointed third parties, such as Citizens Advice Bureaux
- d. contacting debtors directly and bypassing their known appointed representatives e.g. in an effort to deal with someone in a weaker position
- e. failing to refer on reasonable offers to pay by instalments
- f. not passing on money collected within a reasonable time and failing to keep and provide details of payments made.
Comments are invited on whether OFT should specify what we consider to be reasonable. If so please give us your views on what would constitute a reasonable time
- g. where a debt has been bought, failing to establish the details of the debt history resulting in debtors sometimes being wrongly pursued.

Statute-barred debts

- 2.7 The Limitation Act 1980, which applies in England and Wales, sets out time limits for bringing various kinds of legal action. These are known as limitation periods. The limitation period for debts, i.e. the point at which they become statute barred, is 6 years from when the debtor defaulted on or later acknowledged the debt. If debtors are aware of their legal rights then in practice the debt is unenforceable as they can apply to have the claim struck out. Different legislation applies in Scotland and Northern Ireland.
- 2.8 We invite your views on the following:
- a. Is it unfair or improper to pursue such debts? For example, what if no contact with the debtor has been attempted for several years or the debtor has frustrated all attempts to make contact?
 - b. Should the processes involved in collecting such debts differ from the normal processes (e.g. more time/leeway provided to debtors)? If so, in what way?
 - c. Do you have any views on the fairness of pursuing debts which although not statute-barred have not been pursued or chased for a considerable time e.g. should they not be pursued if no contact has been made with the debtor for say a couple of years?
 - d. Do you have any experience of this issue? If so please provide us with a summary of your experiences.

Charging for debt collection

- 2.9 We have stated in the past that we consider it to be an unfair business practice to charge for debt collection when there is no contractual provision to do so.
- 2.10 In order to determine our future position on this issue we invite your views on the following:-
- a. Under what circumstances, if any, is it fair to charge debtors for collection of debts?
 - b. Do you have any experience of this issue? If so please provide us with a summary of your experiences and/or any examples you may have.

Debt collection visits

- 2.11 Is it unfair or improper for a debt collector to visit a debtor e.g. at their work or home? What if the debtor refuses to answer written correspondence or answer phone calls? Would debtors find it beneficial to talk to someone about their situation face to face or are they more likely to be embarrassed or intimidated?
- 2.12 We invite your views on the following:-
- a. Under what circumstances, if any, is it fair to pay personal visits to debtors?
 - b. If visits are appropriate, what safeguards must be in place?
 - c. Do you have any experience of this issue? If so please provide us with a summary of your experiences and/or any examples you may have.

3 CONSULTATION QUESTIONS

3.1 The following is a summary of general and specific questions to be addressed. These questions are not intended to limit debate.

General questions

3.2 We invite your views on the following:

- a. Is the draft guidance clear and concise?
- b. Does the draft guidance have any significant omissions?
- c. Is the draft guidance in need of amplification/clarification and, if so, in what respect?
- d. Are there any points in the draft guidance with which you disagree and, if so, in what respect?

Specific questions

3.3 Should OFT specify what we consider to be reasonable when we state that 'contacting debtors at unreasonable times and at unreasonable intervals' is an unfair practice? If so please give us your views on what constitutes reasonable times and intervals

3.4 Should OFT specify what we consider to be reasonable when we state that not passing on money collected within a reasonable time and failing to keep and provide details of payments made is an unfair practice? If so please give us your views on what would constitute a reasonable time.

3.5 Statute-barred debt

- a. Is it unfair or improper to pursue such debts? For example, what if no contact with the debtor has been attempted for several years or the debtor has frustrated all attempts to make contact?
- b. Should the processes involved in collecting such debts differ from the normal processes (e.g. more time/leeway provided to debtors)? If so, in what way?

- c. Do you have any views on the fairness of pursuing debts which although not statute-barred have not been pursued or chased for a considerable time e.g. should they not be pursued if no contact has been made with the debtor for say a couple of years? Do you have any experience of this issue? If so please provide us with a summary of your experiences.

3.6 Charging for debt collection:

- a. Under what circumstances, if any, is it fair to charge debtors for collection of debts?
- b. Do you have any experience of this issue? If so please provide us with a summary of your experiences and/or any examples you may have.

3.7 Debt collection visits:

- a. Under what circumstances, if any, is it fair to pay personal visits to debtors?
- b. If visits are appropriate, what safeguards must be in place?
- c. Do you have any experience of this issue? If so please provide us with a summary of your experiences and/or any examples you may have.

4 CONSULTATION RESPONSES

- 4.1 Written or e-mail responses must be received by 21 February 2003. Responses are to be sent to:

Ms Pauline McAree
Room 1C/54
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Direct line: 020 7211 8742
Fax: 202 7211 8429
email: debtcollectionguidance@oft.gov.uk

- 4.2 If you have queries about this consultation please e-mail Pauline McAree.
- 4.3 Respondents to this consultation are asked, where appropriate, to provide a brief summary of the people and organisations that they represent.
- 4.4 Responses are not limited to those shown on the consultee list at Annex C. Comments are welcome from any organisation or individual that wishes to contribute.
- 4.5 **Responses may be made public unless confidentiality is specifically requested.**

ANNEXES

A DEBT COLLECTION PRACTICES NOTE

- A.1 A guidance note was published by the OFT in January 2000 (OFT298) outlining the Director General's views on so-called 'look alike' letters and debt collection charges, in relation to his licensing responsibilities under the Consumer Credit Act 1974. Details are as follows:

Debt collection practices

- A.2 The Office of Fair Trading (OFT) has received complaints regarding so-called 'look alike' letters, and debt collection charges. The purpose of this note is to outline the Director General's views on such practices, in relation to his licensing responsibilities under the Consumer Credit Act 1974.

'Look alike' letters

- A.3 These are documents issued by or on behalf of a creditor or debt collection agency which resemble a court summons or other official document, or are intended to lead the debtor to believe that they come from or have the authority of a court. The OFT has also received complaints regarding documents which it is alleged contain false or misleading information intended to coerce the debtor into paying.
- A.4 The OFT wishes to remind creditors and debt collection agencies that the issue of such documents may constitute a criminal offence under the County Courts Act 1984 and/or the Administration of Justice Act 1970. This would be relevant to questions of fitness to hold a licence under the Consumer Credit Act, whether or not it resulted in prosecution.
- A.5 Furthermore, any practice which is liable or intended to mislead the debtor - whether as to the origin or authority of any document or as to any other material matter - is likely to be regarded by the OFT as deceitful or oppressive or otherwise unfair or improper within the meaning of section 25(2)(d) of the Consumer Credit Act, and therefore relevant to the question of fitness to hold a licence. That applies whether the practice is unlawful or not. Under section 25(2), the fitness of a licensee can be brought into question by the actions of

any of its employees, agents or associates, and section 25(3) defines 'associate' for these purposes as including a business associate.

- A.6 Section 136 of the County Courts Act makes it an offence to deliver or cause to be delivered to any person any document which was not issued under the authority of a county court but which, by reason of its form or contents or both, has the appearance of having been issued under such an authority. Section 135 of the Act makes it an offence to deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of a county court, knowing it to be false, or to act or profess to act under any false colour or pretence of the process or authority of a county court.
- A.7 Section 40(1)(d) of the Administration of Justice Act provides that a person commits an offence if, with the object of coercing another person to pay money claimed as a debt due under a contract, he utters a document falsely represented by him to have some official character or purporting to have some official character which he knows it has not. Section 40(1)(c) provides that he commits an offence if, with that object, he falsely represents himself to be authorised in some official capacity to claim or enforce payment.
- A.8 Section 40 of the Administration of Justice Act also provides for certain other offences in respect of the harassment of debtors, and section 1 of the Malicious Communications Act 1988 provides for an offence in respect of sending letters which convey a threat or false information with intent to cause distress or anxiety.
- A.9 A document may be in breach of the County Courts Act and/or the Administration of Justice Act even if it does not exactly resemble a court summons or other official document. Firms must take care to ensure that their documents do not, by reason of their form or contents or both, appear to have been issued by or under the authority of a court or other official body. They must also take care to ensure the accuracy of all statements contained in letters and other documents to consumers. All such statements must be capable of being substantiated in the event of a complaint. Documents must not mislead as to the nature of the processes involved or the likelihood of legal proceedings.
- A.10 If a firm is in any doubt as to whether the issue of a letter or other document would be likely to breach any of the above provisions, or to be regarded by the OFT as an unfair business practice, they should consider taking legal advice on the point. Their trade association, or local trading standards department, may also be able to offer advice.

Debt collection charges

- A.11 In the OFT's view, there is no legal basis for a creditor (or a debt collection agency acting on the creditor's behalf) to claim collection costs from a debtor in the absence of express contractual provision in the agreement between the debtor and the creditor. If there is no such provision, then collection charges cannot be demanded as a debt due under the agreement. If an agency claims an entitlement to recover charges pursuant to a separate agreement with the debtor, there must be a binding contract to this effect, with legal consideration (ie benefit) provided to the debtor. A letter served on the debtor merely informing him that he is liable to pay certain charges is not in the OFT's view such an agreement, regardless of whether it is signed by the debtor.
- A.12 The above applies to all credit agreements, whether regulated or not, although for regulated consumer credit agreements there is an additional reason why costs might not be recoverable. The Consumer Credit (Agreements) Regulations 1983 require inclusion in the credit agreement of an indication of any charges payable on default. If this is not included, the agreement is not properly executed, and so will not be enforceable against the debtor without a court order.
- A.13 It is the responsibility of creditors and debt collection agencies to ensure that they do not recover collection charges in the absence of an express contractual provision entitling them to do so. Furthermore, debtors should not be led or allowed to believe that they are legally liable to pay such charges where this is not the case. Failure to act in accordance with these principles is likely to be regarded by the OFT as an unfair or improper business practice within section 25(2)(d) of the Consumer Credit Act and thus relevant to the issue of fitness to hold a consumer credit licence.
- A.14 If there is any ambiguity in the debtor-creditor agreement as to whether it covers a particular charge, or as to the permitted amount of the charge, the OFT considers that this should be resolved in favour of the debtor as this is the approach likely to be adopted by a court in construing the agreement. Furthermore, even if collection charges are provided for in the credit agreement, where charges are levied which are of an unreasonable amount and/or are disproportionate to the main debt, this too may be regarded by the OFT as an unfair or improper business practice within section 25(2)(d) of the Consumer Credit Act. If firms are in any doubt they should consider taking legal advice.

B DEBT COLLECTION - UNFAIR PRACTICES (published Feb 2001)

- B.1 Consumer Credit Licences Guidance for Holders and Applicants was published by the OFT in February 2001 (OFT 329). Page 8 of this guidance gave examples of unfair debt collection practices. Details are as follows:
- B.2 The use and issue of documents to debtors, which resemble a court summons or other official document, or are intended to lead the debtor to believe that they come from or have the authority of a court ('look alike' letters).
- B.3 False representation of authority in an official capacity, in order to enforce payment from debtors, contrary to Section 40(1)(c) of the Administration of Justice Act 1970.
- B.4 Claiming collection costs from a debtor in the absence of express contractual provision in the agreement between the debtor and the creditor.
- B.5 Misleading or coercing debtors into believing that they are legally liable to pay collection charges where this is not the case, or where there is no such express contractual provision in the agreement between the debtor and the creditor.
- B.6 The use of oppressive or intrusive collection procedures.
- B.7 Acting in a manner in public intended to embarrass the debtor.
- B.8 Not being circumspect and discreet when attempting to contact the debtor whether by telephone or in person.
- B.9 Attempting contact with debtors at unreasonable times and at unreasonable intervals.
- B.10 Harassing debtors with demands for payment, which in respect of their frequency were calculated to subject debtors to alarm, distress or humiliation, contrary to Section 40(1) (a) of the Administration of Justice Act 1970.
- B.11 Disclosing to third parties, (especially neighbours, relatives or employers) the consumer's indebtedness.
- B.12 Pressuring debtors to sell property or to raise funds by further borrowing.

B.13 Falsely implying that criminal proceedings will be brought or that civil action has been instituted in default of payment, or falsely stating or implying that a judgment has already been obtained against the debtor.

C CONSULTEE LIST

Advertising Standards Authority
Alliance of Independent Retailers and Businesses
Association of Civil Enforcement Agencies
Banking Code Standards Board
Better Regulation Task Force
Birmingham Settlement Money Advice Services
British Bankers Association
British Chambers of Commerce
British and Irish Ombudsman Association
British Retail Consortium
Certified Bailiffs Association
Chief Trading Standards Officers
Citizen's Advice Scotland
Civil Court Users Association
Confederation of British Industry (all branches)
Confederation of Scottish Local Authorities
Consumers Association
Consumer Credit Association
Consumer Credit Counselling Service
Consumer Credit Trade Association
Consumer Policy Institute
Corporation of Finance Brokers Ltd
Council of Mortgage Lenders
Credit Card Research Group
Credit and Data Marketing Services Ltd
Credit Industry Fraud Avoidance Systems
Credit Services Association
Department of Trade and Industry
Department of Enterprise, Trade and Investment in Northern Ireland
Equidebt
Equifax Limited
Experian Limited
Federation of Information and Advice Centres
Federation of Small Businesses
Federation of Small Businesses (Northern Ireland)
Federation of Small Businesses (Scotland)
Federation of Small Businesses (Wales)
Finance and Leasing Association
Finance Industry Standards Association
Financial Services Authority
Financial Ombudsman Service

General Consumer Council for Northern Ireland
Independent Committee for the Supervision of Standards of Telephone
Information Services (ICSTIS)
Institute of Consumer Affairs
Institute of Credit Management
Law Society
Law Society of Northern Ireland
Law Society of Scotland
Local Authorities Co-ordinating Body of Regulatory Services (LACORS)
Lord Chancellors Department
Mail Order Traders' Association of Great Britain
Money Advice Association
Money Advice Liaison Group
Money Advice Liaison Group (Scotland)
Money Advice Scotland
Money Advice Trust
Mortgage Code Compliance Board
National Association of Bank & Insurance Customers
National Association of Citizen's Advice Bureaux (NACAB)
National Consumer Council
National Consumer Credit Federation
National Consumer Federation
National Council for Voluntary Organisations
National Debtline
National Federation of Consumer Groups
Northern Ireland Association of Citizen's Advice Bureaux
Office of Gas and Electricity Markets
Office of the Information Commissioner
Office of the Scottish Legal Services Ombudsman
Office of the Regulation of Electricity and Gas (Northern Ireland)
Office of Telecommunications
Office of Water Services
Scottish Association of Citizen's Advice Bureaux
Scottish Consumer Council
Scottish Executive
Sheriffs Association
Sheriffs Officers Association
Social Exclusion Unit
Society of Messengers-At-Arms and Sheriff Officers
Trading Standards Institute
Trading Standards Institute – Regional Co-ordinators
Under Sheriffs Association

Wales Office
Welsh Consumer Council

D CABINET OFFICE CODE OF PRACTICE ON WRITTEN CONSULTATIONS

The consultation criteria

- D.1 The criteria in this code apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- D.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.
- Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
 - It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
 - A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
 - Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
 - Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
 - Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reason for decisions finally taken.

- Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated. OFT's consultation co-ordinator is:-

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Room 5C/8
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Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Telephone: 020 7211 8308

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