

STATES OF JERSEY



DEBT COLLECTION AGENCIES: ESTABLISHMENT OF A WORKING PARTY

Lodged au Greffe on 7th June 2011
by Deputy M. Tadier of St. Brelade

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Minister for Economic Development –

- (a) to establish a Working Party to examine the current operation of debt collection agencies in Jersey and to consider the creation of a code of practice for such agencies to ensure that they operate according to best practice;
- (b) to appoint at least 2 States members as members of the Working Party and to take the necessary steps to appoint other members with relevant skills and experience, including representatives of the debt collection industry and representatives of groups representing the interests of consumers;
- (c) to present the report of the Working Party to the States once the Working Party has concluded its work.

DEPUTY M. TADIER OF ST. BRELADE

REPORT

Background

Early this year, it was brought to my attention that there was an alleged problem with the way in which certain local debt collection agencies had been acting. This led to me raising the matter with the Minister for Economic Development in the form of an oral question, on 1st March 2011¹.

The Minister confirmed that in the last 3 years, a total of 22 complaints and inquiries had been made to the Trading Standards Division of Economic Development, including a total of 11 relating to conduct. All of these 11 complaints related to one company. He also stated that there are 3 debt collection agencies in Jersey.

Following on from this, Channel Television broadcast a feature on 20th April 2011, in which they spoke to the Minister; Director of the Citizens Advice Bureau, Mr. Ferey; and an alleged victim of harassment.

It was stated that the Citizens Advice Bureau receives 2 complaints each month from people feeling harassed by [*name removed*] debt collectors. Mr. Ferey went on to say –

*'The complaints that we receive vary from having no empathy with the client's situation through to the charges compounding the person's debt problem, all the way up to aggressive behaviour and implied threats and **I think the best way to combat this would be to have a code of practice** so that when they operated outside of that code of practice there would be some repercussions.'*²

The alleged recipient of harassment ('Anna') by the debt collection agency said –

'I was suicidal; I was really in a bad way. I can understand why people get into a situation like this, when you've got somebody harassing you, the stress is even more and the pressure becomes so much. There was no reasoning on how much I could pay, there were numerous phone calls made to me, shouting, screaming, threatening that payments had to be made.'

Subsequent to the media reports, I received further contact from members of the public whose stories were consistent with Anna's. Some related to text messages and calls, late at night. Others related to very impolite phone calls and even cases of mistaken identity.

I was also contacted by Viberts Jersey Lawyers, who operate a debt collection agency called *Collect*. They were initially keen to establish that the complaints received were not about them, which was the case, and they advised me that they operate in accordance with UK best practice, which involves following the Code of Conduct as set out by the UK Credit Services Association's guidelines. This they do on a voluntary basis.³

¹ See Appendix 1

² See http://www.channelonline.tv/channelonline_jerseynews/displayarticle.asp?id=493904 for report, 20th April 2011

³ See Appendix 2

In a press release on 3rd May 2011, Viberts' managing partner and director of Collect Services Limited, Advocate Blomfield, said that she commended to the States and to the Minister, a Jersey Code of Practice for Debt recovery.⁴

'Debt collection is an important service. It not only supports the Island's business community but also helps people get back on their feet by arranging settlement of their financial difficulties. Jersey would benefit from a voluntary association of debt recovery agencies and a relevant Code of Practice. Given recessionary pressures, it is important that debts are collected efficiently and effectively, but in a way that will allow the debtor to manage their personal finances, this in turn will mean the debt will be repaid without further default.'

Proposition

There appears to be consensus from all parties involved, including the Minister, that a code of conduct for all local companies operating in the field of debt collection in the Island would be beneficial, both for the companies and for the increasing number of individuals who find themselves in debt. Whether adherence to the code of conduct would be voluntary or a legal requirement is a subject that can be discussed by the working group.

Composition of the Working Party

It is recommended that the Working Party be composed of a mixture of industry professionals, States Members, and representatives from community agencies such as the Citizen's Advice Bureau and the Consumer Council. Input from the Department of Trading Standards and the Community Relations Trust should also be sought.

At the time of writing, both the Citizen's Advice Bureau and Collect Services have signaled their willingness to serve on this working group, voluntarily.

Remit of the Working Party

The working party will initially examine the variety of issues relating to Debt Collection in Jersey, focusing on matters of best practice and how this can be achieved in the Jersey context. It will be up to the party to decide how it wishes to operate – whether it holds hearings, etc., but it would be hoped that a cross-section of experience would be called upon and that all stakeholders are given an opportunity to contribute in a meaningful way.

The ultimate aim of the working party will be to come forward with one or more recommendations, which should form the basis of a proposition to be lodged at the earliest possibility by the Minister, for States approval.

⁴ See Appendix 3 – Collect Services Ltd. Press release, 3rd May 2011

Financial and manpower implications

There should not be any costs arising from the adoption of this proposition. Membership of the working party would be on a voluntary basis. The only possible considerations would be for the 'notional cost' of departmental staff, in the eventuality that they are drafted onto the working party, and advertising costs, should there be a 'call for evidence'. In the eventuality that the latter is required, the cost for 2 nights' advertising in the JEP will be in the region of £485 (based on comparable quotes for Scrutiny adverts).

APPENDIX 1

Extract from Hansard, 1st March 2011

2.7 Deputy M. Tadier of St. Brelade of the Minister for Economic Development regarding complaints against the conduct of Jersey debt collection agencies:

Will the Minister inform Members how many complaints have been made to his department against the conduct of Jersey debt collection agencies over the past 3 years?

Senator A.J.H. Maclean (The Minister for Economic Development):

The Trading Standards Division of Economic Development has received a total of 22 complaints and inquiries relating to debt collection agencies in the last 3 years. Of those a total of 11 complaints could be said to be about conduct.

2.7.1 Deputy M. Tadier:

That is useful. Could I ask if the Minister has, of those 11 in particular, how many of those related to one company?

Senator A.J.H. Maclean:

I believe that all 11 related to one company. There are in fact 3 companies in this particular field and the 11 complaints are, I believe, relating to one of those.

2.7.2 Deputy M. Tadier:

If I just read a quote from an e-mail I received yesterday night, and ask the Minister for his opinion, it is a very short quote: "I was recently contacted at my workplace by an employee of the company and without warning the person launched into a tirade of demands for immediate cash with a very real threat of legal action and police action if payment was not received that very afternoon despite the fact that I was not the person to whom that person should have been talking." Does the Minister agree that this kind of behaviour is completely unacceptable and could he say what safeguards there are in place to make sure that these 11 complaints against the same company do not grow?

Senator A.J.H. Maclean:

All businesses in Jersey have a responsibility to trade fairly and I would certainly agree with the Deputy, the email and contents of which he has read, assuming that is as said, are unacceptable behaviour. I would suggest that he has or directs anybody who has concerns about debt collection agencies or any business trading in the Island that is perceived to be unfair in the first instance to the Consumer Council. They have, I know, in the past... Senator Breckon has dealt with a number of issues in this particular area, and they are the agency to raise awareness and to best deal with such matters, certainly in the first instance.

2.7.3 Deputy M.R. Higgins:

Would the Minister elaborate on the level of complaints and context, and could he also confirm whether the debt collectors are licensed and if they are not does he think there should be a licensing scheme?

Senator A.J.H. Maclean:

I am not going to stand here and start going through the details of individual cases. There are a range of complaints which have been registered with Trading Standards. Trading Standards, as a matter of course, investigate each and every complaint that is received and they have spoken to the company in question about the range of different complaints in this particular area. As far as licensing is concerned, companies that are debt collection agencies are not licensed currently in Jersey; in the U.K. (United Kingdom) they would be. They are licensed in the U.K. under the Office of Fair Trading, under the Consumer Credit Act; that is not applicable in Jersey. The only other point that I would add is that we have just completed a consultation on the unfair trading practices potential legislation and, indeed, I will be bringing forward at the conclusion of that particular Green Paper, and that is an area where some additional protection to consumers would be most appropriately targeted.

2.7.4 Deputy M.R. Higgins:

If I could just come back on the Minister's question. I was not asking for specific examples for individuals, but I would like to know the type of conduct that has been carried out by these organisations.

Senator A.J.H. Maclean:

I am happy to circulate general details of the nature of the types of complaints anonymised to the Member if he would like.

2.7.5 Senator F. du H. Le Gresley:

I am aware from my previous job that there were many complaints about debt collection practices in Jersey and I urge the Minister, would he consider introducing regulation of people who wish to set themselves up as debt collection agents and also would he consider releasing a code of conduct modelled on the one that is issued by the Office of Fair Trading?

Senator A.J.H. Maclean:

I think the best way to answer the Senator's question is that we will progress the unfair trading practices legislation, we will see the assessment of that consultation and see if, indeed, that will provide some additional protection. Regulation is a more difficult area to deal with in this particular matter, but I do think the Senator raises a very valuable point with regard to a code of practice, and I think an area which is targeted with a code of practice would be useful. Indeed, there is a code of practice, which the Senator is probably familiar with, with regard to consumer lending, which was introduced about 18 months ago and has been quite useful. I think we could look at a similar model here, but I would emphasise that the first port of call and the most important, as we stand at the moment, is raising public awareness of challenges and

issues in this area and the Consumer Council is the place to target as far as that is concerned.

2.7.6 Deputy M. Tadier:

I have got 2 but I think I will have to stick to the most urgent one. Can the Minister confirm that it is not best to go directly to Trading Standards because presumably anyone who goes to the Consumer Council is going to have to refer any complaints to the Trading Standards Department anyway, so can the Minister just clarify why one should not go directly to Trading Standards to make complaints?

Senator A.J.H. Maclean:

No, the Deputy is correct. It is quite appropriate to speak to Trading Standards to raise a complaint. The connection with the Jersey Consumer Council is quite simply that I am keen that if there is a problem in this area that public awareness is raised about such matters and clearly the Consumer Council would have that role.



Credit Services Association

1. General Conduct

Each member shall act responsibly and with integrity in the day-to-day conduct of its business. For example:

- a) Conduct its business lawfully, comply with all relevant UK legislation, regulation and judicial decisions and trade fairly and responsibly.
- b) Conduct its business under a name, title or style which will not confuse or mislead clients, creditors, debtors or members of the public, or which will not imply any association with other organisations or persons, which do not exist.
- c) Comply with this Code of Practice and follow any guidance notes issued by the Board of the Association.
- d) Comply with Debt Collection Guidance as Published by the Office of Fair Trading from time to time.
- e) Where appropriate, comply with guidance issued by OFCOM, with particular regard to 'silent calls'.
- f) Follow where appropriate any requests conveyed to members by the Board of the Association or the enforcement authorities.
- g) Provide adequate training for members of its staff, bringing to their attention the principles of this Code and requiring them to carry out their duties in accordance with it. Also, ensure continuous and appropriate training of staff in respect of current legislation and best practice.
- h) Use plain English in all communications.
- i) Show on all letters, postcards and forms the full business address, telephone number and email address, where used.
- j) In all contacts by staff or agents, ensure that the member's identity is clearly disclosed.
- k) Ensure by continuously examining debt collection procedures, and those of any third parties employed, that they conform to the highest ethical standards.
- l) Ensure that their agents, sub-contractors and subsidiaries comply with the Association's Code and Guidelines.
- m) Comply with all reasonable requests by debtors, clients or their appointed representatives for information concerning their agreements and accounts.
- n) Ensure the Association's Code is available on their own website where they have one. They shall further ensure that a copy of the Code is supplied promptly upon request.

2. Confidentiality

Members must keep in strict confidence any information supplied by the debtors or their chosen third party, except where disclosure is authorised by the debtor or others permitted or required by law.

3. Complaints

- a) Each member shall have in place adequate processes to deal with debtors or client complaints, this must contain the following minimum procedure:
 - I. The Management level at which complaints are handled.
 - II. The time frame in which complaints are handled.
 - III. The remedy, if the complainant is not satisfied.
 - IV. Complainants must be advised that one of the remedies is referral of the complaint to the Association where appropriate.
- b) Members shall deal with complaints speedily, responsively, in a user-friendly fashion and at an appropriate management level.
- c) Member's complaints procedures must be made available to the complainant or his/her advisor on request.
- d) For Consumer Credit Regulated Complaints, Members must follow the DISP Rules set by the Financial Ombudsman Service.
- e) If a complaint is made to the Association in relation to dealings with a member of the Association, the Association will deal with the complaint in accordance with the published complaints procedure.

4. Debt Collection & Default Guidelines

The following list of guidelines is intended as an indication of the procedures to be adopted by members. It is not intended as an exhaustive directive to members.

Moreover, the effectiveness of collection techniques and procedures depends on the circumstances applying at the time collection is attempted and so cannot be regulated in an absolute manner. Nevertheless, the Association expects compliance with the guidelines and any member not so complying will have to give a justifiable reason for non-compliance in the event of a complaint being received by the Association.

Guidelines overleaf

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Debt Collection & Default Guidelines

In attempting to carry out collection in default of payment, members of the Association should:

- a) Not use oppressive or intrusive collection procedures.
- b) Not bring unreasonable pressure to bear on the debtor in default of payment.
- c) Not act in a manner in public intended to embarrass the debtor.
- d) Be circumspect and discreet when attempting to contact the debtor by telephone, SMS, email or by personal visit, with due regard to the Data Protection Act and OFT Guidance.
- e) Ensure that all attempted contacts with debtors are made at reasonable times and at reasonable intervals.
- f) Unless instructed otherwise, accept all reasonable offers by debtors to pay by instalments, provided acceptable evidence of non-ability to pay is given.
- g) Not use improper* means to obtain the telephone number and address of a debtor and treat all information supplied as private and confidential unless specific authorisation has been given by the debtor to disclose information to third parties. (*Improper in this connection would refer to actions in breach of relevant legislation or in breach of the Association's code.)
- h) In respect of 4g above, have specific regard to Section 55 of the Data Protection Act 1998.
- i) Not pressurise debtors to sell property or to raise funds by further borrowing.
- j) Not falsely imply by written or verbal means that criminal proceedings will be brought, nor that civil action has or will be instituted where members are unable to do so due to legal restrictions.
- k) Ensure that collectors who use pseudonyms can be identified within the members organisation.
- l) Have due regard and deal sensitively with individuals where evidence has been given, or is apparent, that the individual is incapacitated by mental or physical disability.
- m) When dealing with fee charging debt advisory services, follow the Office of Fair Trading Guidelines on debt management.
- n) Offer maximum co-operation with the debtor's nominated or chosen Third Party. Where the Third Party is an accredited advisory service, and at first appointment and upon request, give a period of up to 30 days 'grace' before re-commencing collection activity.
- o) Encourage debtors in financial difficulties to inform members of their difficulties and then respond sympathetically and positively on the evidence provided.

- p) Take into consideration before determining whether to enforce repayment, all information supplied in relation to the reason for non-payment, which may include The Common Financial Statement, or the debtor's future ability to repay. If the debtor has disclosed multiple debt problems, inform them of the availability of accredited advisory services. Where available, provide in all relevant correspondence the name or designation of a specially trained member of staff who may be contacted regarding financial difficulties.
- q) Where a debt or the sum owed is disputed, as soon as is practicable, supply information to the debtor in support of the claim. Where no information has been supplied by the creditor, obtain the required support, or failing that cease collection action.

5. Trace Guidelines

Each member shall:

- a) In all contact, be circumspect and act with full regard to the Data Protection principles.
- b) Take all possible steps to verify that the person traced is in fact, the debtor.
- c) Verify data relating to a debtors whereabouts via one or more of the following methods:
 - I. Public databases.
 - II. Sending soft letters.
 - III. Contacting other people.
 - IV. Investigative/Field enquiries.
- d) Cease contact should it become apparent that the located person is not the debtor, and carry out further checks.

6. Purchased Debt Guidelines

Each member shall:

- a) Timely advise the consumer that the debt has been assigned.
- b) Adhere to all relevant requirements under the Consumer Credit Act 2006 and any other relevant legislation.
- c) In debt collection or trace activity comply with all the principles of this code.

7. Conduct Regarding Clients

Each member shall:

- a) Ensure fairness and transparency of contracts made with clients.
- b) Inform their clients of the true rates of charges for services rendered.
- c) Safeguard the security of collected monies.
- d) Account and remit to their clients at least once a month, or as otherwise agreed all monies collected.
- e) Ensure that by prior arrangement clients are able to visit their premises for the purpose of auditing and checking their accounts.
- g) Not approach, induce or persuade staff in the employment of a client to join the Member's organisation, although nothing in this clause will prohibit the engagement by a member of such an employee where a bona fide application is made.

Credit Services Association Revised March 2009



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



Tuesday 3rd May 2011

Advocate Blomfield supports Jersey Code of Practice for debt collection

In response to recent publicity about debt collection malpractice, Advocate Zoe Blomfield, Viberts' managing partner and director of Collect Services Limited, commends to the States and Economic Development Minister Alan Maclean, a Jersey Code of Practice for Debt recovery.

Advocate Blomfield emphasizes:

“Collect Services have recovered over £10 million for local businesses and traders. Debt collection is an important service. It not only supports the Island's business community but also helps people get back on their feet by arranging settlement of their financial difficulties. Jersey would benefit from a voluntary association of debt recovery agencies and a relevant Code of Practice. Given recessionary pressures, it is important that debts are collected efficiently and effectively, but in a way that will allow the debtor to manage their personal finances, this in turn will mean the debt will be repaid without further default.”

Advocate Blomfield met with Deputy Montfort Tadier recently to lend Collect Services' support to a question he is to put to the House at the earliest opportunity calling for a working party to address issues of regulation and licensing of the debt collection industry. This party would include consumer representation from the Citizens Advice Bureau, Jersey Consumer Council and Trading Standards. Collect Services suggest the group, which would also include JFSC and Jersey-based debt recovery agencies, use the UK Credit Services Association's guidelines as the base model for Jersey debt recovery practices. Collect Services Limited is registered with, and adheres to, the UK Credit Services Association's (CSA) stringent Code of Practice.

END

Advocate Zoe Blomfield and Advocate Rose Colley are available for further comment

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