



**Consumer  
Focus**  
Campaigning for a fair deal

# **Consumer Focus response to OFT consultation on debt collection guidance**

**June 2011**

# About Consumer Focus

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Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

## Overview

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This update of the debt collection guidance is very important, coming at a time when the problems of over-indebtedness and consequent default are matters of major national concern. The BIS report 'Over-indebtedness in Britain: Second follow-up report' (March 2010) found that in 2008/09 almost a tenth (nine per cent) of households were in 'structural arrears' (ie more than three months behind with any bill or payment). This figure doubled to nearly a fifth (18 per cent) for those in the lowest income band (gross annual household income of less than £13,500).<sup>1</sup>

Furthermore, we particularly welcome the recognition in the guidance of the growth of the debt sale and debt purchase sector in recent years. We very much support the guidance being updated to deal in more detail with this aspect of debt collection.

Our own review of the debt sale and purchase market, completed in early 2010, indicated that this was a rapidly growing industry, although the lack of data regarding the amount of debt sold made it very difficult to gauge accurately the size of the market and the level of recent increase.<sup>2</sup> Consumer Focus commissioned this review to provide us with an understanding of the debt purchase and debt collections industries in the UK.

There is currently no requirement on debt sellers, debt purchasers or debt collection agencies to report the amount of debt sold or subject to third party collection. Given that the OFT, rightly, classifies debt collection and debt purchase as 'high risk credit sectors' for the purposes of licensing (para 1.5 page 16 of the guidance), we consider that this sector should be required to provide data to the OFT regarding the size and nature of its business and the numbers of complaints/disputes regarding inaccurate data.

In our review, debt management and debt advice experts, Nick Pearson from Paymex Group and Deborah Shields from the Money Advice Trust respectively, indicated they felt that debt collection standards had been adversely affected by the increase in debt purchase. This was attributed in part to debt purchasers not being subject to the same level of reputational risk as the original lender in terms of their debt collection practices. It

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<sup>1</sup> BIS, Over-indebtedness in Britain: Second follow-up report, 2010 <http://bit.ly/eHvpZ0>

<sup>2</sup> Unpublished report, Selling on Debt: Review of the Debt Purchase and Debt Collection market, prepared for Consumer Focus by Gill Wales, Gill Wales research, January 2010.

is therefore essential that the original lender will also be subject to scrutiny if the debt purchaser or their agents are found to have acted in breach of the guidance.

Clearly this must also be the case where the lender or purchaser uses a debt collection agency to recover the debt. We feel strongly that any organisation selling on debt or passing on debt for collection should remain accountable.

The inaccuracy of data was also an issue that the review suggested as an explanation for the problems arising in this sector and we are pleased to see the more detailed attention given to this issue by the revised guidance.

Overall, when we looked into this area we found significant information gaps in relation to debt sale and purchase, despite anecdotal reports in the media of bad practice in this sector. In view of the concerns raised about the impact of debt purchase on consumers, we suggest that this is an area where an OFT review of the market would be appropriate in order to investigate the actual level of consumer detriment in this area.

## Comments on the guidance

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### Foreword and introduction

We find these sections clear and easy to understand. We support the clarification regarding the scope of the provisions applying to **all** those engaged in the debt recovery process. It is crucial that those selling on debt, or engaging third parties to recover it, understand that this does not relieve them of responsibility and their licence may be in question if breaches of the guidance occur. We note and agree with the OFT's classification of this as a 'high risk credit sector'.

### Overarching principles of fair business practice

We are in firm agreement with the provisions of this chapter. We are fully supportive of the provisions regarding licence holders' responsibility for the actions of third parties. In view of the possible problems associated with some debt collection practices, we believe the guidance should make clear that this includes debt purchase organisations as well as debt collection agencies.

We appreciate the OFT does not want to be overly prescriptive regarding third party selection, but we consider the guidance could be more detailed in this regard.

### Unfair or improper business practices

This section demonstrates the many ways in which some debt collectors have taken advantage of consumers, often to the considerable alarm and distress of the individuals concerned, as well as to their financial disadvantage. While we appreciate that the OFT has tried to be as comprehensive as possible in describing the behaviours it considers unfair or improper, it will never be possible to capture all the practices that unscrupulous debt collectors will seek to use.

Given the propensity of unprincipled debt collectors to find ways to circumvent regulatory provisions, we would suggest that there is an introduction to this section which repeats and elaborates on the paragraph in the foreword regarding the guidance not being

exhaustive. Alternatively, it might be possible for this to form part of the previous chapter regarding overarching principles of fair business practice.

The final example given under paragraph 3.4.b of **'False representation of authority and/or legal position'** is of falsely implying or stating that goods can be taken without specific authorisation of the court. We understand that the legal position in Scotland may differ slightly in relation to hire purchase and conditional sale agreements. It should be ensured that the situation in Scotland is adequately covered under the guidance to prevent behaviour of this nature.

Under **'Physical/psychological harassment'**, we agree strongly with the inclusion of paragraphs 3.6.e and 3.6.f which state that failure to pass on an adequate history or accurate data will be considered harassment where it results in an individual being contacted inappropriately or pursued on an incorrect basis (ie wrong person, debt does not exist, incorrect amount). This demonstrates to lenders that they must address issues of accuracy when selling on loans or instructing third parties to collect them.

We note that paragraph 3.6.g does not require the creditor to inform the debtor of transfer of a debt with any given timescale. We consider that the creditor should be obliged to inform the debtor of the transfer of the debt within a maximum of seven days (once the debtor has been located/identified).

We suggest that paragraph 3.6.h should be clarified to include *'intimidating or pressurising debtors to pay in full, in unreasonably full instalments etc'*.

Paragraph 3.6.s states that it would be considered harassment to take steps to repossess the debtor's home other than as a last resort. We agree with this provision, but feel it should go further in setting out what is meant by a 'last resort'. It is our view that a 'last resort' must only refer to a situation where it has been established that the borrower is wilfully refusing to pay, rather than where the borrower is unable to pay. There is considerable concern about the recent increase in the use of charging orders and orders for sale to enforce low value debts. Moreover, the threat of a charging order or order for sale can often force borrowers to make unrealistic offers to repay (as recognised by paragraph 3.6.r, which is a very welcome provision).

As we have said in previous consultations regarding the use of repossession to enforce unsecured debts, charging orders and orders for sale should only be used against an individual's home in circumstances where it has been impossible for the creditor to obtain repayment of the debt by any other means. The burden should be on the creditor to prove that they have taken all other reasonable options to obtain repayment, but the debtor has been in persistent default and unwilling to engage with repayment of their debt. The creditor should also be required to show that it was not reasonable for them to pursue any other methods of enforcement available through the courts. We also strongly support the introduction of a £25,000 minimum threshold for charging orders and orders for sale, a measure which is currently being consulted on by the Department for Business, Innovation and Skills (BIS).

In relation to **Debt collection visits**, we note that a large part of the guidance is in a separate Annex and we question why the guidance has been drafted in this way. It is of particular concern to us that an initial visit without adequate notice would not necessarily be considered unfair. In our view this gives undue scope for debt collectors to take advantage of vulnerable consumers. We do not understand why it would not be possible for the debt collector to give the debtor adequate notice.

The guidance goes on to state that 'adequate' notice will depend on the individual circumstances. As stated above, we do not understand why the debt collector requires this degree of flexibility and adequate notice should be a minimum of seven days. Our concern regarding the initial visit being used to the disadvantage of vulnerable consumers

is further compounded by the guidance implying that it would be permissible for the debtor to discuss their debt with the collector at the initial visit. We feel strongly that the collector should be required to arrange another date with the debtor to have a full discussion about the debt.

If the guidance is not strengthened in this regard, then, at the very least, the guidance must make clear that it is incumbent on the debt collector to make clear to the debtor that:

- they do not have to discuss the debt on that occasion
- they can request another visit on a future occasion to discuss the debt

## Debt sale and purchase

As we stated above, our review indicated that there were issues that needed addressing in relation to debt sale and purchase and the inaccuracy of data. We are pleased to see this area being specifically dealt with in the updated guidance. The responsibility of the creditor to ensure the accuracy of data, or any other information passed on, is made clear by these provisions. We would also like to see each party being required to give a clear and sufficient explanation of how the amount claimed has been calculated. However, we feel it should be made explicit that when a debt is sold on and/or contracted out for collection, the original creditor may find their own licence at risk if the practices of the purchaser or collector are found to breach the guidance. Furthermore, as stated at the outset of this response, we consider that an OFT investigation into the nature and extent of this market is warranted. We believe that reputational regulation would be a powerful tool in this market. The naming and shaming of firms that sell on debts to companies that engage in unfair or unscrupulous practices would be a considerable deterrent to companies seeking to retain their brand image with consumers.

## Regulatory compliance and enforcement

A strong enforcement regime is clearly essential to ensure compliance with the guidance. We believe that the OFT and/or local Trading Standards should take a pro-active approach to monitoring and enforcement in this area. We also feel that there is a role for consumers to be made more aware that they have rights when faced with unreasonable behaviour in relation to debt recovery. If consumers are encouraged to complain about unfair or improper behaviour by creditors seeking to recover debts, it will be easier for the OFT or local Trading Standards to clamp down on such practices. At the moment, it seems that consumers often do not realise that they continue to have rights to be treated properly even though they have defaulted on their loan.

We would welcome the opportunity to discuss any of the issues raised in this consultation response further.





## **Consumer Focus response to OFT consultation on debt collection guidance**

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