creditaction
Better thinking about money

Office of Fair Trading

Debt collection: Draft OFT guidance for creditors, debt collectors, law firms and other businesses engaged in recovery of consumer credit debts (OFT664con)

A Response by Credit Action

Background

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

In January 2009 we also created our dedicated Welsh arm, Credit Action Cymru.

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).

creditaction
Better thinking about money

Opening Comments

As an organisation which takes a keen interest in regulatory and consumer affairs, Credit Action welcomes the opportunity to comment on the Office of Fair Trading's draft Debt Collection guidance. A number of members of our core staff have previously worked as debt advisers for the likes of the Citizens Advice Bureau and Consumer Credit Counselling Service, and so have significant front-line experience of many of the issues associated with debt collection procedures.

Moreover, we have developed a Quality Marking scheme for creditor correspondence, whereby we audit the communications that participating creditors send to debtors to ensure that this meets acceptable standards, and is not unduly complex or intimidating. In doing so, we have made considerable use of the OFT's existing guidance on Debt Collection and Irresponsible Lending (as well as other material such as the guidance on the use, format and content of standard Debt Collection Letters produced jointly by the OFT, Credit Services Association, and Debt Buyers and Sellers Group), and so have developed a level of familiarity with the practical implications of these documents.

We are pleased that the OFT has sought to strengthen its existing Debt Collection guidance, and believe that in general the draft document which forms the basis of this consultation is well-intentioned, extensive and robust. We note in particular that the draft guidance extends certain definitions of Unfair Business Practice when compared with the previous 2006 update, and that it also seeks to tackle a broader range of issues than is currently covered by the existing guidance including debt sale and purchase, data handling, and mental capacity. For us, these are all positive steps.

We would, however, like to make a few points regarding particular areas of the guidance that we think could be strengthened further. These concern specific issues to do with debt sales that we feel are not fully addressed in the draft guidance as it stands, as well as a few comments regarding communications. For this reason we have focused our response on Questions 8 and 14 of the consultation, which deal with certain aspects of Chapters 2 and 3 respectively.

Chapter 2

Question 8: Does the section "License holders' responsibility for third parties" clearly convey our expectations?

Paragraphs 2.6 and 2.7 state that if a licensee chooses to do business with a third party, they may be at risk of losing their license if the third party in question engages in misconduct. There is a clear expectation that, when dealing with third parties, the licensee should take care in the selection process, investigate complaints, and implement effective action in the event of problems to ensure that these do not recur.

However, the draft guidance is not currently explicit as to whether the notion of "doing business with" a third party encompasses the sale of debt. When a creditor decides to sell a debt on to a third party business, we would assume that the expectations laid out in paragraphs 2.6 and 2.7 would

apply to the selection process. The guidance subsequently goes on to imply (in paragraph 3.17) that, once the sale is complete, the business which has purchased the debt then in effect becomes the creditor and takes on the relevant responsibilities. In our opinion however, an explicit clarification of this situation in the final guidance would be very helpful.

Furthermore, we also feel that there is a possibility for confusion in instances where the original creditor undertakes due care in selecting a third party to sell to (thereby meeting the expectations laid out in paragraphs 2.6 and 2.7, which we currently assume apply), but the purchaser then goes on to behave unacceptably subsequent to the sale. In such circumstances, we are concerned that the draft guidance is not clear as to whether the original creditor's license will be at risk.

The implication of the draft guidance could be read as being that, once the sale is complete, the purchaser takes on full responsibility, and that any misconduct after this point will only reflect on their own fitness to hold a license and not that of the original creditor. However we think that it would be helpful for the final guidance to include an explicit statement clarifying this. Otherwise, we feel that there may be a potential risk of consumer detriment.

If such a situation were to occur, and a consumer were to suffer as a result of the misconduct of the purchaser, we are concerned that it may be unclear as to who is ultimately liable – would this be just the purchaser, or would the original creditor be implicated as well? In our opinion, it is in the interests of consumers for any such uncertainty to be minimised in the final guidance, as this removes the possibility that a lack of clarity could be exploited by rogue actors looking to evade their responsibilities.

We therefore believe that an explicit statement concerning instances where third parties are subjected to adequate checks by a creditor before a sale but behave inappropriately afterwards, which makes clear precisely who is ultimately responsible and at risk of losing their license, would be useful and would help further strengthen the draft guidance.

Chapter 3

Question 14: Do you have any other suggestions for improvement?

We are pleased that the OFT has maintained and in certain cases broadened the definitions of Unfair Business Practices in Chapter 3 of its draft guidance, compared with the most recent update in 2006. We would however make three comments regarding the standards for Communication laid out in paragraphs 3.1 and 3.2.

Firstly, in our experience creditors can sometimes assume too much knowledge on the part of debtors in their correspondence, which can lead to them becoming confused by communications. This is particularly the case when concepts which may be unfamiliar to many debtors, such as the sale of debts to third parties for example, are discussed.

We recognise that there are a number of sub-sections within paragraph 3.2 that cover this sort of behaviour to some extent, including prohibitions against:

- leaving out or presenting information in such a way that it creates a false or misleading impression or exploits' debtors lack of knowledge (sub-section 3.2b)

- unnecessary and unhelpful use of legal and technical language, for example, use of Latin phrases (sub-section 3.2e)

However, we wonder whether these provisions could be usefully strengthened in some way, perhaps by requiring creditors to make some kind of "assumption of minimum knowledge" when formulating their communications. This would require them to explain things in simple and informal language in all their correspondence, thereby going beyond the draft guidance to simply avoid the use of overly technical terms or refrain from deliberately exploiting debtors' lack of knowledge.

Secondly, we feel that it can be beneficial for creditors to signpost debtors towards free sources of debt advice in their correspondence. We know that debtors who find themselves in particularly difficult situations can panic and sometimes make the wrong decisions about how to deal effectively with their debt problems. Some form of signposting towards free advice can be useful in this context as it provides clear instructions about where debtors should go if they need help. This is something we are seeking to promote through our Quality Marking scheme. We of course recognise that the OFT's final guidance is not supposed to be prescriptive in terms of laying down precisely what should and should not be included in creditors' communications. However, given the clear benefits that such signposting can offer to debtors who are in particular distress we wonder whether it may be in consumers' interests to include some level of "soft" encouragement, or at least a brief acknowledgement of the positive benefits that this can have, in the final guidance.

Finally, we would like to make an additional point about instances where creditors send out communications through subsidiary companies. In the course of our Quality Marking work, we have encountered situations in which creditors issue correspondence through several different subsidiary companies. While these may be wholly owned by the creditor, they do have different names, logos and even addresses which all appear, for instance, on letterheads. From the perspective of a debtor receiving such communications, we are concerned that the fact correspondence appears to be coming from an entirely new organisation could potentially cause confusion and even distress. It may, for example, give the impression that a debt has been escalated and transferred to an external collection agency, when in fact all that has happened is that a subsidiary company has taken on responsibility for the debt (effectively an internal transfer). This is something that we feel undermines the clarity of the process, potentially to the detriment of the debtor.

In order to address this, we wonder whether the final guidance could include an explicit provision requiring communications to clearly inform debtors of the following in such circumstances:

- That the debt has been transferred, and that this is the reason that communications appear to be coming from a new organisation

- Whether the company that the debt has been transferred to is an internal subsidiary or an external agency

We feel that this sort of provision would be helpful in ensuring that there is sufficient clarity for the debtor around the status of their debts, and around the exact identity of the organisation that they are dealing with.

Contact

For further information please contact Richard Talbot or John Davies at Credit Action, either by email at office@creditaction.org.uk or by telephone on 0207 380 3390.