

**Office of Fair Trading**

***Debt collection: OFT guidance for all businesses engaged in recovery of consumer credit debts –  
Supplementary Consultation (OFT1399con)***

**A Response by Credit Action**

**Background**

Credit Action is a national money education charity (registered Charity in England & Wales No. 1106941) established in 1994.

We offer a range of resources, tools and training to help everybody handle their money well, and to inform consumers so that they can make informed decisions about their personal finances.

Credit Action operates at a national level through advocacy, collaboration and partnerships with various groups and companies as well as at a local level through a variety of targeted projects, with a particular emphasis on those most vulnerable to financial difficulties and over-indebtedness. Through its work Credit Action reaches over 650,000 UK citizens every year.

We try and help as many people as possible avoid the pain of debt. However we recognise many contacting us will be in trouble already, so we work in partnership with the major debt counselling charity the Consumer Credit Counselling Service (Registered Charity No. 1016630).

## **Introduction**

Credit Action is committed to supporting consumers by helping them to develop the skills necessary to manage money effectively. We also work with members of the credit industry in order to promote best practice and improve outcomes for consumers, for example through our Quality Marking initiative (whereby we undertake an independent audit of a participating creditor's processes and correspondence). Consequently, we take a keen interest in the OFT's efforts to establish clear regulatory standards for the credit industry, and submitted a response to the OFT's original consultation on its draft Debt Collection guidance last year. We therefore welcome the opportunity to comment on this supplementary consultation on the issue of continuous payment authority.

Continuous payment authority is one of the most contentious issues facing the industry today. While we recognise that, if used responsibly, the system can be a flexible one that may potentially benefit consumers (for example, allowing someone whose wages are unexpectedly delayed to arrange for a creditor to collect a scheduled repayment on a different day), if the power granted by continuous payment authority is abused it can cause enormous detriment and prospectively lead to severe financial difficulties. Defining what actually constitutes the act of "misusing a continuous payment authority", as this consultation seeks to do, is therefore of paramount importance.

In general we are very supportive of the approach taken by the OFT, and largely agree with the definition of the misuse of continuous payment authority laid out in the draft guidance. There are some amendments that we feel could be made to certain sections, although in our view the most important concern is that the guidance is clear and there is as little ambiguity as possible. In order to discuss these issues we have focussed our response on answering Question 3.

## **Question 3: Do you have any other suggestions for improvement?**

In addressing this question, we will initially focus on the two bullet points at the beginning of paragraph 3.9m. The first of these defines the following as constituting the misuse of continuous payment authority:

- debiting a debtor's account other than on a date or dates as expressly set out in the relevant agreement, unless otherwise **specifically agreed** with the debtor subsequent to the agreement having been concluded (for example, where an alternative repayment plan has subsequently been agreed between the creditor and the debtor).

We agree very much with the principle outlined in this section, and feel that in the vast majority of circumstances it is unreasonable for creditors to use continuous payment authority to withdraw money from a debtor's account at a point in time that has not been specifically agreed.

There may be some very limited instances in which this sort of behaviour might be justified, primarily concerning cases in which debtors have deliberately broken off contact with a creditor. In such situations, if the debt owed is comparatively small, recourse to traditional enforcement

mechanisms through the county court system may not be viable for a creditor given the costs involved. Therefore, attempting to debit an account on a date that has not been previously agreed might be viewed as a more feasible way of encouraging a non-communicative debtor to engage.

However, in our view there would need to be strict conditions attached to using continuous payment authority in this way, in order to ensure that it is not abused. For one, it would need to be made clear that in order for this sort of behaviour to be acceptable, it must be undertaken only as an absolute measure of last resort, after persistent attempts to engage with the debtor can be demonstrated. Furthermore, should the action be successful in prompting the debtor to get in touch, we believe there should be an obligation on creditors to repay the money immediately if the debtor states that withdrawal of funds has created financial difficulty. Once the debtor has engaged, giving the creditor the opportunity to agree new repayment terms, there would be little justification in holding on to the withdrawn funds if this caused immediate distress.

The OFT may want to consider these issues in the final version of its guidance around the misuse of continuous payment authority. However, we do recognise that references to such specific circumstances and conditions may be very difficult to write in to regulation. Moreover, without agreed definitions of what constitutes, for example, sufficiently “persistent” attempts to engage with a debtor, changes such as these might introduce ambiguity which could ultimately be used to justify the abuse of continuous payment authority. Therefore, unless the OFT judges that it can incorporate these amendments in a straightforward and unambiguous manner, the safest decision on balance may be to maintain the current wording of the guidance. As outlined in our introductory comments, we believe that clarity within the guidance is the most important factor as it ensures that both debtors and creditors can be confident in where they stand.

Subsequently, the second bullet point in paragraph 3.9m of the draft guidance goes on to define the following as the misuse of continuous payment authority:

- debiting lesser or greater amounts than those expressly set out in the relevant agreement unless debiting of such amounts has been **specifically agreed** with the debtor subsequent to the agreement having been concluded (for example, where an alternative repayment plan has subsequently been agreed between the creditor and the debtor).

We entirely support this provision and the proposed language, and feel that there can be little justification for attempting to withdraw more or less than an amount that has been previously agreed with the debtor.

From a creditors’ perspective, it might be argued that if an attempt to withdraw the agreed amount should fail, it would be reasonable to try and debit a lesser amount in order to recover some of the money due.

In our view however, if an attempt to withdraw the full amount should fail, this ought to be seen as an indication of financial difficulty on the part of the debtor. This is the approach implied by the current draft guidance, which states in the box on page 3 that “If a debtor is, or appears as if he may be, experiencing difficulties meeting repayments (for example, because an attempt by the creditor to recover a repayment is unsuccessful), we would expect the creditor ... **to exercise forbearance**”.

In such circumstances the creditor's first response should, in our opinion, be to attempt to make contact with the debtor in order to clarify their situation, rather than seeking to recover a portion of the debt owed. We recognise that some attempts to debit agreed repayments will fail for reasons other than financial difficulty. However, even in these instances, if creditors seek to make contact with debtors in the first instance it provides an ideal opportunity to arrange for payment to be made on a different day or to agree a new repayment schedule.

We therefore feel that the language currently proposed in the second bullet point should be maintained.

Furthermore, we are very supportive of the rest of the proposed draft guidance which follows on from the two bullet points that open paragraph 3.9m. In our opinion the suggested provisions, including those which prohibit creditors from making recurring attempts to recover a single repayment and from including terms in contracts which facilitate the misuse of continuous payment authority, offer clarity for creditors and valuable protection for debtors.

Equally, the proposed paragraph 3.9n which explicitly prohibits creditors from debiting an account without the express authority of the account holder, is in our view a helpful addition to the guidance. This provides a clearer definition of misuse than is supplied in the existing guidance, with the boxed section that follows adding useful further detail, and we agree that it should be incorporated in the form outlined in the draft guidance.

### **Contact**

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