



## **Advice NI Response to the Debt Management (and credit repair services) Guidance**

**Deadline:** 5<sup>nd</sup> September 2011

Advice NI welcome the opportunity to respond to the OFT Debt Management (and Credit Repair Services) Guidance. **Section 1** includes background information on Advice NI and a general overview. **Section 2** includes our response to areas within the consultation paper.

### **1. Background:**

Advice NI is a membership organisation which exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI provides its members with the capacity and tools to ensure the delivery of effective advice services. This includes: advice and information management systems, funding and planning, quality assurance support, NVQs in advice and guidance, social policy co-ordination and ICT development.

Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 65 member organisations operating throughout Northern Ireland, providing information and advocacy services to over 110,000 people each year and dealing with over 240,000 enquiries on an extensive range of matters including: debt, social security, housing, consumers and employment issues. For further information, please visit [www.adviceni.net](http://www.adviceni.net).

### **General:**

The Debt Management Guidance is a useful practical resource for Advice NI debt advisers and provides an objective basis for the OFT to assess whether

lenders/brokers and Debt Management Firms are behaving unfairly. The guidance is routinely used by advisers either as part of their negotiations on behalf of customers or as a self-help tool to empower people in resolving their own debt problems. The revised guidance is indeed an improvement on the previous guidance and we hope that more subscribers adhere to the principles and apply them in practice. We suggest the OFT continues to adopt a pro-active approach to ensuring that businesses are adhering to the guidance and those that are not are subject to enforcement procedures.

Advice NI welcomes the greater emphasis for Debt management and credit brokering businesses within the guidance which states that they must;-

- Be fully transparent about the service on offer and fees charged.
- Explain to consumers both the risks and benefits of each proposed solution.
- Ensure the advice provided is in customers' interests
- Not use misleading names or advertising, including misleading web-based adverts.

Advice NI's Debt Action Project, aimed at helping the most financially vulnerable in Northern Ireland has helped almost 3,000 individuals and dealt with nearly £57 million of debt for the period November 2009-August 2011. The Debt Action project is funded by DETI, who fund a number of front line advice posts for both Advice NI and Citizens advice in Northern Ireland.

In addition Insolvency figures report there were <sup>1</sup>752 individual insolvencies in Northern Ireland for April-June 2011. This consisted of 451 bankruptcies and 301 individual voluntary arrangements. This is a 122% increase from the same period in 2007. <sup>2</sup>In Northern Ireland recent unemployment statistics indicate that unemployment now stands at 60,400 people. In the last year, the number of unemployed in Northern Ireland increased by 3,800, which at 6.7% is the same percentage increase as in the UK as a whole. It is also expected that the number of

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<sup>1</sup> <http://www.detini.gov.uk/deti-insolvency-index/insolvency-statistics.htm>

<sup>2</sup> <http://www.bbc.co.uk/news/uk-northern-ireland-14557415>

unemployed<sup>3</sup> will rise above 70,000 by 2012, with a warning that Northern Ireland would continue to have a more negative jobless record than the rest of the UK which can already be seen.

Given the above and in light of the current economic climate we consider it of even more importance that the OFT ensures the guidance is comprehensive and is adhered to by all creditors and suggest enforcement action is taken as necessary, to ensure sufficient protection for the most financially vulnerable groups such as people on low income, older people, mental ill health and those with learning disabilities. As debt levels increase and more consumers turn to Debt Management Companies for help in managing their finances it is vital that the guidance increases transparency in the industry, and consumers are provided with all the necessary information to make an informed decision.

## **2. Comments:**

### **Chapter 1: Introduction**

We believe the foreword and introduction clearly sets out the scope of the guidance. However we suggest the footnote 107 on page 82 of the guidance is not comprehensive enough particularly for Northern Ireland. We suggest Advice NI is included within this footnote. We also believe there should be a requirement that Debt Management Companies should inform consumers that free debt advice is available and signpost when necessary. We suggest this is included within the Debt Management Guidance.

### **Chapter 2: Overarching Principles of Fair Business Practice**

We believe the draft guidelines on lead generation, direct marketing and personal visits is sufficiently clear. We do however believe that the Consumer Credit Act 1974 could be amended to exclude cold calling for consumer credit business (specifically credit broking, lending and debt management services) and to prohibit lenders, brokers and debt management firms from charging upfront fees from clients before they have confirmed that an agreement has been reached with the clients creditors

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and provide details of the agreement, including whether or not the creditors have agreed to freeze interest and charges. In our opinion if debt management companies are not allowed to charge large upfront fees, this should remove the incentive for companies to mis-sell unfitting debt management plans or invalidly charge high monthly repayments ensuring vulnerable consumers are not exploited.

### **Chapter 3: Unfair or Improper Business Practices**

In our opinion the draft guidelines on charging for debt management services are clear. We do however disagree with charging initial arrangement fees which can often increase people's debts. Debt management firms must be clear about their charges and the options available to customers.

However from our experiences Debt Management Companies<sup>4</sup> sometimes hold onto client's cash and do not use it to pay off their clients debts. Clients are often kept in the dark and have a false sense of what they are paying off and where their money is going which makes it much harder to keep track of current balances and for them to manage their debts.

Another area of concern is misleading advertising, in particular failing to disclose that fees are payable and claiming services are free when they are not. Another area of concern is where fee charging Debt Management Companies advertise in such a way as to lead the client to believe they are a charity.

### **Chapter 4: Regulatory Compliance and Enforcement**

Advice NI support the requirements for licensees and applicants to take all reasonable steps to ensure they have suitable business policies, practices and procedures in place to facilitate their own compliance. We also support the specific provision for fair and appropriate treatment of vulnerable consumers.

Whilst the guidance is sufficiently clear we believe that given the particular sensitivities around debt advice and the vulnerabilities of many of the clients who use

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<sup>4</sup> <http://www.bbc.co.uk/news/business-13568152>

such services, that applicants ability to meet the licensing requirements should be thoroughly investigated at application stage and that audit checks of compliance are conducted at regular intervals.

### **Further Comments**

We also believe that there is a need for the OFT and the Information Commissioner's Office to work together to investigate the way that consumer contact information is being used by credit firms. We are particularly concerned at evidence suggesting that information passed amongst firms is being used to target consumers in financial difficulty.

Although the OFT now has more extensive regulatory powers as a result of the Consumer Credit Act 2006, we believe that enforcement action needs to be more robust and quicker. Proving that a firm has engaged in "unfair practice" can be a lengthy process. We believe that if responsibility for consumer credit regulation pass to the proposed new financial services regulator - the Financial Conduct Authority, should be granted sufficient powers and resources to take effective action against debt management firms.

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