



OFFICE OF FAIR TRADING

DEBT COLLECTION PRACTICES

January 2000

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A guidance note 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.

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1 DEBT COLLECTION PRACTICES

- 1.1 The Office of Fair Trading 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

- 1.2 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 Office has also received complaints regarding documents which it is alleged contain false or misleading information intended to coerce the debtor into paying.
- 1.3 The Office 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.
- 1.4 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 Office 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.
- 1.5 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.
- 1.6 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.
- 1.7 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.
- 1.8 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.

- 1.9 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 Office 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

- 1.10 In the Office'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 Office's view such an agreement, regardless of whether it is signed by the debtor.
- 1.11 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.
- 1.12 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 Office 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.
- 1.13 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 Office 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 Office 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.