



## **Advice NI Response to the Debt Collection Guidance**

**Deadline:** 2<sup>nd</sup> June 2011

Advice NI welcome the opportunity to respond to the Draft OFT guidance for creditors, debt collectors, law firms and other businesses engaged in recovery of consumer credit debts.

**Section 1** includes background information on Advice NI and a general overview. **Section 2** includes our response to consultation questions within the draft guidance.

### **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 100,000 people each year and dealing with over 227,000 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 Collection Guidance is a useful practical resource for Advice NI debt advisers and provides an objective basis for the OFT to assess whether the creditor/collector is 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. It is also a helpful tool for advisers when communicating with the Financial

Ombudsman Service. The guidance is definitely an improvement on the previous guidance and we hope that more subscribers adhere to the principles and apply them in practice.

Advice NI welcomes the greater emphasis on creditors as collectors in their own right and liable for those collecting on behalf of them. Greater protection will be offered to the client where the history of the client debt is passed on when the debt is sold.

Advice NI's Debt Action Project, aimed at helping the most financially vulnerable in Northern Ireland has helped 2735 clients and dealt with nearly £48.5million pounds in debt for the period November 2009-May 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<sup>1</sup> there were 692 individual insolvencies in Northern Ireland for Jan-Mar 2011. This consisted of 451 individual voluntary arrangements and 241 bankruptcies. This is a 25% increase from the same period in the previous year. In Northern Ireland It is also expected that the number of unemployed<sup>2</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.

Given the above and in light of the current economic climate we consider it of even more supreme importance that the OFT ensures the guidance is comprehensive and is adhered to by all creditors, 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.

## **Response to Consultation questions:**

### **Chapter 1 - Introduction**

#### **Q1 Does the Foreword and Introduction set out the purpose and scope of the guidance sufficiently clearly**

We are satisfied that the foreword and introduction sets out the purpose and scope of the guidance clearly.

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<sup>1</sup> <http://www.insolvency.gov.uk/otherinformation/statistics/201011/table6.pdf>

<sup>2</sup> <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/unemployment-to-rise-above-70000-14904526.html>

**Q2 Is the definition of who the guidance applies to clear and adequate?**

Advice NI is satisfied that new additions to section 1.8 of the guidance clearly convey the guidance is applicable to all consumer credit debt recovery activity. This includes creditors, tracing agents engaged to assist in the debt recovery process and debt recovery/collection businesses. We also welcome the guidance being applicable to persons covered by a relevant group licence such as law firms or solicitors who may be engaged in recovery or enforcement of debts.

However paragraph 1.15 states *In monitoring and assessing fitness of licence holders and applicants we will take account of the behaviour of businesses when recovering debts which are not regulated by the Act, such as utility, telecommunications or council tax debts.* Advice NI has two comments (1) we suggest that this point is expanded to include parking penalties and tax debts, (2) we are concerned by the lack of strength of the term ‘*we will take account*’ and consider this interpretation could vary between lenders. We therefore seek expansion and clarification of this term.

**Q3 Have we set out our approach to the assessment of fitness and potential risk sufficiently clearly?**

Yes. We particularly welcome the new insertion of paragraph 1.5 into the guidance which states *in determining whether a person is fit to hold a licence, the OFT shall have regard to the skills, knowledge and experience to consumer credit business, consumer hire business, and/or ancillary credit business.*

We suggest the OFT continues to adopt a pro active approach to ensuring that businesses are adhering to fitness standards and those that are not are subject to enforcement procedures.

**Q4 Are there any substantive aspects with which you disagree?**

No

**Q5 Do you consider that there are any significant omissions?**

No

**Q6 Do you have any other suggestions for improvement?**

No

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

### **Q7 Do you agree with the proposed 'Overarching principles of fair business practice?'**

Whilst in general we agree with the principles we do however have some comments. These are outlined below.

#### **Section 2.2.**

##### **Transparency**

In cases in which borrowers experience financial difficulties, the lender should be committed to seeking genuine solutions which include being transparent and treating people positively and sympathetically in order to find the best solution.

However from experience this is often not the case. One of our advisers reports a case where a client suffered a severe stroke which left him unable to communicate verbally or in writing. His wife spoke to Barclaycard regarding his credit card as she was alarmed at the high interest rates and charges being added to his account. She asked Barclaycard to freeze interest being charged and was offering them a £150 per month repayment. Barclaycard refused to discuss any of his account details with her unless she had power of attorney or a disclosure certificate signed by her husband. Due to the nature of the client's illness he was unable to give his consent or sign any documentation. The client's General Practitioner provided Barclaycard with a letter stating that he was no longer able to manage his affairs however this did not stop charges accruing on his account. Inevitably this caused a lot of undue distress for the client. We would suggest when creditors are informed that a client is in financial difficulties they should consider the overall circumstances and apply some flexibility e.g. freeze credit card interest charges.

##### **Forbearance and consideration**

One of the principles of fair business practice is that *businesses should exercise forbearance and consideration towards debtors experiencing difficulty*. We are concerned that the interpretation of these terms may vary significantly from one lender to another. We suggest this terminology could perhaps be simplified to increase the chances of consumer credit businesses adhering to the guidance. It goes on to read *we would expect businesses to work with debtors with a view to providing them with reasonable time and opportunity to repay debts*. Once again we would welcome clarification on what constitutes "reasonable" in this context. A lender's definition of reasonableness may not be the same as someone indebted. We would suggest a footnote is included in the guidance as to what constitutes a reasonable time.

### **Act proportionately**

This paragraph states that *actions taken in respect of arrears or default should give proper consideration to available options and the likely effect of such action on the debtor.*

Advice NI reports the case of a young woman suffering from severe depression who was a hospital in-patient. Her bank refused to cancel her direct debits even though there was no income coming into her account other than Statutory Sick Pay, which meant that the account was accruing charges daily. In cases in which borrowers experience financial difficulties, the lender should be committed to seeking genuine solutions which include proportionate and reasonable measures, to postpone payments and to co-operate with advisers in order to find the best solution. In this instance proper consideration was not given to the available options nor to the likely effect these actions could have on the debtor.

### **Law in different jurisdictions**

We welcome paragraph 2.3 which highlights when creditors are dealing with debtors in a different jurisdiction they should take appropriate account of any differences in law or court procedures between jurisdictions that may impact significantly on the debtor's position/rights. From our experiences in Northern Ireland creditors operating in other parts of the mainland are not aware of the difference in law between the jurisdictions and as a result are giving incorrect advice to clients.

The court process in Northern Ireland is different than in England and Wales e.g. there is no bailiff law in Northern Ireland. Instead the Northern Ireland court service consists of the Enforcement of Judgments Office (EJO) which has the power to enforce judgments of the Magistrates, Small Claims, County and High courts. It is presided over by a Master however responsibility for staff lies with the Chief Enforcement officer. The EJO enforces judgments lodged with it and maintains a register containing the details of judgments lodged for enforcement. There are set procedures for enforcing a judgment and the EJO has a variety of powers to enforce the recovery of a debt. These powers and procedures are laid down in the Judgments Enforcement (NI) Order 1981.

However Creditors will often send clients mis-leading threatening letters instructing them to pay their debts or bailiffs will come to their homes and seize their goods. This incorrect information can often place additional stress on clients and have a detrimental effect on their mental health.

**Q8 Does the section ‘Licence Holders’ responsibility for third parties’ clearly convey our expectations?**

We welcome the clear statement that licence holders’ own fitness may be called into question if they choose to do business with third parties who are unfit to hold a licence.

However we feel that the guidance could perhaps be expanded to include how licence holders should assess fitness of the third parties that act on their behalf. We suggest any addition is also reflected in the <sup>3</sup>Consumer Credit Licensing Guidance for licensees on fitness and requirements.

**Q9 Are there any substantive aspects of this chapter with which you disagree?**

No

**Q10 Do you consider that there are any significant omissions?**

No

**Q11 Do you have any other suggestions for improvement?**

We would like to highlight that sometimes clients only become aware their debt has been sold on after receipt of correspondence from a debt collection agency. We believe there is a great opportunity now for all consumer credit organisations to become more transparent and would advocate an approach where lenders would use debt collection agencies and debt purchase companies as a last resort and only when they cannot contact the consumer. We would welcome a note on this being included in the guidance.

**Chapter 3- Unfair or Improper Business Practices**

**Q12 Are there any substantive aspects of this chapter with which you disagree?**

In general we are impressed by the new additions particularly the new section on debt sale and purchase, and the improvement to the section on statute barred debt to cover Northern Ireland.

**Q13 Do you consider that there are any significant omissions?**

Whilst we welcome section 3 on communication we consider some areas could be extended further. For example point j. *contacting debtors at unreasonable times*.

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<sup>3</sup> [http://www.ofc.gov.uk/shared\\_ofc/business\\_leaflets/credit\\_licences/ofc969.pdf](http://www.ofc.gov.uk/shared_ofc/business_leaflets/credit_licences/ofc969.pdf)

We suggest a footnote is inserted to explain what is unreasonable and refer to the <sup>4</sup>National Standard of Enforcement Agencies definition of unreasonable times. We also suggest this point is expanded to cover contacting debtors with an unreasonable volume of calls.

#### **Q14 Do you have any other suggestions for improvement?**

One of the examples of unfair practices as outlined in section 3.2 (l) is *asking or instructing debtors to make contact or premium rate or other special rate numbers*.

We wish to highlight that many of our clients who are in severe financial difficulties would not have any disposable cash to make these expensive calls. Our advisers also report that often when a client requests a callback from the creditor it is refused. We therefore suggest another point is added into the guidance '*refusing to ring debtors back if they request it*'.

We also suggest a footnote is inserted to explain that special rate telephone numbers can be as expensive as premium rates such as 0844, 0870 and 0871 and therefore can be a deterrent to debtors engaging with creditors.

In section 3.4g it refers to *pursuing third parties for payment when they are not liable, for example pursuing a relative for a debt when he is not a joint party to the credit agreement*. We suggest either this section is extended or a new point is inserted to cover pursuing a debtors family member when they are not liable when the debtor has deceased.

#### **Statute barred debts**

Whilst we welcome the new section on statute barred debt and Northern Ireland, we consider the guidance does not contain equal representation of all UK countries including Northern Ireland. We would have concerns that the lack of reference to Northern Ireland may result in consumer credit businesses thinking the guidance does not apply to NI clients. We suggest there is an equal distribution of Northern Ireland issues.

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- <sup>4</sup> Enforcement should not be undertaken on Sundays, on Bank Holidays, on Good Friday or on Christmas Day, unless the court specifically orders otherwise or in situations where legislation permits it.
  - It is recommended that enforcement should only be carried out between the hours of 6.00am and 9.00pm or at any time during trading hours, existing legislation must be observed.

Also in the “Statute-barred debt” section we suggest that in addition to the examples of unfairness in collecting statute-barred debt, it should also be unfair for a company not to tell the person that the debt is statute barred and that they cannot take legal action. We would welcome the guidance being amended to reflect this.

#### **Chapter 4- Other Relevant Guidance and Legislation**

##### **Q15 Is this chapter clear and helpful?**

We would like to highlight that under the Mental Capacity and Mental Health section on page 43 there is reference to the Equality Act 2010. However we would like to highlight that the provisions of the Act, apart from a few minor exceptions, only apply to GB and will not change equality law in Northern Ireland. We refer to an Equality Commissioner Briefing Note<sup>5</sup> which states,

*‘The enactment of the Equality Act 2010 has, however, resulted in significant differences arising between GB and Northern Ireland equality law. These differences affect all grounds of discrimination (race, sex, age, disability, etc.) across a wide range of areas (employment, education, the provision of goods and services and housing, etc.).*

*As a result of the changes that have taken place in GB, vulnerable and marginalised individuals in Northern Ireland have less protection against unlawful discrimination, harassment and victimisation than those in GB. This gap in protection will continue to widen as further planned changes to the equality legislation in GB under the Equality Act 2010 are implemented.’*

We would therefore recommend the OFT liaises with the Equality Commission in Northern Ireland to ensure the guidance is amended to reflect equalities legislation in NI and to ensure NI citizens receive the same protection from discrimination as GB citizens.

##### **Q16 Are there any substantive aspects with which you disagree?**

No

##### **Q17 Do you consider that there are any significant omissions?**

We welcome the new insertion on Mental Capacity and Mental Health on page 42 with regards to the OFT’s work to provide better protection for people who have some form of mental capacity limitation.

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<sup>5</sup> Equality Commission for Northern Ireland – The gaps between GB and NI Equality Law January 2011

However, we believe that mental health is only one factor that will affect a consumer's ability to manage money, deal with personal debt issues, exercise their rights or make informed credit choices. There are many instances where people's circumstances may affect their ability to deal with the financial services industry, such as sensory impairment, physical health problems or bereavement. We therefore suggest the guidance is extended to protect other vulnerable people who fall outside of the mental capacity arena.

**Q18 Do you have any other suggestions for improvement?**

We suggest that the mental capacity section on page 42 of the guidance should include a reference to the <sup>6</sup>Money Advice Liaison Group (MALG) literature available particularly the Debt and Mental Health Evidence Form (DMHEF) and creditors are asked to accept a DMHEF as evidence that the client has mental illness.

**Chapter 5 – Regulatory Compliance and Enforcement**

**Q19 Are these draft guidelines on regulatory compliance and enforcement sufficiently clear?**

We are satisfied that the draft guidelines on regulatory compliance and enforcement are sufficiently clear.

**Q20 Are there any substantive aspects with which you disagree?**

No

**Q21 Do you consider that there are any significant omissions?**

No

**Q22 Do you have any other suggestions for improvement?**

No

**Annexes**

**Q23 Do you have any comments about the Annexes (A-F) contained in the guidance document?**

We would suggest a further annexe on vulnerability or a widening of the annexe on mental capacity to incorporate a wider definition of vulnerability. It might be worth linking in with the work on Vulnerable Consumers undertaken by the 'Addressing Financial Difficulties Working Group' led by Alex McDermott, Creditor Liaison Officer with Citizens Advice, England.

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<sup>6</sup> <http://www.malg.org.uk/dmhdocslist.html>

**Q24 Do you have any other comments about this guidance document?**

No

**Q25 Do you consider that a shortened version of the guidance might be useful? If so, which aspects of the guidance might be omitted?**

We consider all sections of the guidance are essential in terms of provision of protection for consumers. We would therefore have concerns about making the guidance shorter as omission of important information could result in the guidance being less effective.

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