

The OFT and the debt collection industry

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What will be covered

- **Current regulatory issues**
- **Specific unfair practices under review**
- **The licensing process**



Current regulatory issues

Consumer Credit Act

- **Licensing system protects the interests of consumers**
- **New applicants and licence holders must satisfy the OFT they are fit to engage in the activities covered by the licence**
- **Pro-active 'risk based' approach to regulation/enforcement - increased scrutiny in areas of highest risk including debt collection/debt purchase**
- **Competence Assessment - Credit Competence Plan, and on-site visits by OFT or TSS**

Consumer Credit Act – CCA06 changes

- **CCA06 has provided wider enforcement powers:**
 - Power to impose requirements
 - In cases of non-compliance with requirements, power to impose financial penalties
- **Enhanced information gathering powers:**
 - Power to require information generally – s36B
 - Power to require access to premises – s36C

Fitness Guidance

- **Debt collection guidance issued in 2003 and updated in 2006**
 - Minimum standards – not intended to represent best practice
 - Lists unfair practices – but not exhaustive
 - Traders are expected to abide by the spirit **and** the letter
 - Applies to all licence holders and applicants – not just debt collectors

Debt collection guidance

- **Communication**
- **False representation of authority/legal position**
- **Harassment**
- **Deceptive and/or unfair methods**
- **Unfair charges**
- **Visits**
- **Statute barred debts**

Enforcement action

- **Action must be proportionate and appropriate – taking into account**
 - Previous OFT enforcement action, including warning letters
 - Intent
 - Degree of consumer detriment
 - Whether vulnerable consumers are affected

Enforcement action - sources of evidence

- **Proactive**

- Competence visits
- Information gathering powers
- Compliance reviews

- **Reactive**

- Consumer complaints
- Consumer advisors, e.g. CitA, National Debtline and CCCS
- Other regulators and FOS
- LATSS
- Trade bodies

Recent enforcement action

- Requirements imposed on major players in sector to improve debt collection practices
- 1st Credit – Statutory demands
- Mackenzie Hall – Disputed and statute barred debt
- Link Financial – Using neighbours to pass on messages

Enforcement action

- Requirements will be monitored
- Non-compliance may lead to imposition of financial penalty and/or revocation of licence

Specific unfair practices under review

Specific unfair practices under review

- **OFT focus is on areas causing significant consumer detriment including**
 - Aggressive/oppressive behaviour when dealing with vulnerable debtors, including bypassing third party representatives, pressurising debtors to pay by threatening legal action, issuing statutory demands when it is unlikely that proceedings will be initiated
 - Failing to properly investigate genuinely disputed debts and to suspend collection activity
 - Use of misleading letters

Responsibilities of all licence holders

- All licence holders have a responsibility to ensure that base data used in debt collection is accurate
- Failure to ensure that an adequate history of the debt is passed on is listed as an unfair practice in the OFT's Debt collection guidance
- The OFT will be writing to creditor trade bodies recommending they take action to improve base data used for debt collection

Update of Debt collection guidance

- **Currently expected to be updated towards the end of 2009**
- **Will provide more clarity on respective obligations of creditors (including debt purchasers) and debt collectors to ensure that base data used for debt collection is accurate and up to date**
- **Will take account of debt purchase issues including guidance for creditors selling on debt**



The Licensing process

The licensing process

- **Make the correct payment including the Consumer Credit Jurisdiction levy if appropriate**
- **Ensure the application form is complete and all supporting documents are provided**
- **A risk-based system means increased scrutiny for those involved in high risk categories - so apply only for the licence categories you require**
- **Completion of the CCP is essential for debt collectors and debt purchasers and must provide information on the business activities, skills, knowledge, compliance monitoring, complaints handling, and training**

The licensing process – impact of the European Services Directive

- **28 December 2009**
- **Greater transparency - applicants will be provided with a guaranteed date of decision**
- **Improvements to the on line application process - application forms, payments along with supporting documents can be submitted completely on line**
- **Fewer supporting documents required on application**

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